

VOLUME III OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Saluda County

S.C. SUPREME COURT

Honorable J. Cordell Maddox, Circuit Court Judge

ABIN LOWMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001761

APPENDIX

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1 it's being used against him in sentencing.

2 THE COURT: Okay. Y'all need any further time to
3 discuss these issues?

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: Very well. All right. We discussed
6 some of my instructions. Can we have a brief instruction
7 conference?

8 MR. HUBBARD: Yes, sir.

9 THE COURT: Tell the jury we're gonna be about ten
10 minutes. If they want to step outside, they may.
11 They'll have enough time to step outside.

12 (Short break.)

13 BAILIFF: Come to order.

14 THE COURT: Be seated.

15 THE COURT: Y'all ready?

16 MR. WILLIAMS: Yes, sir.

17 MR. HUBBARD: Yes, sir.

18 THE COURT: All right. Bring them in.

19 (Whereupon, the jury entered the courtroom at 12:30
20 p.m.)

21 THE COURT: All right. I'm doing something a little
22 different kind of out of my normal. I normally give my
23 instructions after the lawyers summarize their positions
24 but I have talked with the lawyers and suggested that I
25 give my instructions on the law first and then they give

1 their closing summaries. We can do it that way so we're
2 gonna try it that way. So I'm gonna instruct you on what
3 the law in this case is and then the lawyers are gonna
4 get their opportunity to come up and summarize what they
5 believe the evidence has shown or not shown and therefore
6 present the questions of fact to you.

7 First of all, you're Mr. Leyden?

8 MR. LEYDEN: Yes, sir.

9 THE COURT: Do you mind that I have appointed you
10 foreperson?

11 MR. LEYDEN: No, sir.

12 THE COURT: Okay. Anybody else mind that I have
13 made him the foreperson? You've been my good spokesman
14 but since you're an alternate, y'all won't be back there
15 once we get started.

16 All right. Mr. Leyden and the other members of the
17 jury, the State of South Carolina has charged Mr. Lowman
18 with several counts. These are allegations I have told
19 you. Y'all will have these. You don't need to write
20 down the charges. Y'all will have a verdict form. I'll
21 show it to you. Those are the charges listed so you can
22 see them. That's the verdict form. I'll get it back to
23 you in a second. The lawyers made it short so it's just
24 a list of the charges. These are allegations.

25 The State's presented evidence which it will argue

JURY CHARGE

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1 that its proven which the defense will argue that it's
2 not proven. The purpose of my instructions to you is to
3 tell you what they've got to do.

4 Now, the charges are one count of armed robbery, one
5 count of first degree burglary, two counts of kidnapping,
6 one count of criminal conspiracy. Bare in mind Mr.
7 Lowman has pled not guilty and by that plea he denies the
8 charges in the indictments. I told you early on and I'll
9 tell you again, Mr. Lowman comes into court clothed with
10 a presumption of innocence from our constitution. This
11 presumption of innocence continues throughout the case
12 and entitles him to a verdict of not guilty until that
13 presumption is dispelled by evidence presented to you
14 satisfying you beyond a reasonable doubt that he is
15 guilty of the offenses charged. I tell you each charge
16 contains a penalty, each charge has separate elements and
17 the State must prove those elements beyond a reasonable
18 doubt. All of them.

19 Now, the charges he's charged with, armed robbery,
20 burglary first, conspiracy, those sort of things, they
21 have separate elements that the State must prove the
22 elements. It's not all or nothing. Each charge, armed
23 robbery, guilty or not guilty. Conspiracy, guilty or not
24 guilty, they stand independently.

25 Now, the same constitution in law which makes you

1 the finders of fact makes me as the trial Judge the
2 instructor of the law. So I asked you early on when we
3 were qualifying that you had to accept the law as
4 instructed by the Court meaning the trial Judge so you
5 must understand if I make an error in instructing the
6 law, there's another time and another place where that
7 error can be considered and if necessary corrected. But
8 for our purposes today you must accept the law as I'm
9 instructing it. If you have a different understanding of
10 what the law is or have a belief the law should be some
11 other way, you must disregard that misunderstanding or
12 difference and accept it as I am instructing it to you.
13 That is part of the oath you took as jurors is to accept
14 the law as instructed by the Court.

15 Now, in criminal prosecution cases the State has the
16 burden of proving the charges they bring. A defendant
17 has no burden whatsoever as the defendant is presumed
18 innocent. The State must prove its case to a proof
19 called beyond a reasonable doubt which I will define for
20 you shortly. If the State fails to meet that burden,
21 then the defendant is entitled to a verdict of not
22 guilty.

23 Now, the same constitution I was telling you about
24 making me the instructor of the law makes you 12, 14
25 currently, the judges of the facts. You're the sole

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1 judges of the facts in this case which means really y'all
2 are the judges of the credibility of the testimony and
3 the evidence which has been presented to you as a group
4 during this trial.

5 Now, in evaluating credibility you can use anything
6 in your common and collective knowledge and sense, you
7 12, as you use in your every day life in evaluating
8 whether someone is telling you the truth or not telling
9 you the truth. Several other things in passing upon a
10 person's credibility you can evaluate and utilize would
11 be what was the manner and appearance of a witness who
12 testified. Was the witness straightforward. Was the
13 witness hesitant. How did a witness come to know the
14 facts to which he or she testified. What was his or her
15 ability to recollect these facts during the testimony.
16 Is there some reason a witness would want to give
17 testimony which would help or hurt one side or the other.
18 Was a witness bias or prejudice toward one side or the
19 other. Was the testimony of a witness strengthened or
20 weakened by other testimony or other evidence.

21 Y'all as a group may believe as much of a witness'
22 testimony as you deem appropriate and you deem credible.
23 You can believe a little bit of a witness' testimony and
24 disregard the rest. You can believe one witness over
25 many, many over one. It's up to you to collectively and

1 unanimously find the facts which you believe to be true.

2 Now, the fact that testimony was not controverted
3 does not mean you must accept it as true and undisputed.
4 You still gauge the credibility of the witness who
5 provided that testimony.

6 Now, several witnesses testified who have had past
7 criminal records. A person who has a past criminal
8 record is competent and allowed to testify in court. The
9 past record of that person does not affect the ability of
10 that witness to testify and a past record may be only
11 considered by you in determining that witness'
12 believability. You are the sole judges of the facts and
13 the believability of any and all of the witnesses is
14 subject just to you and y'all's collective judgment.

15 Several other witnesses were qualified as expert
16 witnesses and as they were qualified I told you expert
17 witnesses are witnesses who are allowed to testify
18 because of their education and experience, have become
19 experts in some art or science or profession that they
20 may provide opinions in that art or science which may be
21 relevant and material to a matter which the Court was
22 presenting to the jury. You consider the expert's
23 opinion received as evidence just like any other
24 evidence. Give it the weight that you think it deserves.
25 If you decide that an opinion of an expert is not based

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1 upon sufficient education and experience or if you
2 conclude the reasons the expert gave in support of his or
3 her opinion are not sound or if the opinion is outweighed
4 by other evidence, you may disregard the opinion evidence
5 in its entirety. An expert witness' testimony is to be
6 given no greater weight because they're an expert than
7 those witnesses who were not experts. You're to just
8 evaluate the credibility of all the witnesses in making
9 your determinations of fact.

10 As the sole fact finders I observed y'all listening
11 closely to the testimony and I tell you that weighing
12 evidence, I have been using that term, it's entirely a
13 mental process. It's not how big the person is or how
14 smart they appear to be. It's what you find believable.
15 You weigh the evidence using your good judgment and
16 common sense.

17 Now, there were two types of evidence presented.
18 Most times there are in trials. There's direct evidence
19 and there's circumstantial evidence and I'll tell you
20 what the difference is.

21 Direct evidence is testimony of a person who claims
22 to have actual knowledge of a fact such as an eyewitness.
23 I saw this. I watched that. I did this. Direct
24 testimony.

25 Circumstantial evidence is proof of a chain of facts

1 and circumstances indicating the existence of a fact.
2 Our law makes no distinction between the weight or value
3 to be given to direct or circumstantial evidence. There
4 is no greater degree or certainty required or proof of
5 circumstantial evidence and that of direct evidence. You
6 weigh all of the evidence, all of the testimony presented
7 whether it was direct testimony or circumstantial
8 evidence testimony. To the extent that the State relies
9 upon circumstantial evidence though all of the
10 circumstances must be consistent with one another and
11 when taken together point conclusively to the guilt of
12 the accused beyond a reasonable doubt. If the
13 circumstances are merely portrayed that his behavior as
14 suspicious, then the proof has failed.

15 Thus, after weighing all of the evidence whether it
16 be direct or circumstantial or some combination of the
17 two, if you are not convinced of the guilt of Mr. Lowman
18 beyond a reasonable doubt you must find him not guilty.

19 I keep using the term reasonable doubt so here it
20 is. What is a reasonable doubt? A reasonable doubt is
21 the kind of doubt which would cause a reasonable person
22 to hesitate to act. Reasonable doubt may arise from
23 evidence in the case or from a lack or absence of
24 evidence in the case. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the defendant's

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1 guilt, is a doubt to which you can assign a reason, that
2 assignment can be done reasonably, firmly and
3 convincingly. Reasonable doubt is a doubt which would
4 make a reasonable honest person hesitate to act in a
5 matter of their own affairs.

6 I charge you that Mr. Lowman is entitled to every
7 reasonable doubt which may arise in this case and what
8 that means is if you had a doubt about anything during
9 the trial, you are required to resolve that doubt in his
10 favor.

11 Now, y'all have a full and free discussion about
12 reasonable doubt, lack of reasonable doubt. The fact
13 that y'all have a full and free discussion does not
14 automatically create a reasonable doubt in this case.
15 Thus, you must make a determination whether or not a
16 reasonable doubt exists as to his guilt and if you find
17 the State has not met the burden of proof beyond a
18 reasonable doubt, you must as you were told that Mr.
19 Lowman is entitled to a verdict of not guilty.

20 Now, a necessary element to all the crimes which
21 I'll charge you momentarily is criminal intent. Criminal
22 intent is a necessary element which must be proven by the
23 State beyond a reasonable doubt. Criminal intent is
24 always a matter determined by the jury from the
25 circumstances surrounding the situation. There's no way

1 to prove intent to a mathematical certainty. There's no
2 way medical science can dissect a person's brain and
3 determine what he or she had in mind. The law states
4 criminal intent may be inferred from the circumstances
5 shown to have existed both before and after the fact.
6 That's how you the jury make a determination of whether
7 or not the element requiring intent was present.

8 Criminal intent is a state of mind that operates
9 jointly with an act or omission in the commission of a
10 crime. Criminal intent is a mental state of conscious
11 wrongdoing. It's up to you as the jury to determine what
12 the defendant intended to do based upon the circumstances
13 which were shown to have existed. The State must prove
14 criminal intent beyond a reasonable doubt just as they
15 must prove all of the other statutory elements.

16 Now, I tell you that a statement which was alleged
17 to have been made by the defendant has been admitted into
18 evidence. The Court determined the statement was
19 admissible because of the warnings given to him during
20 the interview. I instruct you that you must make the
21 ultimate decision whether or not the defendant made the
22 statement. If the defendant did make the statement, you
23 must determine whether the statement was made by him
24 voluntarily and of his own free will. This means that
25 the statement was not caused by pressure, force, fear,

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1 threats, coercion, or intimidation, or by hope or a
2 promise of leniency or a reward of any kind. In
3 determining whether the statement was voluntary you
4 should consider the characteristics of the defendant and
5 the details of the questioning. Some of the factors you
6 may consider are the age of Mr. Lowman; his education or
7 lack of education; his mental ability or capacity; his
8 intelligence; his background and environment; the place
9 and length of the detention; the nature of the
10 questioning; the advice or lack of advice to him about
11 his constitutional rights to remain silent; that any
12 statement could be used against him in a court of law;
13 the right to have a lawyer present; that if he could not
14 afford a lawyer, a lawyer would be appointed to represent
15 him without any cost; that he could stop making a
16 statement at any time. You should carefully consider all
17 of the surrounding circumstances before you give any
18 weight to the alleged statement.

19 The State has the burden of proving beyond a
20 reasonable doubt that the statement was voluntary. If
21 you determine that it was, you may give the statement any
22 further consideration that you deem proper. You must
23 decide what weight, if any, should be given to the
24 alleged statement. If you find the statement was not
25 free and voluntary, a statement of the defendant, you

1 should not consider the statement at all.

2 Regarding specifics of the law of each of the
3 indictments. The charges involved an incident with
4 multiple indictments. Five different charges. These
5 indictments are separate and distinct. They stand on
6 their own. They are considered by you individually.
7 Your verdict on one doesn't control your verdict on the
8 others, okay?

9 Now, Mr. Lowman is charged with armed robbery, first
10 degree burglary, two counts of kidnapping, and conspiracy
11 independently. In order to sustain a conviction for
12 armed robbery the State must prove beyond a reasonable
13 doubt that Mr. Lowman took personal property from a
14 person in the presence of another person. Property --
15 I'm sorry. These elements are independent of each other.
16 Property is in the presence of another person if it's
17 within the reach, inspection, observation or control so
18 that a person could if not overcome with violence or
19 prevented by fear keep possession of that property.

20 Additionally, the State must also prove beyond a
21 reasonable doubt that the defendant carried the property
22 away and continued to permanently deprive the owner of
23 that property and to keep the property for his own use.
24 The slightest removal of property or with the complete
25 possession of the property even for an instant by the

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1 defendant is sufficient to show a taking and carrying
2 away of the property.

3 The taking and carrying away of the property must
4 have been done with violence or by putting the owner of
5 the property in fear of violence.

6 And finally, the State must prove beyond a
7 reasonable doubt that the defendant was armed with a
8 deadly weapon during the robbery. A deadly weapon is any
9 article, instrument or substance likely to cause death or
10 great bodily harm and whether the instrument has been
11 used as a deadly weapon depends on the facts and
12 circumstances of each case.

13 An example of a deadly weapon are pistols, rifles,
14 shotguns, knives, those sorts of things. The State must
15 prove those elements all beyond a reasonable doubt.

16 The State also charged Mr. Lowman with first degree
17 burglary. In order to sustain a conviction for first
18 degree burglary the State must prove that Mr. Lowman
19 entered a dwelling without consent.

20 A dwelling is a building or any portion of a
21 building in which a person ordinarily sleeps.

22 In order to prove that the defendant entered the
23 dwelling, the State does not have to show the defendant's
24 entire body entered the dwelling. The smallest entry is
25 sufficient. It may be any part of the body, such as a

1 hand or foot. In addition, the State does not have to
2 prove that force was used to gain entry.

3 If a person enters a dwelling by using deception,
4 artifice, trick, or misrepresentation to get consent to
5 enter, this would be entry without consent.

6 Next, the State must prove beyond a reasonable doubt
7 that the defendant intended to commit a crime at the time
8 of the entry. The mere entry into a dwelling without
9 consent is not a burglary. If the intent to commit a
10 crime is formed after the entry, it is not a burglary.
11 On the other hand, if the defendant intended to commit a
12 crime at the time of entry, it is a burglary even if the
13 intent was abandoned after the entry. It does not matter
14 that the intended crime was not committed.

15 Intent may be shown by acts and conduct of the
16 defendant and other circumstances from which you may
17 naturally and reasonably infer intent.

18 Finally, the State must prove beyond a reasonable
19 doubt that one of the following occurred. First, when
20 entering the dwelling or when fleeing from the dwelling
21 the defendant or an accomplice was armed with a deadly
22 weapon; or when entering or while in the dwelling the
23 defendant or an accomplice caused physical injury to
24 anyone not participating in the crime; or when entering
25 or while in the dwelling or when fleeing the defendant

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1 used or threatened to use a dangerous object or weapon;
2 or when entering or while in the dealing or when fleeing,
3 the defendant or accomplice displayed what appeared to be
4 a knife, pistol, rifle or shotgun or any other type of
5 firearm; or the burglary is committed by a person with a
6 prior record of two or more convictions for burglary or
7 house breaking or any combination of both. Evidence of
8 prior offenses committed by the defendant was not offered
9 to prove the defendant was of bad character or to prove
10 that he committed the burglary on this occasion. The
11 prior convictions may be be considered by you only for
12 the purpose of determining whether or not it satisfies
13 that element of defense that makes it a first degree
14 burglary if you enter a dwelling without consent with the
15 intent to commit a crime and you have two prior
16 convictions for burglary or house breaking.

17 Now, before you can consider the evidence of the
18 prior burglaries or house breakings, you must first find
19 the State has proven beyond a reasonable doubt that the
20 burglary was committed by the defendant.

21 If you find beyond a reasonable doubt that the
22 burglary was committed, then you may consider the
23 evidence of the prior convictions as evidence of one of
24 the circumstances which would make the burglary a first
25 degree burglary. If you find beyond a reasonable doubt

1 that the defendant committed these alleged prior
2 offenses, then you cannot -- I'm sorry. If you do not
3 find beyond a reasonable doubt that the defendant
4 committed these alleged prior offenses, then you cannot
5 return a verdict of first degree burglary; or the
6 defendant entered -- Sorry. Or the defendant entered and
7 remained in the dwelling in the nighttime. Nighttime is
8 the period of time between sunset and sunrise during
9 which time there's not enough daylight to recognize a
10 person's face, except by artificial light or moonlight.

11 The defendant is also charged with the offense of
12 kidnapping. To prove kidnapping, the State must prove
13 beyond a reasonable doubt that the defendant knowingly
14 and unlawfully seized, confined, kidnapped, abducted,
15 carried away another person without authority of law.

16 To do a thing unlawfully is to do it willfully
17 against the law.

18 Knowingly means with knowledge and consciously and
19 not accidentally.

20 Seize means to hold, take hold of suddenly or
21 forcibly.

22 Confine means to limit, restrict or enclose within
23 bounds, imprison, or shut or keep in.

24 Decoy means to lure by, or to entice a person into a
25 trap.

JURY CHARGE

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1 Kidnap is to remove a person against his will by
2 unlawful force or by fraud.

3 Abduct means to carry off secretly or by force for
4 an illegal purpose.

5 Carry away means to remove.

6 The State does not have to prove that the defendant
7 did all of these things. Instead, you must find beyond a
8 reasonable doubt that the defendant did any of these
9 things, you may find him guilty of kidnapping.

10 Something done without authority of the law is
11 something against the law and does not sanction, permit,
12 allow, condone or provide justification for.

13 The kidnapping does not have to be for any personal
14 or monetary gain for an illegal purpose. It may be for
15 any reason whatsoever.

16 Now, lastly the defendant is charged with
17 conspiracy.

18 I'll go back to kidnapping. There are two
19 indictments for kidnapping. One for Mrs. Tidwell, one
20 for Mr. Tidwell. You consider those independently. And
21 the State must prove those independently beyond a
22 reasonable doubt.

23 Lastly, Mr. Lowman is charged with the offense of
24 conspiracy. Mr. Lowman is charged with conspiracy and
25 the State must prove beyond a reasonable doubt that the

1 defendant combined with one or more people or persons for
2 the purpose of accomplishing an unlawful act or
3 committing a lawful act by unlawful means.

4 There must be a mutual understanding, agreement, or
5 common intention and plan. Mere passive knowledge of or
6 consent to the criminal conduct of another is not enough
7 to make a person a conspirator. There must be a guilty
8 knowledge and participation.

9 The mere fact that the defendant may have been
10 associated with another person or met with another person
11 and discussed common aims and interests does not
12 necessarily establish proof of the existence of a
13 conspiracy or that the defendant was involved in
14 conspiracy.

15 On the other hand, it is not necessary that the
16 agreement be a formal one, it is not necessary that it be
17 in writing, it is not necessary that a person is holding
18 meetings and expressly states the terms of the common
19 plan, or that the agreement be stated in words between
20 them. The agreement of a criminal conspiracy may come
21 into being through an implied, mutual understanding. The
22 willful, intentional, and knowing adoption by two or more
23 persons of a common plan is sufficient.

24 No overt acts need to be shown to establish
25 conspiracy. A conspiracy may be shown by circumstantial

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1 evidence and by the conduct of the parties.

2 In order to convict Mr. Lowman of conspiracy, the
3 State must prove beyond a reasonable doubt not only that
4 the defendant knew of the unlawful conduct, but that Mr.
5 Lowman agreed to combine with the other persons for the
6 purpose of accomplishing the unlawful conduct.

7 Now, one issue which has been presented in this case
8 also is identification of the defendant as a person who
9 committed the crimes as charged. The State has the
10 burden of proving the identity of a person accused by
11 beyond a reasonable doubt. You must be satisfied beyond
12 a reasonable doubt of the accuracy of the identification
13 of the defendant before you may convict him.

14 Identification testimony is an expression of belief
15 or impression by a witness. You must determine the
16 accuracy of the identification of the defendant. You
17 must consider the believability of each identification
18 witness in the same way as with other witnesses. You may
19 consider whether witnesses had adequate opportunity to
20 observe the offender at the time of the offense. This
21 will be affected by things like how long or short of time
22 was available, how far or close the witness was, the
23 lighting conditions and whether the witness had a chance
24 to see or know the person in the past. And once again, I
25 instruct you the burden of proof on the State extends to

1 every element of the crimes charged, and specifically
2 includes the burden of proving beyond a reasonable doubt
3 the identity of the defendant as the person who committed
4 the crime. If, after evaluating and examining all of the
5 testimony, you have a reasonable doubt as to the accuracy
6 of the identification, you must find the defendant not
7 guilty.

8 Now, in a crime committed by two or more people who
9 are acting together in committing a crime, the act of one
10 is the act of all. A person who joins with another to
11 commit an unlawful act is criminally responsible for
12 everything done by the other person which happens as a
13 probable or natural consequence of the acts done in
14 carrying out the common plan and purpose. For example,
15 two people can be guilty of killing another person when
16 only one of the two had a gun, there was only one bullet,
17 and only one of the two fired the shot that caused the
18 death. If two or more people are together, acting
19 together, assisting each other in committing the offense,
20 the act of one is the act of all or, as it is sometimes
21 said, "the hand of one is the hand of all."

22 Prior knowledge that a crime is going to be
23 committed, without more, is not sufficient to make a
24 person guilty of that crime. Mere knowledge that another
25 person is going to commit a crime, even if the defendant

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1 is present when the crime is committed, is not sufficient
2 to convict him as its principal. Guilt as a principal is
3 shown by actual or constructive presence at the scene as
4 a result of a prior arrangement. Therefore, a finding of
5 a prior arranged plan or common scheme is necessary for a
6 finding of guilt as a principal. The State must prove
7 beyond a reasonable doubt by competent evidence the
8 theory of the hand of one is the hand of all.

9 A principal in a crime is one who either actually
10 commits the crime or is present aiding, abetting, or
11 assisting in the commission of the crime. When a person
12 does act in the presence of and with assistance of
13 another, the act is done by both. Where two or more,
14 acting with a common plan or intent, are present at the
15 commission of a crime, it does not matter who actually
16 commits the crime. All are guilty. The hand of one is
17 the hand of all. Presence at the commission of a crime
18 means to be sufficiently near to aid and abet and assist
19 in the commission of the crime. However, I'll tell you
20 that the mere presence at the scene of the crime is not
21 sufficient to convict one as a principal on the theory of
22 aiding and abetting. Intent is always a necessary
23 element, for there must have been a common design or
24 intent to commit the crime and the crime must have been
25 committed pursuant thereto with the person aiding and

1 abetting by some overt act. Intent means intending the
2 result which actually occurs and not accidentally or
3 voluntarily. As I've told you, intent may be shown by
4 the acts and conduct of the defendant and any other
5 circumstances from which you may naturally and reasonably
6 infer intent. The state must prove those elements beyond
7 a reasonable doubt.

8 Lastly, I tell you that Mr. Lowman has chosen to
9 exercise his right to remain silent. It's his right
10 under our constitution as it is the right of anyone
11 accused of a crime by the State, the right to remain
12 silent. I tell you he's chosen to exercise that right.
13 That's his right to do so. The fact that he has chosen
14 to remain silent should not be a consideration by you as
15 to I wonder why he decided to do that or I wonder why he
16 didn't testify. It's really, and I instruct you, it's
17 not to be discussed. You must find whether the State has
18 proven its case on these five indictments based upon
19 evidence before you, not why something wasn't presented.

20 So I tell you that the fact that he exercised and
21 asserts his right must not be considered by you in any
22 deliberations. You're to draw no conclusions whatsoever
23 from the fact that he has chosen not to testify. The
24 burden of proof is on the State to prove its case beyond
25 a reasonable doubt and they must prove each of these

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1 elements beyond a reasonable doubt.

2 Mr. Leyden and the other members of the jury, when
3 y'all retire to the jury room after the State's and
4 defendant's closing arguments, I remind you and as I
5 instructed through the selection process and as we took
6 breaks and as we went through the day to day routine, my
7 instructions were clear. Please remember you will get
8 what you need to decide this case here in the courtroom
9 as a group and I'm still telling you that. I want you to
10 confine your decision. It must be unanimous on each
11 based on what you have heard in the courtroom, the
12 evidence, the testimony, the instructions, and disregard
13 anything from outside the jury room that could influence
14 you in making a decision. It's my job to make certain
15 the trial was conducted fairly and orderly, rule on the
16 evidence, rule on the admission of testimony and I have
17 done that. It's your job likewise to make certain that
18 the verdict is fair and just and I'm comfortable that you
19 will do that.

20 Now, since this is a little bit out of order, I
21 normally say y'all step into the jury room and I'm gonna
22 ask the lawyers if my instructions were complete and
23 sufficient based upon our pretrial discussions. Should
24 we do that now and then let y'all summarize?

25 MR. WILLIAMS: That's a good idea.

1 THE COURT: I think that's what we're gonna do.
2 Okay. So y'all step in the jury room, all 14 of you and
3 I'm gonna talk to the lawyers about my instructions. I
4 think they were pretty close. If we need more
5 instructions, I'll finish those before we go forward with
6 the closings.

7 (Whereupon, the jury entered the jury room at 1:05
8 p.m.)

9 (Side bar off the record.)

10 (Short break.)

11 (Whereupon, the jury entered the courtroom at 1:10
12 p.m.)

13 THE COURT: All right. I spoke to the lawyers. The
14 instructions were sufficient. We discussed them
15 beforehand in our pre-instruction conference. And I
16 printed them out and let them read them over and they
17 said I did a pretty good job. I didn't read everything.
18 I spoke to y'all some but y'all will have a copy of these
19 in the jury room so you don't have to commit them to
20 memory. Jurors commonly tell me those instructions sure
21 were a lot like taking a drink of water from a fire hose.
22 So I understand that. This will be back in the jury room
23 with you so rest easy. Y'all will have these back there.
24 Solicitor Hubbard.

25 MR. HUBBARD: Thank you, Your Honor.

1 But for Abin Lee Lowman, none of us would be here.
2 But for him, Robert Goodwin, James Wilson, Joshua Darien
3 would be names you would never hear, they wouldn't have
4 charges, they would be back in Maryland. But for Abin
5 Lee Lowman, Danny and Lynda Tidwell would be living their
6 normal lives, that routine that you heard about, what
7 Danny jokingly said is a boring life but one they
8 cherish, one they live together, that life would not have
9 been brought into this world, into this courtroom, the
10 evil that they saw that night would not be revealed in
11 this courtroom, the evil they met that night in their
12 house would not have happened but for Abin Lee Lowman.

13 Folks, in trying to describe what kind of case you
14 have here probably more than most other cases that I have
15 seen this is a case where evil, true evil enters into the
16 lives of truly good people. It literally bursts into
17 their house, bursts into their lives and just put
18 everything askew. That man, ladies and gentlemen, that
19 man. It was his choices. He was driving the train. He
20 wasn't content to do what the rest of us have to do. We
21 have to go earn a living. He put all his effort, tons of
22 effort into taking from those who earn for themselves.
23 That's Abin Lee Lowman.

24 Folks, he chose his victims. And this is the most
25 revealing thing about this man. He chose Danny Tidwell.

1 He had met Mr. Tidwell when he was a kid. His dad was a
2 regular customer of that store. Someone Mr. Tidwell
3 thought highly of and I think most of the people in the
4 community probably did too. That man played on that. He
5 had a plan to rob those people, the Tidwells, their
6 store, their home, but he wasn't content with that. He
7 had to go to the store to see Mr. Tidwell eye to eye. To
8 look in his face. Pretend to be an old friend. All the
9 while he's talking nicely saying you remember me, he's
10 really saying I'm coming to your house. I'm coming into
11 your business. How are you doing? I'm going to be
12 seeing you again. I'm taking what's yours. I hope
13 you're doing well. You'll be hearing from me. That man.

14 Folks, how do you describe that? How is that not
15 evil? Mr. Williams has talked about the mind set of his
16 client. You know, is he that dumb to have done so many
17 things. Wear is name badge. Run around. Driving a car
18 that's broken down. Well, maybe we can agree, yeah.
19 Yeah. The facts show it was that idiotic. But, folks,
20 this is really about the heart. Who would do this? Who
21 would do this? Who would put these people on their own
22 floors, tie them up. That was his plan. To take from
23 them. Why them? Because they would never, ever suspect
24 it. They welcome everybody. That's who they are.

25 He chose his co-defendants. He chose the people

CLOSING ARGUMENT BY MR. HUBBARD

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1 that would help him. He chose James Wilson who brought
2 along Joshua Darien. He chose his young uncle Robert
3 Goodwin. Gave them all a role. Look at that, folks. He
4 gave them a role that left him kind of out. But who was
5 in charge? Have you heard any facts that anyone else was
6 in charge in this case? It's just that man there. His
7 plan was to follow these good people home. To wait. To
8 get into his car with his crew and follow them. These
9 folks had no idea. He followed them. Followed them to
10 their house trying to find where they lived. The plan
11 was to hit the house, tie them up, get those keys and the
12 code. Really that's what he wanted, to get into their
13 store. That's where the real money was. That's why he
14 saved that part for himself. Do you really think he's
15 gonna share money with these guys? Do you really think
16 he's coming back? What are they gonna say? Who are they
17 gonna run to? The law? They're from out of state.

18 These guys were easy picks. He fed on their greed.
19 You heard James Wilson. It sounded stupid. Everything I
20 saw about it looked like it was stupid. I stayed in. It
21 was greed. Joshua pretty much the same thing and if
22 James is in, he's in. That's his crew. He provided the
23 transportation, that Mercury Grand Marquis you have heard
24 so much about. He provided a gun. Talking about working
25 hard to steal from others, he drove all the way to

1 Spartanburg to get a gun. He went to several Walmarts to
2 buy bullets. If he put half that effort into being
3 honest, folks, we wouldn't be here. He bought zip ties.
4 He paid three nights in the Knights Inn for his guys.
5 That shows you who is in charge. Who comes down from
6 Maryland and demands somebody to pay for their room
7 unless that guy is the one bringing them here. That
8 tells you everything.

9 And he convinced these guys because you can see
10 these guys. James Wilson may not be dumb but he's
11 gullible because he's greedy. Joshua is just young.
12 Goodwin, from what we hear, he's family. But he
13 convinced them to do his dirty work. Y'all go into the
14 house. Y'all put these people on the floor. Y'all tie
15 them up. I'll stay outside. Just hand me the keys.
16 Who's in charge when all of this is going on? When
17 they're being followed. When they're being watched.
18 This couple who have done nothing wrong are going about
19 their normal lives. Just working hard. You heard how
20 long they work every day. Not an enemy in the world.
21 They've done nothing, nothing to deserve this. They've
22 done nothing to have what they have taken away taken
23 away.

24 It's not the cash. It's not the money. Who cares.
25 What they lost was that sense of peace and security.

CLOSING ARGUMENT BY MR. HUBBARD

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1 Everyone deserves that. It doesn't matter where you
2 live. Doesn't matter if you're a man, woman, black,
3 white. It doesn't matter. Doesn't matter. They took
4 something that no one should ever take and that's your
5 sense of peace. And they broke them apart. They tried
6 to. They tried. Those early morning hours of March the
7 8th. Literally it wasn't a window breaking. It was evil
8 crashing into a good house. A house of peace. It really
9 was.

10 All four of these fellows had a role. You heard
11 that. Wilson and Goodwin. They were the gunmen.
12 They're the bigger guys, and put that man and that lady
13 on their floor, on their own floors. Joshua, he's a kid.
14 They had him scurrying about the house looking for the
15 drugs that weren't there.

16 Folks, this is horrific. They took this gun and you
17 heard him, this gun that they went all the way to
18 Spartanburg to get, this pistol, this cheap pistol and
19 they shoved into Danny Tidwell's face as he's on the
20 floor in his own house, his own house and they threaten
21 to kill him. Give us your valuables. Put him down like
22 he was a dog in his own house knowing his wife is right
23 behind him. What man can go through that? He's got a
24 gun to his head and his wife is right behind him. He's
25 helpless.

1 And they separate them. They separate them. That's
2 probably the absolutely worst thing that happened, they
3 separated these people who are inseparable. They
4 separated them. And probably the single worst thing is
5 not just the gun to Danny's face but when one of them
6 walks in with his wife's driver's license and says I see
7 she's an organ donor. You don't want her donating any
8 organs, do you? In his own house. His own house with
9 his wife.

10 Folks, his own house. He's powerless. A woman he
11 loves. He's loved her since he was 17. Before 17. They
12 got married at 17. How does that happen? Why them?
13 Because their that good. They will never suspect.

14 Now, I want to tell you, it's just absolutely mind
15 boggling. While all of this is going on, when they're
16 separated, they're completely apart, they do something.
17 They pray. These are people of faith and they continue
18 to ask for one another. How is my wife doing? Is she
19 okay? How is my husband? Is he all right? Their
20 behavior is incredible. Their love is genuine.

21 These two fellows right here, they had a profound
22 impact on them. James Wilson who went from putting a gun
23 in Danny's face was now looking at Mrs. Tidwell, look at
24 me in the eyes. You will be okay. We will not hurt you.
25 In that short amount of time that was the effect they had

1 on them. Joshua Darien, just a kid, realized I've been
2 lied to. Lowman has lied. There's no drugs in here.
3 These are good people. James Wilson, it's all a lie.
4 It's all a lie. He walks out on the back porch. It's
5 all a lie.

6 And what happens? It doesn't just affect them.
7 Everything starts unraveling. This profound couple
8 crushes evil. The minute, the second these keys are
9 placed in Lowman's hands, a repo man was right back
10 behind him trying to get his car. What if this happened
11 the day before? Two days before? There would have been
12 no repo man. None. You wouldn't have heard from Hook
13 and Book because Hook and Book wouldn't have been there.
14 There wouldn't have been a stop in Johnston, part of the
15 rest of the unraveling, because it would have happened
16 before, the day before.

17 Everything unravels. Everywhere they go it starts
18 to fall apart. He just so happens to get stopped. He's
19 given these keys and he throws them out the window.
20 Y'all know that he did. Our officer notices the
21 passenger window is open. Y'all heard Steve Brown. The
22 man did not want to be here. But think about this. This
23 man, he writhed on the stand. He didn't want to answer
24 my questions or Mr. Williams. You know what? I get it.
25 That's fine. But at that time, at that moment he did

1 something really good. He was a good samaritan. God
2 bless him for that. If nothing else, he did right right
3 then.

4 Knowing the repo man is behind him, where does Mr.
5 Lowman go? He still goes to Johnston. He's still
6 sticking to the plan. Greed. Greed overcomes any sense
7 of what do I need to do to protect myself. Greed. He
8 wants what they have. He's in. Everything, everything
9 false apart. All of it. All of these guys end up
10 getting arrested. Abin Lee Lowman that night. Just a
11 few days later it's James Wilson. Joshua Darien is right
12 behind him and he had a rough go as y'all saw in Maryland
13 before South Carolina ever got him. Robert Goodwin, they
14 eventually got him too. All of them.

15 And through all of this Danny and Lynda survived.
16 James Wilson and Joshua Darien, they could not kill this
17 couple. You heard Joshua. He was giving them pillows.
18 He's broken into their house, he's there to take what
19 they own, he's giving them pillows. He gives Ms. Lynda a
20 blanket. Wilson who goes from being such a brute makes
21 sure her nightgown isn't run up and pulls it down. What
22 an impact.

23 You heard CSI Sprouse from SLED. He says usually
24 when I show up on a case where somebody has broken into
25 someone else's home and the survivor - there are people

CLOSING ARGUMENT BY MR. HUBBARD

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1 in that house, there's usually no survivors. Usually
2 when I go there I expect to see two dead bodies. I
3 expect to see blood. I expect to have DNA from the
4 victims. That is the usual. This was a unique case.
5 They survived. But they didn't survive because that man
6 wanted them to. You heard. He told James Wilson if
7 anything goes wrong, anything, dispose of them. Get rid
8 of them. They couldn't. They could see who these people
9 were. They couldn't do it.

10 When faced, when he's finally confronted and faced
11 with that, all right, what's your story? And I'm sure
12 the whole time we're doing this they're asking does he
13 have a story. Law enforcement sits down with him. He
14 agrees to sit down with them and talk. What is your
15 explanation for this? Why were you out there? We know.
16 We've got you out there on GPS tracker. Why were you
17 there? I was fishing. I was fishing. I just happened
18 to be fishing in a pond, there's thousands of ponds but I
19 chose a pond at the golf course that I have never been
20 to. I chose to go fishing on a night when my buddies
21 just happened to be breaking into a house on the other
22 side of the pond. I chose to fish that night and I chose
23 to do it without any fishing equipment whatsoever. Where
24 is your fishing equipment? We would like to verify what
25 you're saying. I could have put it somewhere. Really?

1 That's it? I'm fishing. I went fishing. I could have
2 put it somewhere?

3 Folks, there's a mountain of evidence here. That's
4 his story? I was fishing? And when they talk to him
5 more about GPS, that that tracker was on his car, he goes
6 I know how this looks. I'm gonna get a thousand years.

7 Folks, I'm gonna tell you something. Your role in
8 our system is not to punish. You don't give anybody a
9 thousand years. You don't punish and you don't have
10 mercy. There's only one Judge in this courtroom who has
11 that authority and he's sitting right here. Y'all are
12 judges of the facts. Because even as this Judge just
13 said, he doesn't have authority to make decisions on what
14 happened. You do. You don't punish. You don't have
15 mercy. You don't ask, well, what does this carry? Or
16 what happens if we do this? No. That burden is on this
17 man here.

18 Your burden is to determine did we prove our case.
19 Are you firmly convinced? That's what proving a case
20 beyond reasonable doubt means. That we have left you
21 firmly convinced that this man committed these crimes.
22 Those crimes are burg first. Burglary first. Going into
23 somebody's home without their permission. I'd say that
24 happened here. But to make it first degree any number of
25 things can be present to make it a first. Was it at

1 night? It was at night. Were weapons involved?
2 Absolutely. Y'all have heard about two of them. One
3 pressed against that man's face and one by a man
4 convicted of two or more burglaries. Two convictions out
5 of Edgefield County in '97 and 2000.

6 Armed robbery. Using a weapon to take what's not
7 yours from another person. Did that happen here?
8 Obviously.

9 Kidnapping. Many of us think kidnapping you've got
10 to pick somebody up and carry them away. Throw them in
11 the trunk of a car and drive off. No. It is are you
12 constrained? Are you held against your will? Even in
13 your own house. Absolutely. Tied up on the floor,
14 nightgown and underwear, folks. They're that violated.
15 Tied up on their own floor and separated. Yes. That's
16 kidnapping in South Carolina without a doubt.

17 Criminal conspiracy. Was there a plan where several
18 people joined in? Folks, all you've heard about is a
19 plan. A plan from this man. From that man who goes all
20 the way to Maryland to share it. All the way to
21 Maryland. Not recruiting locals. Because the plan, he
22 needed people to go away and people if he ended up
23 turning on, they're not locals. He's not going to meet
24 them in the store some day.

25 And then that law called hand of one hand of all.

1 One person in this group has a gun, commits armed
2 robbery, they're all in. Our law says it's like fingers
3 on a hand. They're all one hand. So the plan that Abin
4 Lee Lowman came up with, guess what, all of these guys
5 are in now and they can't say they didn't know. Even
6 Joshua Darien who didn't seem to know as much of the plan
7 as the others, doesn't matter, Joshua. You're as guilty
8 as they are. If one of them doesn't have a gun, Joshua
9 Darien, doesn't matter, sir. Armed robbery. And Abin
10 Lee Lowman, armed robbery.

11 Mr. Lowman, you didn't go in the house. Doesn't
12 matter. These other guys did. You're right there as
13 part of your plan. You don't get to say, ha, the law
14 can't get me now. No, sir. You've got to be held
15 accountable. That's the law. We don't get to debate
16 that. That's the law. It makes sense. It makes sense.
17 You've been taught that since you were a kid. When
18 you're running with a bad crowd, you can't complain that
19 you got in trouble with the bad crowd. You've heard
20 that.

21 Mr. Williams I'm sure in doing his job is going to
22 say everything that we didn't do right, particularly law
23 enforcement, and they say we didn't get fingerprints off
24 things found in the pond. I don't know if you can but
25 he's going to say they didn't check. Didn't get DNA

CLOSING ARGUMENT BY MR. HUBBARD

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1 where Joshua Darien is going around and spraying
2 everything with Clorox to make sure they couldn't get
3 DNA, but they didn't get DNA. But do you know what they
4 did? They got all four of these guys. They got the
5 story. They confirmed what these guys did. They're not
6 just relying on James Wilson and Joshua Darien. We're
7 not saying they're saints. They're charged too. They
8 need to be held accountable.

9 And we didn't just present them with no evidence.
10 Everything about this case confirms what they said.
11 Going to Walmart. Who bought what. Y'all now know
12 without a doubt, not even reasonable doubt, without any
13 doubt who bought the bullets. Walmart man goes this box
14 of bullets paid for by receipt. That man's ID was used.
15 You got him on camera. It's him buying these bullets
16 that were used in the gun that was held to this man's
17 head. So while those bullets are in Mr. Lowman's car,
18 the rest of the bullets are in the gun being used at the
19 Tidwell house. And y'all now know that gun, that gun,
20 that casing that was found in the gun that was found in
21 the car that Lowman was driving, that gun fired it. You
22 now know that. He his linked. He has their ID's. He
23 can't get away.

24 Ladies and gentlemen, we have established our case.
25 We've met our burden. We've carried our load. We

1 believe we have established every single element of every
2 charge and we're asking for guilty verdicts on every
3 single one of them. As representing the State and the
4 Tidwells I know, we know your verdict, your verdict will
5 speak volumes to them and will bring a fitting end to the
6 nightmare that they have been living since last March and
7 your verdict will be fitting for a man who chose to be so
8 evil. Thank you.

9 THE COURT: Mr. Williams.

10 MR. WILLIAMS: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. WILLIAMS: Let's get'em. I want you to take a
13 deep breath. I want you to take a big breath. You know,
14 the only thing that separates the jury system from a mob
15 is the ability to focus and to listen to the evidence and
16 to determine whether or not the person who is charged has
17 committed a crime. Nobody wants to talk about how bad
18 this was. It's bad. Do we need to talk about how bad it
19 was? Everybody can be sympathetic for Mr. and Mrs.
20 Tidwell. I mean, we can, but are we supposed to react on
21 that emotional level? Because you know what happens when
22 you react on that emotional level. Everybody charges off
23 with some theory of what happened based on what happened
24 to the victims. We're not saying that somebody shouldn't
25 be convicted. We're not saying that somebody shouldn't

CLOSING ARGUMENT BY MR. WILLIAMS

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1 be punished.

2 It's my client who's on trial. Right over here.
3 Lee Lowman. He's a regular guy. Lee Lowman. Evil.
4 That's what I heard. Evil versus good. Well, it
5 probably is evil versus good in this world. But you
6 don't make decisions thinking that evil is floating
7 throughout this place. You know, people have evil
8 thoughts. You know, you can't be prosecuted for evil
9 thoughts. People have good thoughts who certainly aren't
10 rewarded for most of those evil or for those good
11 thoughts. You're not rewarded for those good thoughts.

12 What happens is you have to look at people's
13 actions. And as jurors you're impartial. You make
14 decisions based on the evidence that is produced to you
15 or the lack thereof. Ain't no question that we've
16 already seen two guys come up here and testify all day
17 long that they're guilty. We've seen that. That's not
18 him.

19 You know, I was watching, I hate to admit it, don't
20 watch it unless you don't want to. I'll tell you this:
21 I was watching a movie. My wife and my daughter, I love
22 my daughter and my wife. God, they pick some bad movies.
23 And it's got all kinds of awards. It's on TV now. You
24 can watch it later on, I guess, when this is over. It's
25 called "Their Finest." It's a deal about some ladies

1 during World War II and they're writing movies, you know,
2 to cheer on the military. And this lady, she's, it's
3 kind of -- I'm not going to tell you how it ends. But
4 she writes scripts for movies and I was watching that
5 they were designing how they were going to do the movie.
6 Well, they have an opening, they have an ending and then
7 they have something that occurs in the middle of the
8 movie and you see all these guys go through this movie
9 who design whatever they're gonna put in the movie. What
10 facts are they gonna put in the movie. They're gonna
11 have somebody do this. They're gonna have the ship sink.
12 Something's gonna be wrapped around the propeller. It's
13 gonna build the drama. I thought to myself, you know, I
14 never knew a movie was made that way. I thought you
15 started at the beginning and, you know, you just went on
16 until you had an end. I didn't think you had a beginning
17 and the end and then all you do is fill in the middle.

18 We may be subject to that in this case because I
19 kept noticing that what would happen in this case is we
20 would have some event. We would have to tie that event
21 up with something else and then we would have to move
22 over here and we would have to tie that up with something
23 else. This is gonna be real boring and I apologize. But
24 when we were going through the testimony of the people
25 about what they saw, what they didn't see, I kept

1 thinking on best evidence and the reason I thought about
2 it, I'm sure you noticed it, periodically when things
3 would be introduced into evidence, you know, somebody
4 would object, the Judge would make a ruling whether it
5 comes in, doesn't come out, that's a process.

6 The Judge is the judge of the law. He is the person
7 who determines what evidence can come in or not come in.
8 There's a reason why you do that and that's because when
9 you make decisions, you want decisions based on something
10 that's verifiable or something that's reliable or
11 something that's not second hand hearsay. You want
12 something based on direct because all we've got to do is
13 I can start with the first juror and go to the last one
14 and that story might be different by the time it gets to
15 the last one. So what you're looking at is you're
16 looking for verifiable evidence and we heard, we heard at
17 least two co-defendants say things. Obviously it was
18 inconsistent on certain things. You had one co-defendant
19 who was up on the stand and he was just, I don't think
20 you could practice that well. And he just went through
21 this and this and this and that. Anybody promise you
22 anything? How many times did you talk? Only twice. Da,
23 da, da, da, da, da, da. Gets to the end. He goes off
24 the stand. Oh, God. Put him back on the stand and he
25 says, well, yeah. I guess I did get a reduction in the

1 time or a reduction in what I was facing on Federal
2 charges.

3 I don't think jurors are stupid. Why do you think
4 people get up on the stand and say things like that if
5 they're charged with a crime? Why do you think they said
6 it? Do you think they're being redeemed here? Do you
7 think, do you really think that Mr. Wilson who almost
8 broke down and cried on the stand, I mean, he choked up
9 and everything, he's the same man who stuck a gun into
10 Mr. Tidwell's cheek. What is that? What is that? He
11 sits up there and he takes a picture of the Bible and the
12 gun together. And who does that? Maybe the Solicitor is
13 right about evil on that issue. Who does that?

14 And then Mr. Tidwell is over there upset, praying.
15 God, you know, everybody kind of prays if they're under
16 the gun. I know I do. I bet everybody does and there
17 ain't nothing wrong with that. But why do you ask the
18 man are you a Jew? No. I'm a Christian. Well, you can
19 pray then. You almost want to know what is the
20 underlying thought behind that. There's a lot of
21 underlying things in this case.

22 See, we've got to first decide who is the master
23 mind here. Now, Mr. Lowman over there, he's the master
24 mind. He is so clever. He goes out there and he gets a
25 car that everybody knows you can follow it anywhere

1 you want to follow it and he drives, he chooses this car
2 to do all of this driving around and dropping people off
3 and stuff like that. But he's the master mind.

4 See, I like to focus on stuff a lot but I'm not
5 gonna talk about silly DNA. Let the Solicitor talk about
6 it. I'm not gonna talk about the footprints that nobody
7 got. I mean, it is what it is. I mean, you didn't get
8 any DNA. You didn't get any fingerprints. That's
9 nothing that points to my client. That's true. But I
10 like to talk about the stuff that you did have and that
11 they didn't produce, that you didn't put into evidence.

12 You know, with people you can ask them questions and
13 they can give you straight answers or sideways answers or
14 what have you. But if you have information that's
15 pre-printed, that you can't change, that's pretty
16 verifiable, isn't it? I want to know where that printout
17 of the GPS is. You just heard it. Police officers
18 admitted that they looked at it. Everybody talked about
19 it. Everybody talked about it. What would it show? Got
20 a printout. Well, we can just look at the printout and
21 we can see where he went. He went this way, he went that
22 way, he went this way, he went that way. Where is it?

23 You know, cell phones, we want to talk about them.
24 Well, there was a phone call made. There was a text that
25 came back after he was stopped and all this other. He

1 called and let us know and there was all this calling.
2 Do you remember all the discussion that I had with Mr.
3 Wilson about going online, finding out about Mr. and Mrs.
4 Tidwell, about Tidwell's Jewelers several times. Well,
5 if you have this information that shows that my client is
6 texting him, my client is calling him, my client is
7 having some sort of relationship with him, why don't you
8 introduce it? Then you don't have to rely on those two
9 guys.

10 But my guy is so smart. My guy is so smart he gets
11 an ID on Jerry Kirk and either he or somebody else plants
12 it down there because he's gonna throw off the Saluda law
13 enforcement. That's what he's gonna do. He's gonna
14 throw them off. Boy, he's so smart. He should be a
15 lawyer, shouldn't he? But that's what he does. He puts
16 it down there on the carport for everybody to see, not
17 that I'm smart, and you've got to see this. I mean, this
18 is just one of those things you've just got to see in
19 real life. I'll show it to you. This is Abin Lowman.
20 That was the picture that was on the front seat. Got the
21 long dreads. Stylish. Long dreads.

22 You've got a picture of James Wilson. Short hair.
23 You can look at it. He's got short hair. You've got the
24 picture of Robert Goodwin that was supposed to be found
25 in the car. Believe it or not in evidence you have the

CLOSING ARGUMENT BY MR. WILLIAMS

1045

1 identification card of Mr. Kirk. Seems like it's been
2 moved around a little bit. It's here. I don't know what
3 happened to it.

4 Part of your task, part of your task when you go
5 back to your jury room is you will have all of the
6 evidence with you. You do. You have all of the evidence
7 with you and you can look at all of the evidence that you
8 have with you. In this stack of stuff there's an
9 identification card of Mr. Kirk. I want you to look at
10 that identification card because he looks just like Mr.
11 Lowman. Got the dreads. Black guy from South Carolina.
12 So why would you pick somebody's card that looks like you
13 and put it down on the carport? I mean, who does that?
14 I don't know. Why wouldn't you pick a card of a woman or
15 an Indian or whatever and I don't mean not nationality
16 that way. If that's what you're trying to do, why would
17 you pick a card that looks like you? Why would you hold
18 onto the card for three years?

19 You know, I've got this card here and when I break
20 into this house, I'm gonna use this and I'm gonna put it
21 down there. Who holds onto something for three years? I
22 can't find my socks from two days ago. And he puts it
23 down there. Well, that's just unbelievable. Yeah. You
24 know, everyone on here could write a story, could write a
25 book about what transpired in this trial because it just

1 so happens that when my client gets pulled over, the
2 window is down. It's like, got to make it match. Got to
3 make it match. We've got to show something. We've got
4 to show something that Mr. Lowman somehow was there and
5 that Mr. Lowman got something from the house because that
6 way we can prove he was there and that way we can prove
7 that he got it and that it's part of the deal.

8 See, that's the connection here. That's what. So,
9 so not only do you find the keys at some location which
10 is reportedly in close proximity to where my client was
11 driving, but now his window is down. You noticed some of
12 the questions I asked about the guy who was driving, the
13 police officer who was driving the vehicle. I said did
14 you see anything abrupt? Did he try to run away from
15 you? Part of that was to show that obviously he wasn't
16 afraid of you. That he wasn't trying to hide from you.
17 Did you see anything coming out from his car? No. I
18 didn't see anything coming out from his car. Did he
19 throw anything out the window? No. I didn't see him
20 throw anything out the window. But then, oh, his window
21 was down.

22 That's what I'm talking about jumping to
23 conclusions. This entire case we are jumping to
24 conclusions. So what I asked about, see, nobody wanted
25 to talk about the three cars that were there. I said,

1 well, let's talk about the video camera. Because
2 remember the officer stops him. I don't have a video
3 camera. I don't know if the other guy has got a video
4 camera. We get the guy from Simpsonville down here who
5 says, yeah. I've got a video camera. I record stuff.
6 The little light is on. You turn it on. It runs when
7 you don't want to turn it on. You know what that camera
8 tape would show? Well, it might show if you're throwing
9 something out the window or not. But we would rather you
10 just kind of guess that because the keys were found, I
11 don't know, close proximity and because the window is
12 down then you can dot all of these things and connect
13 them together and come to a conclusion that, oh, that was
14 him. Oh, yeah. He had it. Mm-hmm. And he threw it
15 out. Somehow nobody else saw it.

16 And we got this guy that finds it. And he comes up
17 here and he testifies. Steven Brown. And he says, turns
18 out, turns out that Steven Brown would never say that he
19 found it on the ground. No poetry intended. He says,
20 well, my cousin found it. She's 32 years of age. She
21 finds it. But you didn't see it down there, did you?
22 No. I didn't see it down there. I don't know. Why
23 wouldn't you put -- Why are we always dealing with
24 secondhand stuff? It's like we can't go, we can't go to
25 the person. Why doesn't the cousin come up and testify,

1 yeah, I found it. It was sitting on the ground right
2 over here. We put Steven Brown up there. Did you see
3 him squirm? And you think, boy, he seems really nervous.
4 What's he worried about? Well, guess what? Guess who
5 he's kin to? Mr. Kirk. What are the odds? Do you
6 remember him saying he was kin to Mr. Kirk? What are the
7 odds?

8 Who is setting up whom? Is Lee setting up somebody
9 else or is somebody else setting up Lee? Mr. Wilson, he
10 gets his cell phone, takes a picture of my client, puts
11 it in his cell phone records. Well, who does that? Why
12 would you do that? I don't know.

13 So one thing I hoped that we would have with the
14 camera would be the appearance of Mr. Lowman. You know,
15 we kept talking about his clothes because you see all of
16 these guys were, on the movie set they're all dressed in
17 black. They have black, you know, and they're super
18 secret. And, of course, they're going to be dressed in
19 black to effect a burglary if he was gonna do something
20 bad. I kept asking him about his clothes. Well,
21 nobody's got his clothes. He goes to Edgefield. His
22 clothes, I don't know. I don't know where they are. The
23 camera might at least show what he had on. I kept asking
24 the police officer. Everybody dances around what he had
25 on. Did he look like he had done something?

1 See, I'm looking for stuff that you can actually
2 look at. You don't have to -- You don't know me. You
3 really don't. Well, you just don't. You haven't lived
4 in my house for 67 years. But you can look at me and see
5 I have gray hair. I think that's the point. If you can
6 see it, then there's more reliability over what you can
7 say.

8 Now, I want to take you briefly through all the
9 junk, stuff. Do you remember Mr. Tidwell went through
10 about, it's not an issue, about whether or not he waited
11 around on the Mexican food or not. That's not really an
12 issue. So some things, some things that are -- I'm not
13 all about gotcha. I mean, I forget stuff. I do. It's
14 not all about gotcha. It's just a discrepancy. What you
15 need to do is focus on the big stuff that you don't have
16 that you can rely on. He says, remember that there were
17 three lights. And, of course, you could say -- And, see,
18 what happens is you start judging credibility and
19 believability. I know, you know, you got one guy over
20 here, you got one guy over here and you determine how
21 they match up. Wilson said there was two lights so
22 that's a discrepancy, isn't it? But then obviously we
23 bring Darien in. He's got his pen light. That makes
24 three because we have to dot that "i". We can't leave
25 that question out there.

1 Who cares if there were two lights or three lights?
2 Who really cares? The one thing, the one thing that
3 Mr. Tidwell knew about was that there were only three
4 people involved. Not four. Nobody has said four. These
5 two honest people who were there have never said it was
6 more than three people. They're the victims. They're
7 the same people that we wanted to talk about evil and
8 good, who suffered, had their boring lives, got through
9 it. That is commendable. But you don't make decisions
10 based on emotion. They've never seen, they've never seen
11 more than three people. They have never said there was
12 more than three people. You know what? Maybe there was
13 only three people.

14 And you go through a lot of information about who
15 does what. See, I told you I was gonna be brief. Never
16 saw who took which items. All of this stuff I have got
17 written in red I'm just ignoring because it's not
18 important. It's not important. You can remember. Some
19 of you guys have probably filled up about two or three
20 pads of stuff.

21 And you see, most of the reason why it's not
22 important is because whether you go through there's a
23 discrepancy here or a discrepancy there, it clearly shows
24 they were clearly robbed. It clearly shows that those
25 individuals who testified on this stand were the ones

CLOSING ARGUMENT BY MR. WILLIAMS

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1 that robbed them. So whether or not -- Because we know
2 that.

3 Here's what I wondered. Do you remember the
4 videotape that was taken by the son-in-law and it shows
5 the car? It shows the car that looks like Abin Lowman's
6 car. Goes down there and comes back. It's done at, I
7 don't know, 4:58 depending on whether it's standard time
8 or whatever kind of time it is, and it's a motion camera.
9 And I asked the question, well, do you have a tape of
10 everything that happened that day? Well, yeah. I told
11 the police about it. I don't know why that we're too
12 stupid that we can't look at a film to show all this
13 happening. If you've got a camera that shows, got
14 someone in motion, you would see the tow truck guy come
15 back there. You would see Abin Lowman's car come back
16 there. You could see what time it happened. Because it
17 would cut on when it happened because clearly it happens
18 at 4:50, whatever time it is. Why can't we look at the
19 video? He told the police about it. I don't even know
20 if anybody looked at it.

21 I hope I'm not making anyone feel uneasy. But why,
22 why can't we look at the best evidence of what happened
23 in today's society? We've got a bunch of stuff to talk
24 about. Footprints. Fingerprints. We've got the Waffle
25 House people. Ain't no question about those three people

1 being in the Waffle House. I did kind of wonder about
2 the silver clip a little bit because I'm thinking, well,
3 particularly after the guy said it was cutting a hole in
4 his pants pocket. I wish he had given it to me. I have
5 wanted a clip like that for a real long time. It's a
6 nice looking clip. Silver clip. He's held onto that
7 thing for like forever. But it was inconvenient for him.
8 That's not why he got rid of it. Do you believe that's
9 why he got rid of it because it was messing up his pants?
10 No. Why not just tell us the truth. You're gonna get up
11 here and you're gonna point the finger. You're gonna
12 point the finger at Lee. You're gonna say Lee did this,
13 Lee did that, I did this, I did that. Why do you have to
14 dance around that thing? You admitted you had the clip.
15 Why don't you just tell the truth? He got rid of it
16 because he didn't want it found on him.

17 Why can't we just tell the truth? Didn't want the
18 Waffle House video in, too, which they said we don't need
19 to watch the video. We've got the pictures of it and we
20 know that they were there. I did want to know about
21 whether or not a second guy went in there and dropped the
22 white glove. Of course, I was kind of thinking how do
23 you have like just one glove? It's not like it's Michael
24 Jackson or something, you know? How do you have the one
25 glove and drop that in there? Why do you hold onto one

CLOSING ARGUMENT BY MR. WILLIAMS

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1 glove? Where is the other glove? Who dropped it in
2 there? They've got the video. Let's look at it. Let's
3 figure out who it is. We like to dot our i's and cross
4 out t's. Let's do that, too.

5 We have the Waffle House manager who basically comes
6 in and verifies that information. And I'm skipping over
7 a lot of it. You've got Mr. Rutland and his wife. And
8 again, clearly, clearly -- See, Mr. Rutland, if you
9 believe what he said, he said he couldn't see the
10 vehicle. That's what he said. He couldn't see the
11 vehicle. He had his little machine and he was watching
12 where the vehicle was. Of course, obviously he tells the
13 police to stop it and that's how this all gets involved
14 about whether or not, how he got stopped, what was found
15 in the trunk, what wasn't found in the trunk, where it
16 was found. The only reason why that's something that
17 just sticks in your craw is because we're doing this dot
18 crossing and you get a search. You find something. It
19 turns out that the person who did the chain of custody
20 was not the one who actually found it. We could have
21 seen that if we had the video.

22 When you go out there with a search warrant, you
23 find these things in there, they take a picture. You
24 know, that's the first thing you do. You take a picture
25 of all the stuff in the vehicle so that you can see. You

1 can see where it is. You can see what it is. Why
2 wouldn't you introduce that into evidence so people can
3 see how it looked? Is it something stuck under
4 something? Is it something on top of something? Is it
5 on the front seat? Is it on the back seat? Is it stuck
6 in some sort of luggage compartment? They take pictures
7 both times. They come out the second time and they do
8 another search. How come you don't see it on the first
9 search? I just don't know why people don't use cameras
10 much. Obviously we know how to use the camera.

11 And we want to talk about the fact that Mr. Lowman's
12 ID was in the car. Well, of course it was in the car
13 because once he had been stopped the police officer took
14 it, put it back on the front seat. He didn't have two
15 ID's. You can prove he didn't have two ID's because if
16 he had gotten another ID, the highway department could
17 say that you've gotten another ID because they keep
18 records like that. It gets old, doesn't it?

19 So after the Rutlands, I would like to see that
20 pick up order though. I'll skip on ahead. We already
21 talked about Mosley talked about -- Well, then we get to
22 -- Well, that's kind of, that's basically it really what
23 you've got.

24 You know, when I sit down, my client is gonna say
25 why didn't you say so and so? Why didn't you say so and

CLOSING ARGUMENT BY MR. WILLIAMS

1055

1 so? My answer to my client is the jury is not stupid.
2 They heard all of this for five days. Five days. And
3 you know what's important? All you have to do is explain
4 to me how Jerry Kirk's ID could be on the carport, how
5 the keys that were found could be found by the cousin of
6 Steven Brown who happened to be related Jerry Kirk. If
7 y'all can explain that, I'm half the way home. If y'all
8 can explain to me why we don't introduce the GPS to show
9 how and where the person drove -- I'm getting a little
10 close -- I don't know how you explain that stuff.

11 I want to thank you for putting up with me. I'm 67.
12 I enjoy practicing law. I enjoy jurors because I think
13 this jury system that we have, it is so good. I mean, it
14 really is. And I hope you don't make decisions based on
15 the fact that other people have done terrible things
16 because, I mean, it is bad. I mean, it is bad. But you
17 don't want to rush out and do something to somebody just
18 because somebody else did something bad. You don't make
19 decisions based on that. I hope not. If you would give
20 Mr. Lowman what he is entitled to and that is a fair
21 trial making them prove, making them, the State prove him
22 guilty beyond a reasonable doubt, that's all anybody can
23 ever expect. That's all we're ever offered and
24 guaranteed. We're guaranteed that. You know, you can
25 take away a lot of stuff in this country. We're

1 guaranteed that. We will never lose that. Thank you.

2 THE COURT: Mr. Hubbard.

3 MR. HUBBARD: No, sir.

4 THE COURT: Nothing?

5 MR. HUBBARD: No, sir.

6 THE COURT: All right. Folks, those are the closing
7 summaries. I'm going to inventory the evidence and get
8 it organized for you, send the verdict form back there.
9 As soon as you get it, start deliberations. Unless y'all
10 want to take a break. You've been in here a while. But
11 there's a bunch of stuff in there. We'll make certain of
12 what's here and what's there is the same thing, okay? So
13 step into the jury room. I want all of you in there
14 until I get the verdict form in there. Once you get the
15 verdict form, I'll pull the two alternates out, okay? So
16 step into the jury room.

17 (Whereupon, the jury entered the jury room to begin
18 deliberations at 2:26 p.m.)

19 THE COURT: All right. We have a verdict. We're
20 about to bring the jury in. We have a lot of people in
21 the courtroom. This jury has listened very intently for
22 four days, they've worked hard, and I do not want them
23 disrespected by any show of emotion good or bad, positive
24 or negative. They have made a decision, 12 people
25 unanimously made a decision and I don't want any

1 celebration or any show of emotion. If you can't do
2 that, leave now. All right. Bring them in.

3 (Whereupon, the jury entered the courtroom at 3:15
4 p.m.)

5 THE COURT: Mr. Leyden, have y'all reached a
6 verdict?

7 MR. LEYDEN: Yes, sir, Your Honor.

8 THE COURT: Was it unanimous?

9 MR. LEYDEN: Yes, sir.

10 THE COURT: Okay. Good. Can I have the verdict
11 form? All right. Madam Clerk, the verdict appears to be
12 filled out in its correct form. You may publish it.

13 THE CLERK: The State of South Carolina, County of
14 Saluda. The State, plaintiff, versus Abin Lee Lowman,
15 defendant. Verdict form 2018-GS-41-116, 120, 121, 122
16 and 123. We the jury find as follows: Armed robbery,
17 guilty. First degree burglary, guilty. Kidnapping,
18 guilty. Kidnapping, guilty. Criminal conspiracy,
19 guilty. Signed by the foreperson Daniel Leyden dated
20 June 22nd, 2018 for Saluda, South Carolina.

21 THE COURT: Mr. Williams, would you like the jury
22 polled?

23 MR. WILLIAMS: I would, Your Honor.

24 THE COURT: All right. We'll do it by jury number,
25 Madam Clerk.

1 THE CLERK: Teddy Miller --
2 THE COURT: No. We're gonna do it by jury number.
3 THE CLERK: I'm sorry. All right. Allison Price.
4 THE COURT: By their number.
5 THE CLERK: Jury number. Okay.
6 THE COURT: That way it's not on the record. So is
7 this your verdict? Is it still your verdict?
8 THE CLERK: Okay. Thank you. Juror number 3.
9 THE COURT: Raise your hand when she calls your
10 number, if you remember it.
11 THE CLERK: Juror number 3, is this your verdict and
12 is it still your verdict?
13 JUROR #3: Yes.
14 THE CLERK: Juror number 4 -- Juror number 22. Is
15 this your verdict and is it still your verdict?
16 JUROR #4: Yes.
17 THE CLERK: Juror number 152, is this your verdict
18 and is it still your verdict?
19 JUROR #152: (Nodding head.)
20 THE CLERK: Juror number 55, is this your verdict
21 and is it still your verdict?
22 JUROR #55: (Nodding head.)
23 THE CLERK: Juror number 140 -- I'm sorry. Juror
24 number 39, is this your verdict and is it still your
25 verdict?

1 JUROR #39: (Nodding head.)
2 THE CLERK: Juror number 19, is this your verdict
3 and is it still your verdict?
4 JUROR #19: Yes.
5 THE CLERK: Juror number 204, is this your verdict
6 and is it still your verdict?
7 JUROR #204: (Nodding head.)
8 THE CLERK: Juror number 27, is this your verdict
9 and is it still your verdict?
10 JUROR #27: Yes.
11 THE CLERK: Juror number 105, is this your verdict
12 and is it still your verdict?
13 JUROR #105: (Nodding head.)
14 THE CLERK: Juror number 149, is this your verdict
15 and is it still your verdict?
16 JUROR #149: (Nodding head.)
17 THE CLERK: Juror number 111, is this your verdict
18 and is it still your verdict?
19 JUROR #111: Yes. It is.
20 THE CLERK: Juror number 8, is this your verdict and
21 is it still your verdict?
22 JUROR #8: Yes. It is.
23 THE CLERK: And juror number 116, is this your
24 verdict and is it still your verdict?
25 JUROR #116: Yes, ma'am.

1 THE COURT: All right. The jury has been polled and
2 all affirmatively responded as to their verdict.
3 Anything else from the jury, Mr. Williams?

4 MR. WILLIAMS: May the Solicitor and I approach?

5 THE COURT: Yes.

6 (Side bar off the record.)

7 MR. WILLIAMS: Nothing further for the jury.

8 THE COURT: Okay. All right. We'll stand at ease.
9 I want to speak to the jury in the jury room and thank
10 them for their service and they'll be on their way. Step
11 into the jury room and I'll come and talk to you. Bring
12 the indictments in. There's one I'm missing because it
13 was the one that was redacted from the --

14 (Whereupon, the jury was released from further
15 service at 3:35 p.m.)

16 THE COURT: Mr. Williams, you ready?

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: Mr. Solicitor Hubbard, are you ready?

19 MR. HUBBARD: Yes, sir, Your Honor.

20 MR. WILLIAMS: We would like post trial motions for
21 the record.

22 THE COURT: Absolutely. Let's do that right now.

23 MR. WILLIAMS: Your Honor, I move to set aside the
24 jury's verdict. I know it's been a long five days but it
25 would appear that the jury's verdict was incorrect based

1 on all of the discrepancies that were in this particular
2 case. The jury should not have found that the defendant
3 was guilty of all of these offenses.

4 THE COURT: Well, I'm very, very remiss that -- The
5 jury's verdict was unanimous and there was ample facts or
6 questions of fact to be discussed on all five charges so
7 consistent with a directed verdict motion the jury
8 weighed the evidence, found facts unanimously and I will
9 not disturb their verdict so I'm gonna deny your request
10 for a new trial.

11 MR. WILLIAMS: Thank you, Your Honor.

12 THE COURT: All right. Now, I was notified that
13 there was a notice that was prepared before the trial --

14 MR. HUBBARD: Yes, sir.

15 THE COURT: -- as to the sentence should a
16 conviction be imposed.

17 MR. HUBBARD: Yes, sir.

18 THE COURT: That being the case, there's not much
19 mitigation to be stated. Am I incorrect in saying that
20 other than criminal conspiracy the sentence is the same,
21 it's life on all four because they're most serious. It's
22 not because of the sentencing range.

23 MR. WILLIAMS: That is correct, Your Honor.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: So my sentence, and I haven't written it

1 out yet, is consistent with the notice provided by the
2 State to Mr. Lowman, the jury's verdict of guilt on four
3 of the most serious crimes meaning burglary first, armed
4 robbery, two counts of kidnapping, the sentence on those
5 four will be just life. On the criminal conspiracy it
6 will be five years and concurrent. I don't know how that
7 can be consecutive. So life on four, five years on the
8 criminal conspiracy. Am I incorrect in that sentence?

9 MR. HUBBARD: I believe that's correct, Your Honor.

10 THE COURT: Okay. So that being the case, I don't
11 think I need to hear mitigation or hear from the victims
12 because that's what the law requires.

13 MR. HUBBARD: Yes, sir.

14 THE COURT: All right. Bear with me. All right.
15 On indictments 116, 121, 122, 123 the sentence is life
16 concurrent. Gets days since 3/8 of '17, and a concurrent
17 five years on indictment 120 and he gets days credit for
18 time served since 3/8/17. That's all concurrent. Is
19 that correct?

20 MR. HUBBARD: Yes, Judge. And I do have one thing.
21 Although it's in the notice, I just wanted to put it on
22 the record that we had three prior convictions that were
23 serious or most serious. We had a 2009 distribution of
24 crack cocaine within proximity of a school; 2004
25 distribution of marijuana within proximity of a school.

1 That would have been sufficient. We have a 1998 burglary
2 second degree violent. I know Mr. Williams questioned
3 that to some extent, but we already had two and so I just
4 wanted that on the record. Thank you.

5 THE COURT: All right. I hope that brings closure
6 for everyone. Good luck.

7 MR. WILLIAMS: Thank you, Your Honor.

8 MR. HUBBARD: Thank you Your Honor.

9 WHEREUPON, THE TRIAL WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

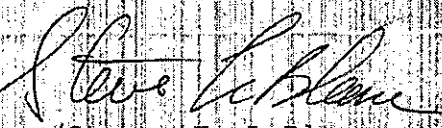
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 18th day of June through the
11 22nd day of June, 2018.

12 I FURTHER CERTIFY that the forgoing 1063 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 14th day of November, 2018.

18
19 
20 By: s/Steven E. LeBlanc

21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.
24
25

WITNESSES

Saluda County Sheriff's Department

Charles Padgett

Law Enforcement Case #: 201703-531

SRH

ARREST WARRANT NUMBER

18-STR-0024 (referencing warrant #:
2017A4110100125)

ACTION OF GRAND JURY

TRUE BILL

Meredith Miller R. Rand
Foreperson of Grand Jury
Date: JUN - 5 2018

VERDICT

GUILTY

D. A. Ivy
Foreperson of Petit Jury
Date: 6/22/18

DOCKET NO. 2018GS4100116

The State of South Carolina

County of Saluda

COURT OF GENERAL SESSIONS

JUNE TERM 2018

THE STATE

vs.

Abin Lee Lowman

CDR #: 0079

Indictment for

Burglary First Degree

§ 16-11-0311

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)
)

INDICTMENT FOR
Burglary First Degree

§ 16-11-0311

At a Court of General Sessions, convened on June 2018, the Grand Jurors of Saluda County present upon their oath:

That **Abin Lee Lowman**, together with others, did, in Saluda County, South Carolina, on or about March 8, 2017, knowingly and willfully enter a dwelling, to wit: [REDACTED] Birdie Court being the dwelling of Lynda and Danny Tidwell, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime, was armed with a deadly weapon or explosive, caused physical injury to a person who is not a participant in the crime, used or threatened the use of a dangerous instrument, or displayed what was or appeared to be a pistol, revolver, or other firearm; and/or the defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both; and/or the entering or remaining occurred in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina (1976, as amended).

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



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Saluda
STATE VS.

Abin Lee Lowman

AKA:

Race: Sex: M Age: 40

DOB: SS#:

Address: Rd

City, State, Zip: Greenville, SC 29611-5318

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary - First Degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar# 015294

Defendant

Attorney for Defendant

SC Bar#

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

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 186541-120, 121, 122, 123☒ 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 126.75

Clerk of Court/ Deputy Clerk Steve Coleman

Court Reporter: Steve LaBlum

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4100116

A/W#: S18-STR-0024

Date of Offense: 3/8/2017

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar# 015294

Defendant

Attorney for Defendant

SC Bar#

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

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 186541-120, 121, 122, 123☒ 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 126.75

Clerk of Court/ Deputy Clerk Steve Coleman

Court Reporter: Steve LaBlum

SCCA/217 (04/2018)

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,

§ Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date: 6-22-18

WITNESSES

Saluda County Sheriff's Department

W R Padgett

Law Enforcement Case #: 201703-531

SRH

ARREST WARRANT NUMBER

18-STR-0028 (referencing warrant #:
2017A4110200063)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUN - 5 2018

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 6/22/14

DOCKET NO. 2018GS4100120

The State of South Carolina

County of Saluda

COURT OF GENERAL SESSIONS

JUNE TERM 2018

THE STATE

vs.

Abin Lee Lowman

CDR #: 0049

Indictment for

Criminal Conspiracy

§ 16-17-0410

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)
)

INDICTMENT FOR
Criminal Conspiracy

§ 16-17-0410

At a Court of General Sessions, convened on June 2018, the Grand Jurors of Saluda County present upon their oath:

That **Abin Lee Lowman** did, in Saluda County, South Carolina, on or about March 8, 2017, knowingly and willfully unite, combine, conspire, confederate, agree and have tacit understanding with James Christopher Wilson and/or Joshua Lee Darien, and/or Robert Goodwin, Jr., and/or other unknown persons, for the purpose of accomplishing a criminal or unlawful object and/or an object neither criminal nor unlawful but by criminal or unlawful means, to wit: Burglary First Degree, Armed Robbery, Kidnapping, Grand Larceny, Possession of a Weapon during the Commission of a Violent Crime, and/or Impersonating Law Enforcement Officer at the residence of Lynda and Danny Tidwell located at [REDACTED] Birdie Court, in violation of the common law and punishable under § 16 -17- 410 of the Code of Laws of South Carolina (1976, as amended).

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


SOLICITOR

1070

STATE OF SOUTH CAROLINA

COUNTY OF Saluda
STATE VS.
Abin Lee Lowman

AKA:

Race: Sex: M Age: 40

DOB: SS#:

Address: Drive

City, State, Zip: Johnston, SC 29832

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Conspiracy

in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16 GS 41-116, 128, 121, 122
☒ 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 SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Sheri C. Coleman

Court Reporter: Steve Gabeance

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4100120

A/W#: S18-STR-0028

Date of Offense: 3/8/2017

S.C. Code § : 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16 GS 41-116, 128, 121, 122
☒ 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 SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Sheri C. Coleman

Court Reporter: Steve Gabeance

SCCA/217 (04/2018)

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,
§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2154

Sentence Date: 6-22-18

WITNESSES

Saluda County Sheriff's Department

W R Padgett

Law Enforcement Case #: 201703-531

SRH

ARREST WARRANT NUMBER

18-STR-0029 (referencing warrant #:
2017A4110200064)

ACTION OF GRAND JURY

TRUE BILL

Meredith Mullen R. Land
Foreperson of Grand Jury
Date: JUN - 5 2018

VERDICT

GUILTY

D. A. Ayed
Foreperson of Petit Jury
Date: 6/22/18

DOCKET NO. 2018GS4100121

The State of South Carolina

County of Saluda

COURT OF GENERAL SESSIONS

JUNE TERM 2018

THE STATE

vs.

Abin Lee Lowman

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)
)

INDICTMENT FOR
Kidnapping

§ 16-03-0910

At a Court of General Sessions, convened on June 2018, the Grand Jurors of Saluda County present upon their oath:

That **Abin Lee Lowman**, together with others, did, in Saluda County, South Carolina, on or about March 8, 2017, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Danny Tidwell by any means whatsoever without authority of law, and without his consent, to wit: during the commission of a burglary and/or armed robbery, the Defendant, together with others, did bound the victim with plastic zip ties and/or did confine him against his will inside his home located at [REDACTED] Birdie Court, in violation of § 16-3-910 of the Code of Laws of South Carolina (1976, as amended).

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



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Saluda

VS.

Abin Lee Lowman

AKA:

Race: Sex: M Age: 40

DOB: SS#:

Address: Drive

City, State, Zip: Johnston, SC 29832

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY
Steve LaBlanc 015294
Solicitor SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or paymentof \$ _____; 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: 18 GS 41 120, 122, 123 & 116
☒ 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 SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/ Deputy Clerk Shirley ColemanCourt Reporter: Steve LaBlanc

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4100121

A/W#: S18-STR-0029

Date of Offense: 3/8/2017

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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,
§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date: 6-22-18

WITNESSES

Saluda County Sheriff's Department

W R Padgett

Law Enforcement Case #: 201703-531

SRH

ARREST WARRANT NUMBER

18-STR-0030 (referencing warrant #:
2017A4110200065)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN - 5 2018

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 6/22/18

DOCKET NO. 2018GS4100122

The State of South Carolina

County of Saluda

COURT OF GENERAL SESSIONS

JUNE TERM 2018

**THE STATE
vs.**

Abin Lee Lowman

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)
)

INDICTMENT FOR
Kidnapping
§ 16-03-0910

At a Court of General Sessions, convened on June 2018, the Grand Jurors of Saluda County present upon their oath:

That **Abin Lee Lowman**, together with others, did, in Saluda County, South Carolina, on or about March 8, 2017, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Lynda Tidwell by any means whatsoever without authority of law, and without her consent, to wit: during the commission of a burglary and/or armed robbery, the Defendant, together with others, did bound the victim with plastic zip ties and/or did confine her against her will inside her home located at [REDACTED] Birdie Court, in violation of § 16-3-910 of the Code of Laws of South Carolina (1976, as amended).

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



SOLICITOR

1076

STATE OF SOUTH CAROLINA

COUNTY OF Saluda
 STATE VS.
Abin Lee Lowman

AKA:

Race: Sex: M Age: 40DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] DriveCity, State, Zip: Johnston, SC 29832DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 015294

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

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

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

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

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

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 18 GS 41 116, 120, 121, 123☒ 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4100122A/W#: S18-STR-0030Date of Offense: 3/8/2017S.C. Code § : 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code:

Sentence Date:

JE aff
6-22-18

WITNESSES

Saluda County Sheriff's Department

W R Padgett

Law Enforcement Case #: 201703-531

SRH

ARREST WARRANT NUMBER

8-STR-0031 (referencing warrant #:
2017A4110200066)

ACTION OF GRAND JURY

TRUE BILL

Meredith Miller Hubbard
Foreperson of Grand Jury
Date: JUN - 5 2018

VERDICT

GUILTY

Dr. A. Ford
Foreperson of Petit Jury
Date: 6/22/17

DOCKET NO. 2018GS4100123

The State of South Carolina

County of Saluda

COURT OF GENERAL SESSIONS

JUNE TERM 2018

**THE STATE
vs.**

Abin Lee Lowman

CDR #: 0139

Indictment for

Armed Robbery

§ 16-11-0330(A)

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)
)

INDICTMENT FOR
Armed Robbery

§ 16-11-0330(A)

At a Court of General Sessions, convened on June 2018, the Grand Jurors of Saluda County present upon their oath:

That **Abin Lee Lowman**, together with others, did, in Saluda County, South Carolina, on or about March 8, 2017, knowingly and willfully while armed with a deadly weapon and/or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed, to wit: did feloniously take from the person or presence of Lynda and Danny Tidwell, by means of force, threats, or intimidation, goods or monies being described as follows: jewelry, cash, cell phones, business and vehicle keys, vehicle, firearms, and/or other household items from the residence of Lynda and Danny Tidwell located at [REDACTED] Birdie Court, with intent to deprive the owner of the use of such property, in violation of § 16-11-330 (A) of the Code of Laws of South Carolina (1976, as amended).

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Saluda
 STATE VS.
Abin Lee Lowman

AKA:

Race: Sex: M Age: 40

DOB: SS#

Address: Drive

City, State, Zip: Johnston, SC 29832

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Armed Hobberyin violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

SPH Solicitor 015294 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 18 6541 116 120 121 122
☒ 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 SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/ Deputy Clerk Sheri C. ColemanCourt Reporter: Steve Lablanc

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4100123

A/W#: S18-STR-0031

Date of Offense: 3/8/2017

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms:

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*Fine: \$

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3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/ Deputy Clerk Sheri C. ColemanCourt Reporter: Steve Lablanc

SCCA/217 (04/2018)

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,
 § Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge J. M. 2154Judge Code: 6-22-18Sentence Date: 6-22-18

STATE OF SOUTH CAROLINA)

County of SALUDA)Abin Lee Lowman #248506)

Full name and prison number (if any) of Applicant)

Applicant,)

v.)

State of South Carolina)

Respondants.)IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUITCase No. 2022-CP-41-00075

APPLICATION FOR

POST-CONVICTION RELIEF

S.C. Code Ann. §17-27-20(a)(1)

S.C. Code Ann. §17-27-45(A)(C)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Prison 430 Oaklawn Road, Pelzer, South Carolina 29669.
2. Name and location of Court which imposed sentence Saluda County General Session, 100 E. Church St., Ste. 6, Saluda, S.C. 29138.
3. Name(s) of co-defendant(s) (if any) Joshua Darien, James Wilson and Robert Goodwin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: See attached page
 - (a) Burglary 1st degree (16-11-311) 2018-GS-42-00116
 - (b) Criminal Conspiracy (16-17-410) 2018-GS-42-00120

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4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) Burglary First degree (16-11-311) 2018 GS-42-00116.
- (b) Criminal Conspiracy (16-17-410) 2018-GS-42-00120.
- (c) Kidnapping (16-3-910) 2018-GS-42-00121.
- (d) Kidnapping (16-3-910) 2018-GS-42-00122.
- (e) Armed Robbery (16-11-330(A)) 2018-GS-42-00123.

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) June 22, 2018 - Life.
- (b) June 22, 2018 - Five (5) years.
- (c) June 22, 2018 - Life.
- (d) June 22, 2018 - Life.
- (e) June 22, 2018 - Life.

(c) Kidnapping (16-3-910) 2018-GS-42-00121

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June 22, 2018 - Life.

(b) June 22, 2018 - Five (5) years.

(c) June 22, 2018 - Life. See attached page 1.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere N/A

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

Yes. Intent to Appeal was timely, filed June 28, 2018.

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

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

i. South Carolina Court of Appeals. Case No.: 2018-001215

ii. _____

iii. _____

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

i. Appeal Dismissed.

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted April 1, 2021 - Filed May 18, 2021.

ii. Remittitur filed June 28, 2021.

iii. _____

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

i. Unpublished Opinion No. 2021-UP-172.

ii. _____

iii. _____

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

(a) Not Applicable.

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **Newly Discovered Evidence.**
- (a) **The Applicant was denied due process of law; discovery**
- (b) **of the Government failure to disclose the promise**
- (c) **of immunity made to its principal witness. See attached**
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) **Too extensive for this section, see attached page**
- (b) **for 10 and 11 Grounds (a), (b), (c), (d), (e), (f),**
- (c) **(g), (h), (i)**
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: **Not applicable**
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. **No**
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. **No**
- iv. _____

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

a.

The Applicant was denied due process of law; discovery of the Government's failure to disclose the promise of immunity made to its principal witness, James Christopher Wilson is sufficient grounds for a new trial pursuant to Rule 59(d), SCRPC, Rule 60(b)(2)(3), SCRPC, S.C. Code Ann. §17-27-20(a)(4) and S.C. Code Ann. §17-27-45(C).

b.

Was the undisclosed promise made by a Assistant United States Attorney attributable to the entire prosecution agency; when prosecutorial agency failed to disclose such agreement to trial counsel was objectively unreasonable.

c.

That trial counsel was not effective assistance of counsel when he failed to address that there was no reasonable suspicion that violated the TERRY and Vehicle stop.

d.

That trial counsel was ineffective, when the police had no probable cause to believe an offense has been committed; going to be committed or about to be committed by Applicant driving around in dark tinted windows.

e.

That trial counsel was not effective for not challenging that the police may not create an Exigency to make an arrest.

f.

Trial counsel failed to protect Applicant's right to a fair trial, when he failed to back-up on his decision for a Mistrial.

g.

Trial counsel failed to address the state failed to prove sufficient chain of custody of the bullets, such that it

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should have been excluded from trial.

h.

Trial counsel should have objected to the Court's unorthodox tactic to give its jury instruction before the trying Attorney's summarize their closing arguments.

i.

Trial counsel was not effective for not challenging the State's introduction of hearsay statement without stating its reason for its introduction and what Rule it can be introduce, such Rule 803, SCRE.

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

a.

The facts which served as the basis of the Applicant's claim relates to certain promise made to the Government's main witnesses, James Christopher Wilson (Wilson) and Joshua Darien (Darien), the existence of which were discovered subsequent to the time when the Applicant had went to trial.

Wilson and Darien, the Government witnesses testified to inculcate the Applicant to criminal conspiracy and other alleged crimes committed only by Joshua Darien, James Wilson and Robert Goodwin. Wilson at trial testified that he had received no promise of immunity from prosecution in return for the testimony which he gave. See Exhibit A and Exhibit B-1.

Under direct-examination, Wilson testified as follows:

THE FACTS

Q: Please state your full name for the record.

A: James Christopher Wilson.

Q: Mr. Wilson, are you charged with armed robbery?

A: Yes.

Q: Are you charged with burglary in the first degree?

A: Yes.

Q: Are you charged with two counts of kidnapping the Tidwells?

A: Yes.

Q: And are you charged with criminal conspiracy?

A: Yes.

Q: Are you being promised anything to be here today?

A: No, ma'am.

Q: Any promises of leniency?

A: No, ma'am.

Q: Any threats?

A: No, Ma'am.

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Trial Record (Tr.) page 689 line 14-25 thru Tr. 690 line 1-5. Exhibit B-1 page 9-12. This was not true. In fact, his agreement was for a downward departure and reduction of sentence to wit: Firearms Zastava, Model Cz99, 9mm semi-automatic pistol. Serial Number T101291. Ammunition 13 rounds of 9mm ammunition seized from: Abin Lee Lowman (Applicant).

Wilson under oath stated that no promise was made, when in fact an immunity had been exchange for his cooperation with the Government. Wilson represented himself as if he was solely motivated by the fact that he had been subpoenaed.

Again and again throughout 74 pages of examination with Wilson the record does not reflect any of Wilson's understanding of that agreement. The record clearly and unequivocally did not shed light that he understood that even as a lie spoke from the witness stand he could still be prosecuted. Exhibit B-1.

The record does not reflect any of the counsel questioning Wilson specifically if he was told that he would not be indicted if he testified or are you waiting to go to trial on those charges? Had Wilson been indicted on those charges? Where was Wilson currently being held?

The net effect of this testimony left an absolute impression on the jury that the accomplice witness cooperation with the Government [State and Federal] was not motivated by assurances that he would come through the ordeal unscathed. This testimony, later revealed to be false, is further highlighted by the solicitor reference to it throughout the case and closing argument to the jury. Wilson testimony was not straightforward.

b.

The newly discovered evidence which Applicant relies upon in bring this claim for a New trial. Exhibit A and B-1, is in fact that there was an express promise made to Wilson, (Darlen, who received an downward departure), that he would not be prosecute if he agreed to become a witness against Applicant.

IN MOONEY V. HOLOHAM, 294 U.S. 103 (1935), that a prosecuting attorney was under a Constitutional duty to disclose evidence which was beneficial to the defendant's case. There it was held that conviction obtained through the use of knowingly false and perjured testimony cannot be permitted to stand. Applicant was denied due process and effective assistance of counsel. See MAPUE V. STATE OF ILLINOIS, 360 U.S. 264 (1959).

GIGLIO and BRADY recognize that without disclosure of the processes by which the government creates informant witnesses, and especially the inducement provided to them, the adversarial process is unfairly one-sided and opaque; without disclosure, defendant's cannot adequately protect themselves against, and be sure juries and Courts know about, informant's and accomplice-witness biases and misrepresentation.

It was the intention of the prosecution office not to disclose the evidence of any understanding and agreement as to a future prosecution or not would be relevant to Wilson credibility and the jury was entitled to know it GIGLIO V. UNITED STATES, 405 U.S. 150, 154-155 (1972) and BRADY V. MARYLAND, 373 U.S. 83, 87 (1968).

I. The Substance of Wilson Testimony

Wilson testimony was also critically prejudice.

1. The whole time Wilson been with the Applicant he never trust the whole situation.
2. As safety precaution, Wilson took a picture of Applicant's ID. Tr. 782 line 15.
3. That Applicant been to prison before.
4. That something foul going on with Applicant.
5. Wilson placed Applicant's character at issue, and
6. That Wilson lied about his promise of immunity.

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c.

TERRY V. OHIO, 392 U.S. 1, (1968) and its progeny has discussed "stop-and-frisk," a "brief detention," or a "pat-down," are short of full blown "arrests;" they are investigative detention.

Here, the police (Officer Harding) accost the Applicant basis off "no insurance" allegation by the Repo man need for a vehicle. The police did not independently "established the legitimacy of the investigatory stop."

THE FACTS

James Rutland testified that "at that I go back out to the main road light that I came out to the first time and I notice an officer sitting there...I came back over and stopped and kind of just let [her] know what I'm about to do, because the vehicle had no insurance. Tr. 102 line 8-12.

The repo man continue to track the vehicle. When the vehicle made a U-turn and was coming back his way down 23. The Repo man saw another law enforcement officer. So, he "actually made U-turn [himself] and came back to the other side down 23. There was an[other] officer sitting there and he let him know that the car" he's trying to reposses was coming back toward Johnson and it has ververy dark tint that he could not see inside the vehicle when he approached the vehicle earlier.

Trial counsel made it clear the Repo mans intention to get the police involved, so that he could get possession of the vehicle.

Q: Okay. So after you have the conversation with the female deputy, then you have the conversation with the other deputies. You tell them what you are looking for. Where is the vehicle when you're having this conversation?

A: When I'm sitting there having a conversation with everybody that's there. * * * * The Officer (Austin Harding). Because he was wanting to know what I was doing and I told him I was

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out here to pick up a repossession which they already knew and I realized the car is not there no more." Tr. 467 line 12-15 thru Tr. 468 line 1.

This testimony along with the police at trial, did not articulate a reasonable suspicion that a crime was afoot. The Fourth Amendment requires "some minimal level of objective justification for making the stop. The police level of suspicion here is less than proof of wrongdoing. There was no preponderance of any other objective evidence except that (1) The known driver was black and (2) the car, 2003 Mercury Grand Marquis had dark tinted windows.

In reviewing the totality of the circumstances; first, the issue is what the police knew when they acted. The police can make a personal observation, outside the anonymous tip to suspect illegal conduct is afoot. The particularized and objective basis for Harding suspicion was initiated by Rutland that the car has no insurance and he's trying to repossess it. This productive information was a civil issue not criminal and it only show the police of the hour in which the Applicant was driving. Rutland was trying to obtain the vehicle because it violated the policy of "Jiggie's Truck and Auto Sales." Secondly, there was no suspicious behavior by Applicant except the lateness of the hour and tinted windows is still did not rise above a hunch. Exhibit B-2.

Mr. Rutland tip that the car had no insurance required nothing observable to show reliability or predictability or that a criminal act is afoot. Rutland complaint was civil in action.

Basis on Officer Harding experience, he was a rookie, one year of experience on the force fall subject to Mr. Rutland police shopping that particular night, March 8, 2017.

The no insurance allegation was insufficient indicia of reliability to justify an investigative stop. See *STATE V. GREEN*, 532 S.E.2d 896, 897 (Ct. App. 2000), *United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993), *STATE V. WILLARD*, 647 S.E.2d

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252, 255 (2007).

II. Vehicle Stop/Seized

In *BRENDLIN V. CALIFORNIA*, 551 U.S. 249 (2007), the Court held that when a car is stopped pursuant to a routine traffic stop, the driver is unquestionably "seized" within the meaning of the Fourth Amendment. Even the passenger are "seized" although Applicant was driving alone.

A routine traffic stop, a law enforcement officer may:

- a. Request a driver's license.
- b. Request vehicle registration.
- c. Run a complete check and
- d. Issue a citation.

See *UNITED STATES V. SULLIVAN*, 138 F.3d 126, 131 (4th Cir. 1998). Any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has reasonable suspicion of a serious crime.

Applicant contends that trial counsel failed to argue this point. Applicant's vehicle was not subject to a lawful traffic stop, a subsequent pat down and vehicle search. *STATE V. ALEXANDER*, 424 S.E.2d 526, 529 (S.C. Ct. App. 1992) (Terry stop of car upheld). There was no traffic violation. "An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure." *BRENDLIN V. CALIFORNIA*, 551 U.S. 249, 258 (2007), *MUEHLER V. MENA*, 544 US. 93, 100-101 (2005).

d.

The police (Harding) had no probable cause to subject Applicant to a full custodial arrest. Harding stopped Applicant because James Rutland told he could not see into the car when he first approached it. Applicant was stop, handcuffed and arrested for driving without a license. Overly dark tint, failing to wear seatbelt or other proper safety restraints are warrantless

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misdemeanor. This misdemeanor was accompanied by a real or threatened violence violated Applicant's "right of the people to be secure in their person and effects, against unreasonable searches and seizures." In this case, the police:

1. Knew the Applicant.
2. The police knew the Mercury Grand Marquis.
3. The police knew that this vehicle had dark tinted windows.
4. The police was aware of other individuals that been in that vehicle did not justify the tinted windows probable cause that night.

The Fourth Amendment sought to limit the police warrantless intrusion upon a civil right against unreasonable searches and seizure. Moreover, Applicant driving with tinted windows did not amount to or involve breach of the peace. Officer William Padgett (Padgett) testified "that[] the vehicle that Abin Lee Lowman and the three guys from up around Washington, D.C. were in last week." Tr. 363 line 7-8. Officer Padgett also "ran identification" on James C. Wilsom, Joshus L. Darion and Robert J. Goodwin. Trial record page 362 line 14-15.

Trial counsel object to the state's scenario that these guys and including his client being stopped prior to this incident and was not charged with anything, is NOT "relevant" to what we're representing here other than saying that maybe his [client] bad character of being involved with three other guys who subsequently turn out to be burglars." Tr. 364 line 22-25. Applicant was denied effective assistance of counsel.

e.

The Fourth Amendment to the U.S. Constitution reads as follows

"The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

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describing the place to be searched, and the person or things to be seized. See also South Constitution, Art. I, section 10.

It has been held that officers cannot go to a location without a warrant or full probable cause, and create an exigency. See JOHNSON V. UNITED STATES, 333 U.S. 10, 12-15 (1948).

The underlying facts are that officers were reacting to allegation from Rutland, the Repo man who was +determined to repossess the 2003 Mercury Grand Marquis. Rutland did not alleged that Applicant was involved in any criminal activity that require the police intrusion. The police intrusion was unreasonable "within the meaning of the Fourth Amendment. The car was private property of Reberta Lowman, Applicant's mother. In fact, Rutland nor the police knew who was actually driving the vehicle. The police was not in hot pursuit of the vehicle or that the vehicle was stolen or involved in a crime.

The police was unaware of any imminent danger of destruction of evidence. The police was unaware if Applicant was a fleeing felon or that Applicant was going to harm or injury person or the police.

Although exigent circumstances may also permit police to detain while a search warrant is obtain. ILLINOS V. MCARTHER, 531 U.S. 326, 331-333 (2001). However, the vehicle tinted windows did not amount to a warrantless stop or seizure initiated by information given from Rutland of a civil matter.

The restraint at issue was tailored to the need of Rutland and was being limited in time and scope. Trial counsel should have had the Court balance the privacy-related and law enforcement related concerns to determine if the intrusion was reasonable. Cf. DELAWARE V. PROUSE, 440 U.S. 648, 654 (1979) and UNITED STATES V. BRIGNONI-PONCE, 422 U.S. 873, 878 (1975).

f.

Trial counsel may generously be characterized as ineffective. He not only failed the STRICKLAND test, his performance was so dismal from start to finish that deficiency and prejudice

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must be presumed per se under *CRONIC*, 104 S.C.T. 2039 (1984).

THE FACTS

"I always had my doubts about this whole situation. Uhm, I kind of didn't really trust [Applicant]. I was asking him the whole way, why, why pick me? Because he know a lot of people so why did you pick me? And his best answer was I looked out for him rather than some of his home boys when he first got out of, I guess, prison. Something about the whole situation didn't sit right with me so I took a picture of his ID just in case anything foul happened."

Trial record page 782 line 8-15.

Evidence of a witness's bias can be compelling impeachment evidence, and for that reason "considerable latitude is allowed" to defense counsel in criminal cases "in the cross-examination of an adverse witness for the purpose of testing bias." *SMALL V. STATE*, 422 S.C. 174 (2018).

As a "general rule" that "anything having a legitimate tendency to throw light on the accuracy, trustfulness and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, so that "on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." See Rule 608(c), *SCRE*, states: "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."

Also *STATE V. HOWARD*, 296 S.C. 481 (1988), *STATE V. HARRISON*, 432 S.C. 448 (2021), *STATE V. KIRKPATRICK*, 320 S.C. 38 (1995) and *STATE V. VON DOHLEN*, 322 S.C. 234 (1996).

Here is allegedly one of three co-conspirators who sat in the car for three night straight and contemplated everything that could go wrong. Could go right. Tr. 697 line 14-15.

Trial counsel said: "I think it would be silly to ask you to give a curative instruction." Tr. 785. Trial counsel had

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moved for a mistrial when Wilson testified that Applicant had recently got out of prison. Tr. 782 at 13. Applicant's character had also been placed in dispute. Under the totality of the Wilsons testimony, his comment was unduly prejudicial and bias. See Applicant's PCR Grounds (a) and (b).

The State contended that Applicant's prior burglary indictment will be submitted to the jury; this did not happen. The court under stipulation excepted Applicant's March 17, 1998 and March 20, 2000 indictment into the record. Tr. 995 line 13-23. The Applicant contend that the stipulation and Wilson's admission that Applicant just "got out of prison" violated Applicant due process and his right to a fair trial. This highlighted Applicant as a felon. Criminal Attached bad character to him.

The jury heard this commit "Applicant [just] got out of prison", that Applicant knows a lot of people, so he took a picture of Applicant's ID went uncured. Trial counsel erred in not pushing forward with his motion for a Mistrial and/or have the trial Court entertain a curative instruction to have that comment strike and disregarded.

Applicant was denied due process to a fair trial and effective assistance of counsel.

9.

THE FACTS

"We don't have a set method but I did assist in the systematic search. I started on the driver's side. Dublin was on the passenger side. We went from front to back, front compartment of the vehicle to the rear compartment of the vehicle. We searched the vehicle. We switched roles. I went to the front side of the passenger. She came to the front side of the driver's and we did another systematic search to cover each other to make sure we don't miss anything."

Trial record page 514 line 7-14.

THE FACTS

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By trial counsel and officer Harding.

Q; Now, who is the actual person who goes inside the trunk to search the trunk?

A: Andrea Dublin and Tony Mosley.

Q: When I say who, I mean are you sure there was more than one that actually searched the trunk?

A: Yes, sir. They split the trunk in half and they did one half, the other person did the other."

Trial record page 505 line 4-10.

The chain of evidence in this case "is not clear." The record reflects that all items recovered from the Applicant's vehicle had passed through several hands; leaving it to conjecture as to who had it and what was done with it between the taking and the analysis.

Applicant further contends that "evidence seized in violation of the Fourth Amendment must be excluded from trial. Applicant's PCR Grounds (c), (d) and (e). STATE V. KHINGRATSAIPHON, 352 S.C. 62 (2002), citing MAPP V. OHIO, 367 U.S. 643 (1961).

Generally, a warrantless search is per se unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures. STATE DUPREE, 319 S.C. 454 (1925), STATE V. VALENTINE, 386 S.C. 499 (2010).

When trial counsel objected to the chain of custody, the trial Court reasoned that "the chain is not complete but its a short step between Dublin and [Mosley]." Tr. 517 line 13-15.

h.

THE FACTS

THE COURT: All right. I'm doing something a little different kind of out of normal. I normally give my instructions after the lawyers summarizes their positions but I had talked with the lawyers and suggested that I give my instructions on the law first and then they give their closing summaries. We can

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do it that way so we're gonna try it that way. So I'm gonna instruct you on what the law in this case is and then the lawyers are gonna get their opportunity to come up and summarize what they believe the evidence has shown or not shown and therefore present the questions of facts to you.

Trial record page 1001, line 21-15 thru page 1002, line 1-6.

It is well practice in South Carolina that the trial Court give its instruction after the attorneys summation of the case. See *STATE V. GATES*, 269 S.C. 557 (1977) and *STATE V. WILLIAMS*, 266 S.C. 325 (1976). S.C. Code Ann. §17-23-100. Here, the Court was not entertained by counsel of any matter or any instruction as to what the Court can pronounce to the jury on behalf of Applicant. If it wasn't but for trial counsel error, this allowed his summation coming after was highly prejudicial to Applicant. It denied him his right to due process and the right to a fair trial. It gave the state the opportunity to shift the burden of proof. It placed Applicant's trial counsel in hindsight position to the evidence the State may alleged to have shown before the jury. Any State's comments during its closing could have triggered a reminder of the testimony and evidence presented by the states. It was clearly reversible error to allow the court to do so. This was structural error.

1.

At trial, officer Padgett address the Miranda issue. He admitted he or any other office made any document as to that interview. Tr. 993. He testified that he did admitted telling Applicant he was investigating alleged break-in at Persimmon Hill. Applicant admitted he had been in that area but fishing. When Officer Padgett told applicant that a "GPS had located his vehicle around the pond, Applicant allegedly stated : "I'm going [to] get a thousand years for this." Tr. 991 at 21.

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Trial counsel was ineffective to allow the state to introduce hearsay testimony. He allowed the State to have the police make criminating statement without objecting to its admission up under what subsection it could be introduce, e.g., was it an present sense impression or excited utterance or the condition it was made. Applicant has a protected right under the Fifth Amendment here. EXHABIT

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. **No** _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. **NO** _____
- iv. _____

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

- i. _____
- ii. _____
- iii. **No** _____
- 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: **Not Applicable**

(a) which grounds have been presented:

- i. _____
- ii. **No** _____
- iii. _____

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

- i. _____
- ii. **No** _____
- 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: **The grounds raised were not ripe for**
 (a) **for Direct Appeals, only for PCR actions.**
 (b) _____
 (c) _____
17. Were you represented by an attorney at any time during the course of:
 (a) your arraignment and plea? **Robert T. Williams, esquire.**
 (b) your trial, if any? **Robert T. Williams, esquire.**
 (c) your sentencing? **Robert T. Williams, esquire.**
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **Robert Michael Dudek, of S.C. Appellate Defense**
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
S.C. CODE ANN. §17-27-20(a) requires Applicant pro-se filing to initiate action.
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. **Robert T. Williams, esq. Williams Stitely & Brink,**
Trial PC. P.O. Box 2390. Lexington, S.C. 29071.
 ii. **Robert M. Dudek, esq. Appellate Defender for indigent.**
Direct Appeal.
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. **Trial.**

 ii. **Direct Appeal.**

 iii. _____

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

I, Abin Lee Lowman #248506, 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.

Abin Lee Lowman

SWORN or affirmed to and subscribed before me this

9th day of March, 2022

Tamara Conwell
Notary Public

Commission Expires
September 20, 1934

My Commission Expires: September 22, 1991

Saluda County Clerk of Court
100 E. Church Str. Ste. 6
Saluda, South Carolina 29138

March 9 , 2022

Re: Filing of Post-Conviction Relief

Dear Clerk of Court.

Enclosed please find applicant's application for post-conviction relief and Appendix to be filed within this court. Please clock stamp and give this case a filing number and return a copy , so that I may serve the respondents in this action.

Thank you so much in this matter.

I am

Respectfully submitted

1st Abin Lee Lowman

Abin Lee Lowman #248506

Perry Prison 3-B-106

430 Oaklawn Road

Pelzer, South Carolina 29669

Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF SALUDA	)	

Abin Lowman, #248506,	)	Case No.: 2022-CP-41-057
	)	
Applicant,	)	
v.	)	RETURN
	)	(Hearing Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Applicant filed the captioned application for post-conviction relief dated March 9, 2022 and challenges his convictions for burglary in the first degree, armed robbery, 2 counts of kidnapping and criminal conspiracy. The Applicant, through counsel Chelsey Marto, served an amended application on March 11, 2024. He alleges allegations of ineffective assistance of counsel and prosecutorial misconduct. Respondent submits that the allegations of ineffective assistance of counsel will likely require an evidentiary hearing to adequately resolve. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”). However, Respondent relies on the established record and controlling law to assert that Applicant is not likely to be able to carry his burden of proof.

In support of its position, Respondent would respectfully show the court:

Procedural History

Applicant, Abin Lowman, is presently confined in the South Carolina Department of Corrections, pursuant to orders of commitment from the Saluda County Clerk of Court.

Applicant was indicted at the June, 2018 term of the Saluda County Grand Jury for the offenses of burglary in the first degree, armed robbery, two counts of kidnapping, and criminal conspiracy. R. 1065 - 1074. His case was called to trial on June 18, 2018, before the Honorable Eugene C. Griffith, Jr., and a jury. Robert Theodore Williams, Sr., represented Applicant. Solicitor Richard Samuel Hubbard and assistant solicitor Sutania Fuller represented the state. R.1.

On June 22, 2018, the jury found Applicant guilty on all counts. R. 1057, 11. 13-20. Judge Griffith sentenced Applicant, based upon his prior record and the service of the life without parole notice, to life imprisonment concurrent on all of the convictions with the exception of criminal conspiracy. On the criminal conspiracy conviction, Judge Griffith sentenced Applicant to five years imprisonment, concurrent. R. 1062, 11. 14-19.

Direct Appeal

The Applicant appealed to the South Carolina Court of Appeal. He was represented in the appeal by Chief Appellate Defender Robert M. Dudek. On July 29, 2019, counsel made an Anders Brief Of Appellant and petition to be relieved as counsel pursuant to *Anders v. California*. 386 U.S. 738, 87 S.Ct. 1396 (1967) raising the following arguable issue:

Whether the court abused its discretion by refusing to declare a mistrial where codefendant James Wilson testified on direct examination for the state that appellant allegedly chose him as an accomplice in the crime because Wilson had "looked out for him" when appellant got out of prison, since evidence appellant had been in prison was an impermissible comment on his character, it was extraordinarily prejudicial, it denied appellant a fair trial, and a mistrial was the only cure for the prejudice.

Anders Brief of Appellant, p. 1. On May 18, 2021, the South Carolina Court of Appeals dismissed the appeal after Anders review. *State v. Lowman*, Unpublished Op. No. 2021-UP-172 (S.C. Ct. App. May 18, 2021). The remittitur was issued on June 28, 2021.

Attachments

Respondent attaches, and incorporates by reference, the following:

1. Direct Appeal Materials:
 - a. Anders Brief of Appellant.
 - b. Record on Appeal - 32 volumes –
 - c. State v. Lowman , Unpublished Op. No. 2021-UP-172
(S.C. Ct. App. May 18, 2021)
2. Other materials.
 - a. Saluda Clerk of Court Records related to the materials.
 - b. SCDC records related to the conviction.

Allegations

In his original applications, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. Prosecutorial Misconduct

(PCR App. at 3).

Amended Application

In the Amended application dated March 11, 2024, the Applicant, through counsel Chelsey Marto, alleges:

1. Ineffective assistance of counsel for:
 - a. Proceeding forward with the wrong trial strategy. Specifically, counsel should have argued to the jury that Applicant was not involved with the other defendants in the case, nor was within the vicinity of the crime at the time of the home invasion.
 - b. Failure to obtain a favorable plea offer.
 - c. Failure to present a zealous defense at trial.
 - d. Failure to preserve important issues on appeal.

- e. Failure to effectively cross-examine witnesses, especially Wilson and Darien concerning their prior inconsistent statements.
- f. Failure to object to Wilson's tangent about why Applicant selected him to commit the crime as being non-responsive. (Tr. 782).
- g. Failure to successfully move for a mistrial based upon Wilson's statement about Applicant recently being released from prison.
- h. Failure to request a curative instruction when counsel's motion for a mistrial was denied. (Tr. 785).
- i. Failure to investigate potential plea resolutions Applicant's co-defendants had.
- j. Failure to cross-examine Wilson concerning the federal plea resolution he had entered several months before the trial.
- k. Failure to argue pre-trial that there was no reasonable suspicion backing the traffic stop.
- l. Failure to argue pre-trial that there was no probable cause to believe an offense was committed because of the tinted windows.
- m. Failure to challenge Applicant's arrest based upon a lack of exigent circumstance.
- n. Failure to challenge the chain of custody regarding the bullets. (Tr. 517).
- o. Failure to object to jury instructions being given before closing arguments.

- p. Failure to object to Applicant's statements to the police on hearsay grounds. (Tr. 991-93).

2. Prosecutorial Misconduct:

- a. Applicant believes prosecutorial misconduct occurred because of alleged falsehoods the investigators and Applicant's co-defendants stated at trial.
- b. For not disclosing that Wilson had entered a plea agreement months before Applicant's trial.
- c. For obtaining the wrong gas station surveillance footage when, had the right footage been obtained, Applicant believes he would have been exonerated.
- d. For arguing that the tinted windows was the basis for the stop.
- e. For stating that Applicant made statements to the police when Applicant's position is that the statements were never made.
- f. For threatening Steven Brown with jail time if he did not testify.
- g. For fabricating a fourth person being on location after Applicant's charges had been pending for some time.
- h. For submitting that calls were made involving a phone that was broken and could not be extracted from.

FACTUAL BASIS OF CASE

Danny Tidwell and his wife, Lynda, were the owners of Tidwell's Jewelry Store in Johnston, South Carolina. They had owned and operated that jewelry store for forty-two years. R. 162, l. 12 - 163, l. 3. They owned three jewelry stores, although the main store was in Johnston. R. 163, ll. 7-20.

The Tidwells lived in a large house on the Persimmon Hill golf course subdivision in Saluda, South Carolina. R. 164, l. 14 - 165, l. 13. Mr. Tidwell remembered on March 8, 2017, he and Lynda, followed their usual routine of driving home from Johnston to Saluda after the jewelry store closed for the evening at six o'clock. However, on this particular night, Mr. Tidwell stopped at a Mexican restaurant near their home to purchase a take-out dinner. R. 167, l. 11 - 172, l. 24.

At around seven o'clock that night, they went by his daughter's house in the same golf course subdivision, and then Tidwell drove the extra block or so home. "I noticed a car that was not familiar to me at all. It's only seven neighbors that live back in that part and I know all of them and I know what they drive and it just was different. I didn't really think about it other than that's odd. I wonder who they are visiting or it was just strange. I had never seen that car before." R. 172, l20-173, l. 25. The strange car was a Mercury Marquis owned by Applicant's mother. R. 174, ll. 1-5.

As usual, Tidwell went to sleep at about 8:30 that night, and he testified that his wife usually was "not too far behind me. Tidwell remembered awakening to a noise that he thought was their under-the-counter ice machine in his kitchen. R. 175, ll. 9-23. However, Tidwell said the next thing that happened was "I hear men in my house hollering, 'ATF. ATF. Come out with your hands up.' I rolled over and wake [awakened] my wife. She might have already been

awakened. I don't know. But I asked her, I said, we need to cooperate thinking that it was law enforcement." R. 182, 11. 1-15. Tidwell thought it was law enforcement but that they had "the wrong address." Tidwell and his wife were placed on the carpet, and they had their hands tied behind their backs with zip ties. R. 182, 11. 16-24.

Tidwell said he quickly realized the men were not law enforcement based on their vulgar language, and from them demanding to know "Where's your valuables? Where's your belongings? Don't lie to me. I'll blow your F'ing head off." R. 182, 1. 25 - 183, 1. 11. Tidwell told one of the three inquiring men that he did not have a safe in his house. One of the men then asked Tidwell how he could own a jewelry store, and not have a safe in his house. R. 183, 1. 12-190, 1. 23. Tidwell gave one of the men the alarm codes, the safe combinations for the jewelry store safe, as well as the store keys. R. 191, 1. 7 - 197, 1. 14. Tidwell said the men assured him that they would not hurt his wife or him as long as they cooperated.

At one point, Tidwell said he asked one of the men, "If I could pray. I didn't want to offend anybody. And then he said, 'What are you, a Jew?' And I said no. I'm Christian. And he said, 'Yeah. You can pray.'" R. 197, 1. 21 - 198, 1. 11.

Tidwell remembered it became quiet, and he saw headlights from a car leaving the area on his ceiling. Mrs. Tidwell got free, untied Danny Tidwell, and they searched for a phone to call the police but all of the phones were gone. Tidwell and his wife then came up with a plan where they would run out of different doors in the house to different neighbor's houses to ensure one of them could safely call the police. No one was injured, and Saluda police officer Dale Hallman was the first police officer on the scene that morning. R. 199, 1. 2 - 203, 1. 18.

Other police officers soon arrived. The robbers had taken Tidwell's car, a .380 caliber pistol, a silver money clip with about \$3,000 in it, and another \$1,000 from the house. An

additional .45 caliber pistol, a pocketknife, and their cell phones were also all stolen. R. 205, 1. 17-214, 1. 12.

Neither Tidwell nor his wife could identify any of the burglars. They did, however, remember that there were only three men inside the house. One black man was said to be wearing dark glasses, and another man apparently wore "military" like boots. R. 215, 1. 10 - 236, 1. 19.

Tidwell also remembered that about \$100,000 in jewelry was stolen from their bedroom drawers, as well as his wife's diamond ring. R. 247, 11. 5-24. However, the jewelry store was not burglarized and robbed that night or in the early morning as allegedly was planned. R. 236, 11. 3-10.

The state's theory of the case was that one of the accomplices gave Applicant the key to the jewelry store, the alarm code, and the safe combination given to him by Mr. Tidwell during the burglary. Applicant was driving his Grand Marquis to the jewelry store in Johnston to burglarize and rob it when he was stopped by the police. There was a lengthy pre-trial motion to suppress the fruits of the traffic stop of Applicant's Grand Marquis on the basis that the traffic stop was a pretext to assist a repossession agent, James Rutland, in repossessing the Grand Marquis, and not for any legitimate law enforcement reason. This, the defense argued, rendered the traffic stop illegal. The trial judge ruled the traffic stop was legal because the repossession agent, Rutland, told the Johnston police that Lowman was driving without insurance, a

legitimate reason to stop Lowman. In addition, the judge accepted the state's claim that law enforcement also had the right to stop Lowman because of the very dark tint on the Grand Marquis, which appeared to be illegal. R. 93 - 141. ¹

Tidwell's wife, Lynda Tidwell, remembered the burglary lasted approximately two hours. Her necklace, bracelet, three rings, and a watch were among the items stolen during the burglary. R. 278, 1. 4. - 279, 1. 25. Mrs. Tidwell also remembered after the men left and the car lights disappeared that they went to the neighbor's house and were able to get the neighbors to call the police. R. 296, 1. 20 - 298, 1. 24.

The Tidwells' car had an OnStar tracking device on it. Consequently, the police were able to trace the stolen car to "Old Camp Log Road in Aiken County," where they found the car abandoned. The car was abandoned not far from a Waffle House. R. 307, 1. 12 - 308, 1. 11; R. 321, 11. 8-18.

When law enforcement went to the nearby Waffle House in Aiken County, they went through the trash can in the men's room. They found Mr. Tidwell's apparent silver money clip and a white glove there. 2 R. 328, 1. 22 - 329, 1. 25. Mr. Tidwell never identified the money clip as being his clip.

As a result of surveillance tapes at the Waffle House and one of the Wal Marts in Aiken County where the ammunition was purchased, the suspects, in addition to Applicant, became Joshua Darian, James Christopher Wilson, and Robert Goodwin. R. 386, 11. 3-7.

¹ There was no contemporaneous objection by the defense when the ammunition found in Lowman's trunk, or a shell casing found on the passenger side of the vehicle, or other incriminating items were entered into evidence. R. 515, 1. 1-517, 1. 23.

Lowman's mother purchased the Grand Marquis for Lowman from Jiggie's Truck and Auto Sales in October 2016. R. 407, 1. 11 - 409, 1. 24. The car came with a GPS contract which allowed the car lot to disable the vehicle if there was no insurance on the vehicle, or if the purchaser was behind on the payments. R. 411, 1. 9 - 418, 1. 22. The owner of the car lot was Sheila Rutland. Her husband, James Rutland, was the repossession agent for Hook and Book Recovery Services.

James Rutland remembered that the Grand Marquis was traced on the night of March 7, 2019, to the golf course near the Tidwell home. R. 427, 1. 12 - 431, 1. 22. Rutland found the vehicle there but was unable to repossess it because of the narrow dirt road it was on. Rutland actually had to drive on the golf course to turn around. He was worried about "tearing up the golf course or getting stuck." R. 441, 11. 6-25; r. 470, 1. 20 - 471, 1. 8.

In the interim, Applicant returned to the car and drove away in it. Rutland followed Applicant in the vehicle from the golf course to Johnston. Rutland informed a female police officer in Johnston that there was no insurance on the Grand Marquis Lowman was driving, and that he intended to repossess the vehicle that night. R. 441, 11. 6-25; r. 470, 1. 20 - 471, 1. 8.

Both Rutland and the Johnston police officers claimed that Lowman was not stopped that evening so that Rutland could repossess the car. When Lowman was stopped, he did not have a driver's license. He was arrested for driving under suspension. R. 481, 1. 24-489, 1. 20. He was arrested on the night of the robbery, March 8, 2017. No ticket was apparently issued for the tint on the car windows being illegal. R. 652, 11. 10-16.

A box of nine millimeter ammunition was found in the trunk of the vehicle. R. 494, 1. 1 - 495, 1. 3; r. 515, 1. 1 - 516, 1. 11. In addition, a nine millimeter shell casing was found inside the

front passenger seat of the car, along with multiple cell phones and identification cards for Robert Goodwin and Lowman. In addition, walkie talkie handheld radios were found inside the car. R. 556, l. 2 - 557, l. 18.

James Wilson was arrested in Maryland on March 11, 2017. R. 652, 11. 17-23. Joshua Darian was also arrested in Maryland on March 24, 2017. R. 653, 11. 4-14. Robert Goodwin was arrested in Maryland on July 10, 2017. R. 653, 11. 16-21. James Wilson and Joshua Darian testified for the state against Lowman.

James Wilson

James Wilson was charged with burglary in the first degree, two counts of kidnapping, armed robbery, and criminal conspiracy in this case, the same charges for which Lowman was also indicted. R. 689, 11. 14-24. Wilson claimed the solicitor had not promised him anything in return for his testimony against Lowman. Wilson then maintained that Lowman, Robert Goodwin, and Joshua Darian were the other participants in this crime. R. 689, 1. 14-690, 1. 12.

Wilson was from Guyana, South America. He lived in Maryland. Before March, 2017, he had never been to South Carolina. He was twenty-two years old at the time of the burglary. Joshua Darian was eighteen years old. R. 691, 1. 17 - 692, 1. 5.

Wilson claimed that Lowman told him he could come to South Carolina and participate in the robbery of some drug dealers who ran a jewelry store. There was going to be at least \$300,000 involved in the robbery. R. 694, 1. 1 - 695, 1. 1.

Wilson said he was told that Lowman would provide a rental car, the guns, and that they would be given money for hotels, food, and any extra expenses. "Pretty much all we had to do

would be to go in there and pretty much rob them, tie them up, lay them down. I was to get the codes." R. 695, 1. 11 - 696, 1.25.

Wilson said on the day of the robbery, Joshua Darian was driving because Lowman's driver's license had been suspended. Wilson said Lowman went in the Tidwell Jewelry Store that afternoon to buy a ring.³ R. 710, 1. 3 - 711, 1. 22. Wilson said the purpose of this purchase was so Applicant would know the layout of the jewelry store he was to burglarize later that evening. R. 711, 11. 19-22; r. 738, 11. 7-11. Lowman was supposed to rob the jewelry store while the other three men held Mr. and Mrs. Tidwell as prisoners in their golf course home. R. 738, 11. 4-11.

Wilson explained that that night, he went into the Tidwell home with Darian and Goodwin while Lowman remained on the back porch. R. 751, 11. 7-10. Wilson said he was led to believe that the Tidwell Jewelry Store was a front for a drug operation. "People come in there and they look to buy, act like they're buying jewelry . . .but they're buying drugs. He said it was an old bank, had a bank vault in the business and he was going to clean the bank vault out." R. 752, 1.9-753, 1. 12.

Wilson said the men entered the house, they beamed their flashlights into their eyes, and screamed: "ATF." R. 753, 1. 13 - 754, 1. 7. They then tied up Mr. and Mrs. Tidwell with the zip ties, obtained the security codes, the combination to the safe, and the store keys for Lowman. They then held the Tidwells as prisoners. R. 754, 1. 17 - 757, 1. 20.

A short time later, Lowman sent a text message to Wilson informing him that he had been "pulled over" by the police. "I really thought he was lying. I didn't believe him to be honest with you because I kind of figured once I realized there was nothing in the house, I kind of figured it

was, he kind of used us to go and rob the jewelry store so I'm thinking that he just robbed the jewelry store and just left us. I didn't believe him at all but just to be on the safe side I left. I left the house." R. 766, 1. 23 - 767, 1. 8.

Wilson, Darian, and Goodwin then traveled in the Tidwells' stolen car to Aiken, South Carolina. Wilson explained: "I knew it had OnStar on it so I knew we had a limited time in the car. So once we got back to Aiken, I figured it was time to get rid of the car so I parked it in this like in the woods or whatever." R. 769, 11. 15-22. Wilson saw police officers swarming in the area, and he threw his gun into a bush by the Waffle House. Wilson would later lead the police to find the gun he threw into the bushes there. R. 772, 1. 4 - 773, 1. 19.

Wilson related that the men were chased through the woods by the police from the Waffle House area for about two hours. They then called a cab and got a ride back to the Econo Lodge in Aiken. From there, Wilson caught a cab to Columbia, and he took a Greyhound bus back to Maryland. R. 774, 1. 15 - 776, 1. 6. Wilson said he only received about \$700 for his part in the crime. R. 823, 11. 19-23.²

² Mistrial Motion

Wilson testified on direct examination that "I always had my doubts about this whole situation." He said he did not trust Lowman, and he wondered why Lowman chose him to be a participant in the crime. "[H]e knew a lot of people, so why did he pick me? And his best answer was I looked out for him rather than some of his home boys when he first got of, I guess, prison. Something about the whole situation didn't sit right with me so I took a picture of his ID just in case anything foul happened." Defense counsel told the judge he had a matter of law at this point. R. 782, 11. 6-21.

Defense counsel then moved for a mistrial, noting there had been no evidence of Applicant's prior criminal record before the jury, and that the jury now knew Lowman had been in prison. R. 782, 1. 25 - 783, 1. 6.

The solicitor argued that she did not intentionally elicit this testimony that Lowman had been in prison. The solicitor also urged there was not enough prejudice from the mention of Lowman having been in prison to justify a mistrial. Further, the solicitor reasoned the jury was later going to hear a stipulation that Lowman had two prior burglary convictions. "I think we can minimize this and not cause any prejudice to the defendant at this stage in the trial." R. 783, 11. 8-23.

The judge also noted the indictments placed the jury on notice of Lowman's two prior burglary convictions. The judge also reasoned that Lowman's character had already been placed at issue through testimony about Lowman planning the robbery. Defense counsel countered, "That's his [the witness's]

Joshua Darian

Joshua Darian also claimed there was "no deal" in return for his testimony against Lowman. Darian, like Wilson, was facing the same charges. R. 892, 1. 5 - 893, 1. 2. Darian testified that "Wilson let him in on the plan" to rob drug dealers located in South Carolina. The burglary and jewelry store robbery were expected to result in about \$250,000 in stolen money. R. 896, 1.2-897, 1. 23.

On the night of the robbery at the Tidwell home on the golf course, Darian said Lowman remained outside while he went inside the Tidwell home with Wilson and Goodwin. R. 925, 11. 15-22. The men inside were going to provide Lowman with the keys to the jewelry store, the alarm code, and the safe code. R. 926, 11. 16-20.

Darian said his role was "like to be a scavenger over the house, look around in the house trying to find the drugs." R. 928, 11. 15-17. Darian testified once they had the keys and code that Lowman left to go to the jewelry store. Darian said they repeatedly assured the Tidwells that they were not going to harm them. Darian said he got a blanket and a pillow for Mrs. Tidwell while she laid on the floor. R. 929, 1. 13 - 931, 1. 24.

The solicitor again had Darian repeat that he had no deal with him for his testimony against Lowman. Darian also said he had no promises from the federal government for his testimony against Lowman. The federal authorities had apparently charged the men with firearms violations and impersonating federal officials. R. 945, 11. 5-25.

opinion [of the plan]." R. 784, 11. 8-19. The judge agreed with defense counsel's statement, and he said he could give a curative instruction, but that he was not granting a mistrial. Defense counsel agreed that a curative instruction in this situation would only make the matter worse. The judge then denied the mistrial motion and warned the solicitor to tell his witnesses not to mention Lowman's prior criminal record or prison again. R. 784, 1. 20-785, 1. 24.

However, the solicitor later asked to recall Darian so Darian could admit that he was making a proffer with federal authorities that would cause a decrease in his federal sentence. Darian still claimed the deal with the federal authorities would have no effect on his state court charges, although this Court can take judicial notice of the fact Darian's state court sentence ran ultimately was ordered to run concurrent to his federal sentence. R. 980, 1. 5 - 981 , 1. 4.

At the end of the state's case, the judge read the jury a stipulation that Lowman had two prior convictions for burglary in Edgefield County on March 17, 1998, and March 20, 2000. R. 995, 11. 13-23.

DISCUSSION

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An

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applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816; *see White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992) (instructing reviewing courts evaluating a claim of ineffective assistance of counsel to “at the start presume effectiveness” and “always avoid second guessing with benefit of hindsight”). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington*

v. Richter, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not

ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

Respondent submits that the trial court record, when considered in light of the relevant and controlling case law, demonstrates that Applicant likely cannot show he is entitled to any relief.

Argument in Response to the Claims

M
819. The claims alleging ineffective assistance of counsel likely requires consideration of facts outside the existing record to adequately resolve. As it presently stands, though, the trial and appellate record appear to demonstrate competent assistance, and, as a matter of law, counsel is presumed to have rendered "reasonable professional assistance." *Strickland*, at 689. For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary

hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

CONCLUSION

WHEREFORE, having made its Return, Respondent requests that this matter be conditionally scheduled for an evidentiary hearing pursuant to *Sharper*.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
S.C. Bar #5758
Dzelenka@scag.gov

By: 

DONALD J. ZELENKA

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

March 13, 2024

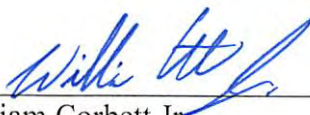
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	
	)	2022-CP-41-00075
	)	
ABIN L. LOWMAN, # 248506	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Ms. Chelsey F. Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this the 14th day of March 2024



 William Corbett Jr.
 Legal Assistant For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Abin L Lowman. #248506.	)	Case No.: 2022-CP-41-00075
Applicant.	)	
v.	)	APPLICANT'S AMENDED APPLICATION
State of South Carolina.	)	
Respondent.	)	
	)	

NOW COMES Applicant, Abin L. Lowman, amending his application filed March 15, 2022. In addition to the allegations raised in his initial application, Mr. Lowman, through PCR Counsel, submits the following:

1. Ineffective assistance of counsel for:
 - a. Proceeding forward with the wrong trial strategy. Specifically, counsel should have argued to the jury that Applicant was not involved with the other defendants in the case, nor was within the vicinity of the crime at the time of the home invasion.
 - b. Failure to obtain a favorable plea offer.
 - c. Failure to present a zealous defense at trial.
 - d. Failure to preserve important issues on appeal.
 - e. Failure to effectively cross-examine witnesses, especially Wilson and Darien concerning their prior inconsistent statements.
 - f. Failure to object to Wilson's tangent about why Applicant selected him to commit the crime as being non-responsive. (Tr. 782).
 - g. Failure to successfully move for a mistrial based upon Wilson's statement about Applicant recently being released from prison.
 - h. Failure to request a curative instruction when counsel's motion for a mistrial

was denied. (Tr. 785).

- i. Failure to investigate potential plea resolutions Applicant's co-defendants had.
- j. Failure to cross-examine Wilson concerning the federal plea resolution he had entered several months before the trial.
- k. Failure to argue pre-trial that there was no reasonable suspicion backing the traffic stop.
- l. Failure to argue pre-trial that there was no probable cause to believe an offense was committed because of the tinted windows.
- m. Failure to challenge Applicant's arrest based upon a lack of exigent circumstance.
- n. Failure to challenge the chain of custody regarding the bullets. (Tr. 517).
- o. Failure to object to jury instructions being given before closing arguments.
- p. Failure to object to Applicant's statements to the police on hearsay grounds. (Tr. 991-93).

2. Prosecutorial Misconduct:

- a. Applicant believes prosecutorial misconduct occurred because of alleged falsehoods the investigators and Applicant's co-defendants stated at trial.
- b. For not disclosing that Wilson had entered a plea agreement months before Applicant's trial.
- c. For obtaining the wrong has station surveillance footage when, had the right footage been obtained, Applicant believes he would have been exonerated.
- d. For arguing that the tinted windows was the basis for the stop.
- e. For stating that Applicant made statements to the police when Applicant's

position is that the statements were never made.

- f. For threatening Steven Brown with jail time if he did not testify.
- g. For fabricating a fourth person being on location after Applicant's charges had been pending for some time.
- h. For submitting that calls were made involving a phone that was broken and could not be extracted from.

Conclusion

Based upon the above, Mr. Lowman requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



Chelsey F. Marto
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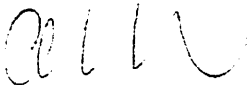
For Applicant Abin L. Lowman

March 5, 2024

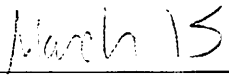
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Abin L Lowman, #248506.	)	Case No.: 2022-CP-41-00075
Applicant,	)	
v.	)	Affidavit of Service by Mail
State of South Carolina.	)	
Respondent.	)	

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: Donald Zelenka, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



 Attorney for Applicant



 March 15, 2024

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Abin Lee Lowman,)
Applicant,)
)
)
)
)
)
State of South Carolina,)
Respondent.)

)

2022-CP-41-0075

TRANSCRIPT OF RECORD

March 19, 2024
Lexington, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge

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

ATTORNEY FOR PLAINTIFF:

Donald J. Zelenka, Assistant Attorney General

ATTORNEY FOR DEFENDANT:

Chelsey Marto, Esquire

Tara T. Scott, CVR
Official Court Reporter

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Abin Lowman-Direct Examination

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1 MR. ZELENKA: Your Honor, this is the matter of Abin
2 Lowman v State of South Carolina. Mr. Lowman is presently
3 incarcerated in the Department of Corrections pursuant to
4 orders of commitment from Saluda County. He was indicted on
5 June 18 at the Saluda County Grand Jury term for burglary in
6 the first degree, armed robbery, two counts of kidnapping,
7 and criminal conspiracy. His case was called to trial June
8 18, 2018 before Judge Griffith. He was represented at that
9 time by Robert Theo Williams, Sr., and the matters were
10 prosecuted by Solicitor Rick Hubbard and Assistant Solicitor
11 Sutania Fuller.

12 The jury found the Applicant guilty on June 22, 2018 of
13 all counts. He was sentenced by Judge Griffith, based upon
14 his prior record, and was sentenced to life imprisonment
15 without parole. There was a LWOP notice given in this
16 particular case, and it was concurrent on all the
17 convictions with the exception of the criminal conspiracy,
18 which he also received a five-year imprisonment. There was
19 an appeal to the South Carolina Court of Appeals. He was
20 represented at that time by Robert Dudek of the South
21 Carolina Office of Appellate Defense. Mr. Dudek, on July
22 29, 2019, made an Anders brief in that matter pursuant to
23 Anders v California, and he raised a singular issue to be of
24 arguable merit at that time. And the Court of Appeals
25 dismissed the appeal after the Anders brief was filed. The

1 application was filed initially on March 9, 2022, and it was
2 amended on March 11, 2024, alleging claims of ineffective
3 assistance of counsel and prosecutorial misconduct. And the
4 allegations are set forth in our return, as well as the
5 amended application that you have before you. So, the State
6 is ready to go forward. He is presently represented by
7 Chelsey Marto pursuant to court appointment.

8 THE COURT: Do you agree with all that?

9 MS. MARTO: Yes, Your Honor. We are ready to proceed.
10 Our first witness would be Abin Lowman.

11 THE DEFENDANT: Good morning, Your Honor.

12 WHEREUPON, Abin Lee Lowman, having first
13 been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MARTO:

16 Q Good morning, sir. So, what charges did you proceed to
17 trial on?

18 A First degree burglary. Actually, it was armed robbery,
19 two kidnappings, first degree burglary, criminal conspiracy,
20 impersonating a police officer, grand larceny, and
21 possession of a firearm during the commission of a violent
22 crime.

23 Q And who were you represented by?

24 A Mr. Theo Williams.

25 Q Do you remember who the prosecutors were?

1 A Mr. Hubbard and Ms. Fuller.

2 Q You went to trial on this case, correct?

3 A Yes, ma'am.

4 Q And what was the outcome at trial?

5 A I was found guilty.

6 Q Now, do you think that counsel did a good job
7 representing you at trial?

8 A I think it's a hard question to say. And I know that
9 every counsel is supposed to do the best that they do. I
10 just feel that he could have done a better job, and with
11 doing a better job, the outcome of my case would have been
12 better.

13 Q Do you feel like you had sufficient enough time to talk
14 to Mr. Williams?

15 A I feel like I had efficient (SIC) enough time to talk
16 to him. I don't feel like -- I don't feel like it was -- I
17 don't feel like there was enough investigative work done.

18 Q Okay. What specifically do you think he should have
19 investigated.

20 A During my trial, throughout my trial, there was
21 numerous things that was added to my trial. There was
22 numerous testimonies that were said at the trial. Should I
23 quote them?

24 Q Well, yeah, we'll get to that. So, did you -- what was
25 the trial strategy used at trial? Do you recall?

1 A The trial strategy that was used at the trial was
2 basically I just had people that was around me that was
3 committing crime. I think that the case was -- originally,
4 we went into the case thinking that it was just going to be
5 a criminal conspiracy. That was what I had on my -- I
6 didn't know anything about a "hands of one hands of all",
7 you know. So, once we got into court and the case got to
8 going, reality came in to where the "hand of one hand of
9 all" was the same charges as I was found guilty to. I was
10 like, you know, I didn't think that I was being actually
11 tried for those charges at that point in time. In my mind,
12 I just thought it was just criminal conspiracy, you know.

13 Q Yeah. Going back to trial strategy, you said the
14 defense was you had people doing things around you?

15 A Right. I just, I made a bad decision on having just
16 picking friends around me that were burglars.

17 Q So, you were near the scene, but you didn't participate
18 was the defense?

19 A Right.

20 Q And is that correct?

21 A No.

22 Q What was correct?

23 A The correction of that was I was locked up. Well, I
24 was in Edgefield, Johnston at the time. I was in Edgefield
25 County. I have a residence there, and at the time of the

Abin Lowman-Direct Examination

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1 crime that's where I was at. So, my initial paperwork from
2 Mr. Williams it had that I had a possible alibi, but when we
3 went to trial the alibi wasn't exposed at the trial. I'm
4 not an attorney, so I felt that again I was thinking about a
5 criminal conspiracy. So, I feel like the attorney is more
6 in control of the case.

7 Q So, you're saying that you were nowhere close to the
8 crime?

9 A No. I was in a different county.

10 Q And you wish counsel had raised that defense at trial
11 instead?

12 A Yes, ma'am.

13 Q Now did you get any plea offers in this case?

14 A No, I never talked to the Solicitors at all.

15 Q Did you want a plea offer in this case.

16 A I would have heard what they had to say. You know, I
17 felt like they knew just as much about the case as I did. I
18 feel like anyone is offered a plea agreement. That's what I
19 thought, you know, but I'm not an attorney, so I didn't
20 know. But I thought everybody got one.

21 Q Turning to, I guess, pretrial motions. You were stopped
22 in the car by police officers, correct?

23 A Yes, ma'am.

24 Q Okay. And do you recall the reason for that?

25 A His reason that the incident report stated was because

1 my windows was tinted.

2 Q Now, did counsel argue the pretrial motion about the
3 stop?

4 A He did.

5 Q Do you recall what he said?

6 A He argued that the stop was illegal. And upon
7 questioning Officer Harden about his intentions, he asked
8 him why was his corporal close to him in the area. At that
9 time, Corporal Harden said that they already knew what he
10 was going to do. And he asked Mr. Harden again, so there
11 was no doubt that you was going to -- y'all was going to
12 stop this vehicle. Mr. Harden said yes. So, with that
13 being said, I felt that he was -- I felt at that point in
14 time that he had asked the right questions, you know. I
15 think the grounds identified a protection was stopped. You
16 can't make a decision without seeing a vehicle. If you see
17 -- if you don't see the vehicle, how can you say you're
18 going to stop it? You have already made your mind up before
19 you even seen the tinted windows. And he spoke on that in
20 court.

21 Q So, do you think that counsel did a good job when it
22 came to arguing this motion?

23 A At the beginning, on the follow ups -- I didn't know --
24 I didn't know anything about you having to preserve it for
25 it to be -- for me to be able to use it later on. I think

1 he did a great job in presenting it, but he didn't do a
2 follow up job to preserve it for me to use it. Mr. Dudek
3 spoke on me not being able to use it, because it wasn't
4 preserved. And that's how -- that's how -- that's how I
5 feel that he didn't do a good job on the follow up. Like,
6 he had a great presentation, but the follow up part, he
7 didn't. He didn't preserve it too well. I feel like that's
8 your point. When you present something, if it doesn't go
9 your way, your next job is to preserve it to be used again
10 if you're going to use it as ammo. And he didn't do it.

11 Q So, when you say preserve, you mean preserve for
12 appeal, right?

13 A Right.

14 Q And when did you find out that this wasn't properly
15 preserved on appeal?

16 A Mr. Dudek sent me a letter and told me that it was not
17 -- it was not -- it was not -- it was not preserved and I
18 couldn't use it. And among other things that wasn't
19 preserved and I couldn't use them as well that I presented
20 to him at the time to tell him that these was my issues with
21 the stop and the fruits from the stop.

22 Q I'm going to show you this letter. Can you identify
23 this letter from, please?

24 A Yes, this is the -- this is the letter from Mr. Dudek
25 that he wrote to me.

1 Q And what is he saying in that letter again?

2 A I had wrote him a letter and I told him what I wanted
3 to raise in the direct appeal phase, and he was responding
4 back, letting me know that I could not raise them because
5 they were not preserved. And that at a direct appeal
6 hearing, in order for me to raise those issues, they had to
7 be preserved for me to raise them. And mine wasn't.

8 Q This letter was sent to you personally, correct?

9 A Yes, ma'am.

10 MS. MARTO: Can we mark and enter this as Exhibit
11 Number 1, please?

12 MR. ZELENKA: No objections.

13 (WHEREUPON, Applicant's Exhibit Number 1, letter, was
14 marked for identification and entered into evidence.)

15 Q Now, you also -- so two of your co-defendants testified
16 against you at trial, correct?

17 A Yes, ma'am.

18 Q And do you think that counsel did a good job when it
19 came to cross-examining them?

20 A I don't think my counsel was prepared to examine them.
21 I think that -- I think that he asked the questions upon
22 listening to them. I don't think he had enough
23 investigative information to properly cross-examine them.

24 Q And when you say investigative information, what are
25 you referring to specifically?

Abin Lowman-Direct Examination

12

1 A On follow up, behind the -- on follow up, behind the
2 prosecutor, it was known that they were using the theory of
3 me not being -- them not being from here, me being from
4 here, and spoken clearly and loudly in court that none of
5 this wouldn't have happened if it wasn't for me. So, when
6 on cross-examine, I felt that with the evidence that I had,
7 or with the evidence that I have now, my lawyer should have
8 had it in then. And it would have -- it would have shown
9 that they flat out lied. That the theory doesn't match up
10 with the evidence. The theory sounds good when you don't
11 have the evidence to dispute it. And my lawyer was only
12 asking the questions to try to get them caught up, or
13 tangled up, but he didn't have the -- he didn't have the
14 evidence to show to say you're lying. I got -- I got it
15 right here, you know. And I don't know if I'm saying it
16 properly, but he just didn't have -- he didn't have the
17 proper evidence to back up his cross-examination.

18 Q And that's one of the things that maybe you didn't have
19 pertaining to plea agreements these co-defendants entered
20 into?

21 A Yes, ma'am.

22 Q Can you explain to me specifically what that's in
23 reference to?

24 A My personal witness, Mr. Wilson, testified freely
25 without his attorney as that he had no plea agreement, that

1 there was no deal at all. That was on the prosecutor's
2 examination and on cross-examination. And he spoke clearly
3 and boldly enough to where I understood that he had no deal.
4 But after it was -- after I was convicted, it was brought to
5 my attention by Mr. Wise that there were a deal and it was
6 given out months before I went to court.

7 Q And the deal was with the federal government?

8 A The deal was federal, but it was a merger agreement
9 between the federal case and the Eleventh Circuit
10 Solicitor's Office.

11 Q And counsel didn't know about this, correct?

12 A He didn't -- he didn't cross-examine them as he had
13 knowledge about it.

14 Q Is that one of the things you wish he had investigated?

15 A I feel that that was something that was key factor that
16 the jury should have known when you dealing with a case that
17 has very thin evidence and everything is being listened to
18 by people who have committed a crime. So, in reference with
19 -- in reference with that, I feel more that -- I feel more
20 that if he would have had the proper evidence, I feel like
21 he would have cross-examined. But he didn't. And without -
22 - without that, they stood on trial as a neutral witness.
23 There was no deal given, he's telling the truth, which is
24 obviously a lie.

25 Q And you said you got this from Mr. Rauch Wise, correct?

1 A Correct.

2 Q And what relation did Mr. Wise have to your case?

3 A I hired -- I hired -- I had a retainer for Mr. Wise and
4 I was telling him about my case, and he sent me this with a
5 letter telling me that, well, they had a deal. And I was
6 like, I didn't know. He sent it to me and they actually had
7 a deal. I was shocked, because the Judge asked the
8 prosecution did they know anything about it and they said
9 that they didn't know. Judge Griffin asked the prosecution
10 did they know anything about it, and they said that they
11 didn't know anything at all about a deal, but in fact it's a
12 merger between the federal, the Feds, and the Eleventh
13 Circuit Solicitor's Office. So, wouldn't even know about
14 it. You know, I just...

15 MR. ZELENKA: No objection to the plea agreement with
16 Mr. Wilson done by the U.S. Attorney's office and Mr.
17 Wilson's federal defense counsel.

18 THE COURT: All right. Without objection.

19 (WHEREUPON, plea agreement was marked as Applicant's
20 Exhibit Number 2 and entered into evidence.)

21 Q Did you attach that to your original post conviction
22 relief?

23 A Yes, I did.

24 Q And that's the agreement you're talking about; correct?

25 A Yes, it is.

1 Q Now, one of the co-defendants that testified against
2 you, sir, was -- it was Mr. Wilson, correct?

3 A Yes, ma'am.

4 Q And did he say anything during the course of his
5 testimony that you wish counsel had maybe better objected
6 to?

7 A Yes. The comment that he made about me being in
8 prison. My reason for not taking the stand during that
9 trial was for my character not to get an issue upon going to
10 trial. That's why I didn't take the stand, because I knew
11 that if I would've took the stand, my character would have
12 been placed on the issue. So, that's what I was in fear of
13 taking the stand for that reason. So, when he got up there
14 and he told the jury that I just got out of prison, I felt
15 that regardless of us being in the trial four days, you're
16 seeking a life sentence. Let's do it fairly. The time that
17 we spent in this trial shouldn't have -- it shouldn't have
18 been an issue at all, period, about us being in trial four
19 days. You want any and everybody to have a fair trial I
20 would think. So, when they didn't -- when he didn't go in
21 depth into it -- when he did not go in depth, more into it,
22 I think that he dropped the ball on it. Now, he objected to
23 it, but I felt that he should have done a little more.
24 Q For the record, we're looking at page 782, starting
25 with line six, going down to line 15. It says (READING),

1 "Why did you take a picture of his ID when you first got to
2 South Carolina? Because I always had doubts about this
3 whole situation. I kind of didn't really trust Mr. Lowman.
4 I was asking him the whole way, why pick me? Because he
5 knows a lot of people. So, why did you pick me? And his
6 best answer was, I looked out for him rather than some of
7 his homeboys when he first got out of prison." That's what
8 you're referring to, correct?

9 A Yes, ma'am.

10 Q Now, did Counsel do anything after that was stated?

11 A Counsel objected.

12 Q Did counsel move for a mistrial?

13 A Counsel moved for a mistrial.

14 Q And was that mistrial successful?

15 A It was denied.

16 Q Now, the judge offered him a curative instruction,
17 right?

18 A Correct.

19 Q Did he take it?

20 A No.

21 Q Do you wish he took it?

22 A Yes.

23 Q And why do you wish he took it?

24 A Because the jury -- the jury is -- the jury need to be
25 told what they can exclude and what they -- basically, the

1 jury need to be told what to do. And on that, they
2 definitely should have been told that that should have been
3 striked or disregarded or something. You know, again, I've
4 been put on record that you're seeking a life sentence. So,
5 I would feel just as well as the prosecution would be
6 serious about their job, my lawyer should've been serious
7 about his as well. It's a very serious case. You put
8 someone in jail for the rest of their life, you want all
9 things to be -- all stones to be turned over.

10 Q Now, in your original application you also raised
11 failure to challenge the chain of custody regarding the
12 bullets. Is that an issue?

13 A Yes, ma'am.

14 Q Okay, can you expand on that?

15 A It was a cloudy chain. And it was swept under -- it
16 was like it was swept under the rug, like it didn't matter
17 at all, like. Yeah, it is, but we still know what's going
18 on. You know, it's not. It's not. It's not. It's not.
19 It's not something that's going to spoil. So, we can still
20 use it, you know, I mean, if we're not going to follow the
21 rules, why have them? So, I felt that when he brought it
22 up, I felt like he should have objected to it and all of the
23 other illegal fruits that was obtained from the stop.

24 Q And you also raised failure to object to jury
25 instructions being given before closing arguments. Do you

1 still wish to raise that today?

2 A Yes, I do.

3 Q Okay. Can you expand on that for me, please?

4 A Again, the jury has to be instructed on the case, 'on
5 how you want them to do things. They only can follow as
6 good as you lead. Without instructions, the jury is going
7 to speak in dismay or out of context. And I feel like with
8 those instructions, it gives them the path of which way they
9 need to go. Without those instructions, they can go either
10 way, however they choose. And I still feel like that the
11 judge should have gave those instructions.

12 Q Do you think that -- because the judge gave the
13 instructions, right? "

14 A Uh-huh.

15 Q Just before closing arguments.

16 A Uh-huh.

17 Q Do you think that giving them after closing arguments
18 would have, I guess, let the law get less muddled in their
19 minds? Is that what you're trying to say?

20 A I feel that -- I just -- I didn't know that. I didn't
21 know that they do it that way. The unorthodox way that he
22 done it. It just -- I didn't understand it, you know. And
23 I don't know if they really understand it that way because
24 it's not normal. It wasn't normal that a judge would do it
25 that way. Normally, they give it out before. So, yeah.

1 Q Did you ask counsel why they decided to do it that way?

2 A I did not. And again, at the time, I didn't
3 understand. I didn't understand the content of it. Because
4 again, when you hire a lawyer, it's like, this is the person
5 that takes care of me. Okay? This is not my profession.
6 So, this is why I hired this person. I feel that it's their
7 job to say, this is your best issue. This is what we should
8 do. This is what's best for you. That's what I thought.
9 You know, I didn't know that I needed to say do something
10 else or try another way. Because like I said, again, I'm
11 not legal professional. I'm just a normal person with
12 normal thinking when it comes down to right or wrong. I
13 know I know right and wrong, but I don't know the content of
14 law to back up right or wrong. So, my lawyer knows these
15 things. So, I was comfortable with what he was doing and
16 assuming that everything was going as he was doing what he
17 was supposed to do, because to a normal person, it seemed
18 that he was doing what he was supposed to do.

19 Q You also wanted counsel to move to suppress your police
20 statements, right?

21 A Yes, ma'am.

22 Q And what was the basis you wanted those suppressed?

23 A The issue was the statements that they was bringing to
24 the light was fabricated to the point of conviction. I felt
25 that. I felt that the law was manipulated to the point to

1 say, okay, well, if we do this, and we say he said it this
2 way, then it makes him look guilty. Makes him look, it
3 makes him look like he guilty. So, this is how we'll do it.
4 And that's what they did.

5 Q So, do you think that that was prosecutorial
6 misconduct?

7 A I think that was part. I think that was part of one of
8 my issues with prosecutorial misconduct. I have a few.

9 Q Okay, so you're also seeking to raise prosecutorial
10 misconduct claims today, right?

11 A Yes, ma'am.

12 Q Okay, can you expand on what you think they did that
13 constituted prosecutorial misconduct?

14 A Yes, ma'am. My claim for prosecutorial misconduct was
15 again, you know, I'm a normal person. And again, law is not
16 my profession. So, when it comes down to your profession,
17 this is your profession. And if this is your profession,
18 this is what you're good at. There's no way that this is
19 your case and you have evidence where the -- Exhibit 80, for
20 example. Exhibit 80 was a HTC cell phone. Upon talking to -
21 - upon Mr. Hubbard talking to Captain Horne, he allowed
22 Captain Horne to tell the jury, the Court, that that phone
23 was a working device. Mr. Horne got on the stand, a 30-year
24 veteran police chief, and said that he received that phone
25 from my car, he picked it up, he dialed 911 on that phone,

1 and he walked to the call center, and he got the phone
2 number from the call center and wrote it on the back of that
3 phone. They entered it into evidence as Exhibit 80. And
4 they knew by South Carolina Law Enforcement Division Special
5 Agent Gregory Hines, the expert witness that testified at my
6 case, that he told them on record. Sent this back to Captain
7 Horne. Has a signature on it. He received it. And it stated
8 that the HTC device would not power on even using backup
9 systems provided by Cellebrite. Now, that phone number that
10 he got off the back of that phone was not in any call
11 records that was at the Saluda County 911 call center. I
12 have numerous paperwork dealing with that particular phone
13 that Mr. Hines has sent them telling them that the phone
14 didn't work. Yet, it was used in court as a working device.
15 If you're using a theory that I'm talking to these people on
16 the cell phone, you definitely going to know if it worked or
17 not. He testified at prelim that this phone worked. Who
18 wouldn't believe a 30-year-veteran? His word was like gold.
19 The prosecutor asked him to explain the situation more so
20 that the jury would understand it better. He explained it
21 to the "T" that this was an active phone. I was the only
22 one in this car with this phone. So, no one else could have
23 talked to this man but me. I'm the only one in the car.
24 So, from Exhibit 80, the way that Special Agent Hines was
25 questioned by Ms. Fuller after he took the stand as an

1 expert witness clearly identified that she knew exactly of
2 this same paperwork, because she never asked him one time
3 about Exhibit 80. But she asked him numerous questions
4 about Wilson's phone and the number for Exhibit 80 being in
5 Wilson's phone, because that would link me to Wilson. Not
6 that the phone worked or not. Captain Horne testified that
7 he dialed 911 and got the number put on the back. He wrote
8 the number on the phone. That number, there was no way for
9 him to dial 911 on that phone when it doesn't work. The
10 prosecutors knew this by the way -- because of by the way
11 that they asked -- they questioned Mr. Hines. They avoided
12 asking him the key questions to the same theory that they
13 were using. You're not gonna open the shot and don't close
14 it out with that. You introduce the phone as a working
15 phone, yet you don't speak on it to the expert witness, the
16 phone tech, because the phone tech is going to speak on
17 exactly what he wrote, that it didn't work.

18 Q I'm going to show you this. Is this the discovery
19 you're talking about that shows that the phone wasn't in
20 use?

21 A Yes, ma'am. This is the chain of the phone coming from
22 Captain Horne to Mr. Hines. He stated again, on record,
23 that he wrote the number on the back of the HTC phone. If
24 he wrote the number on the back of the HTC phone, why isn't
25 it written on his chain where he got a 803 number written

1 down, but he don't have a number written down for the HTC?

2 Q So, I guess you wish counsel had looked into and cross-
3 examined on this, right?

4 A Yes, ma'am.

5 Q And you think that this constitutes prosecutorial
6 misconduct because it's contrary to what was presented at
7 trial, correct?

8 A Yes. And not only that, they had a statement. They
9 had a statement from a Detective ---

10 Q We're going to try and do one thing at a time, sir.

11 A All right.

12 MS. MARTO: I'd like to move to have this entered as
13 Defense Exhibit 3.

14 THE COURT: Any objection entering this? I assume not.

15 MR. ZELENKA: My understanding it came out of defense
16 counsel's file, so we would have no objection for that
17 purpose. It was in a May 21, 2018 submission from the
18 prosecution to defense counsel prior to the trial.

19 (WHEREUPON, chain of custody was marked as Applicant's
20 Exhibit Number 3 and entered into evidence.)

21 Q Now, you said that you had a detective report from an
22 investigator?

23 A I had a detective -- from a Detective Chad -- his last
24 name is P-L-E-G-G-I. I don't know exactly how to pronounce
25 that. Peleggi, (PHONETIC) from the Montgomery Police

1 Department, that also indicated that the number that was on
2 the back of that phone was being used by my co-defendant.
3 And they had a special informant that knew that my co-
4 defendant was actively using that phone number. All of this
5 while they're saying that I'm using it.

6 Q So, do you wish that counsel had used this as part of
7 his cross-examination?

8 A Yes, ma'am.

9 Q Do you think that this constitutes prosecutorial
10 misconduct?

11 A I think that it does, because it also shows that they
12 had the paperwork to get presented. And if you're over a
13 case, the evidence that comes with the things that you're
14 using, you're going to double check to make sure that it's
15 nothing that contradicts what the information you have.
16 Numerous times my lawyer asked them were they getting this
17 information from the guys that did the crime, or was they
18 getting their information from the actual police work? And
19 on the record they said that whatever they was being told
20 was being corroborated, and if it was being corroborated, it
21 couldn't have happen.

22 Q So, let me show you this. Is this the statement from
23 the detective you're talking about?

24 A Yes, ma'am.

25 Q Okay. And you received this in your discovery,

1 correct?

2 A Yes, ma'am.

3 Q You receive this from counsel? Did counsel send you a
4 copy?

5 A I received this after I got locked up. So, I don't
6 know where he got it from. I knew just when -- it wasn't
7 wasn't -- I didn't have it then.

8 Q This is, your understanding, a copy of a piece of the
9 discovery?

10 A Yes, ma'am. Yes, ma'am.

11 MS. MARTO: We would like to move to have this entered
12 as Defense Exhibit 4.

13 THE COURT: Without objection?

14 MR. ZELENKA: No objection. Again, this is, as we
15 understand it, it's from defense counsel's file based upon a
16 discovery submission made to the defense counsel by the
17 prosecution on or about February 16, 2018.

18 (WHEREUPON, Statement marked Applicant's Exhibit Number
19 4 and entered into evidence.)

20 Q Is there anything else that you think constitutes
21 prosecutorial misconduct in this case?

22 A The theory of the prosecution, from the get go, was
23 that they were not from here. The jury is blind to what's
24 going on. They only hear the facts of the case. So, the
25 theory was that they were, the guys that did this, wasn't

1 from here. And throughout the case, we've seen that they
2 would say that they from out of town. They're not from
3 here. The only person from here is me. I armed them. And
4 yet, I have a statement where Travis Legions gave to yet
5 another investigator, J.C. Bugsby (PHONETIC), and he told
6 Mr. Bugsby that these guys come down here every month.
7 These are the same guys that testified at court and said
8 they didn't know me but one month. But we have a statement
9 that says that they come down here every month and they
10 bring drugs down here. The prosecution questioned Wilson
11 and Darrien, speaking on them not being from here, never
12 been here before, how could they know anybody down here when
13 they never been here? So, they can't pick anybody out from
14 here because they ain't never been here. Yet, I have a
15 statement where a guy -- I don't know, this guy. He's a
16 taxi driver and he clearly says that they told him that they
17 come down here and bring drugs every month. So, it's
18 obviously somebody else that's down here that they know.
19 But they made the jury believe and feel that I'm the only
20 person that they know down here. And I -- that is -- that
21 is not the case.

22 Q I'm going to show you the statement. Is this what
23 you're referring to?

24 A Yes, ma'am.

25 Q Do you think that counsel should have used this when

1 cross-examining your co-defendants?

2 A Yes, ma'am.

3 Q Was this in your discovery?

4 A Yes, ma'am.

5 Q And do you think this, the way it runs contrary to what
6 was presented at trial, constitutes prosecutorial
7 misconduct?

8 A It contradicts the theory that they used.

9 MS. MARTO: I'd like to enter this as Defense Exhibit
10 5.

11 THE COURT: Any objection?

12 MR. ZELENKA: No objection. Same reason.

13 THE COURT: Okay. Without objection.

14 (WHEREUPON, statement marked as Applicant's Exhibit
15 Number 5 and entered into evidence.)

16 A Also, as Ms. Fuller stated, none of this wouldn't have
17 happened without me. If it wasn't for me, none of it
18 wouldn't happen. They was very blunt forward saying that I
19 armed them. Saying that I armed them on the 7th, and bought
20 bullets for them on the 8th, and if it wasn't for me arming
21 them on this day, and buying these bullets, this wouldn't
22 never have happened. When in fact, they had Wilson's
23 phones, and they had his text messages. And in his text
24 messages on the 2nd he says -- third month, the second day,
25 2017 at 11:42. He texts someone and say, "Tomorrow is the

1 big day, but I feel like we're overpowered in the
2 artillery." So, if this is the 2nd, he says just got here
3 on the 1st. So, upon further text messages, he says, "I
4 hope it's to be that easy, but to be honest, it's not going
5 to be a walk in the park. They're going to fight back. I
6 seen what they have today and they got some bigger and
7 better." He says, "Hope this would be easy, but I don't
8 think it's going to be a walk in the park. They're going to
9 fight back. I seen what they had today. They got some
10 bigger and better shit. And my shit ain't no little shit."
11 So, above that, they say, "These country folks shoot for
12 fun." But yet again, prosecution, their theory indicates
13 that I am the person responsible for arming them on the 8th.
14 Said that I bought the bullets and armed them, but yet on
15 the 2nd they're talking about having a full shootout with
16 the people and talking about the gun that he has. But the
17 prosecutor and their team used this theory to make the jury
18 believe that I gave them a gun. They didn't say I gave him
19 a gun on the 2nd. They had their own gun on the 2nd.

20 Q Are these the text messages you're referring to?

21 A Yes, ma'am.

22 Q And was this in your discovery?

23 A Yes, ma'am.

24 Q Do you think counsel should have used this to cross-
25 examine at trial?

1 A Yes, ma'am.

2 Q Do you think that this, because it runs contrary to the
3 State's case, is prosecutorial misconduct?

4 A Yes, ma'am.

5 MS. MARTO: Judge, we would like to enter this as
6 Exhibit, I guess, 6.

7 THE COURT: No objection to 6?

8 MR. ZELENKA: Correct.

9 MR. ZELENKA: What's the exhibit number?

10 COURT REPORTER: Six.

11 (WHEREUPON, text messages, marked as Applicant's
12 Exhibit 6 and entered into evidence.)

13 A Also, Mr. Hubbard was the prosecutor over my case. He
14 had sent the proper -- the proper review to my attorney, and
15 he received the proper review. And he also see -- received
16 Wilson's iPhone. And he said he sent all this to my
17 attorney stating that he had those things and everything
18 from him. Yet, when asked by Judge Griffith, did he know
19 anything about the plea agreement, Mr. Hubbard said no, he
20 stay away from it.

21 Q So, to back up a little bit. There were two co-
22 defendants that testified, right?

23 A Correct.

24 Q And both of them had federal plea agreements, correct?

25 A Correct.

1 Q One of them was talked about at trial, correct?

2 A Right.

3 Q And that's what you're referring to, not the other one.

4 A Not the other one.

5 Q Not Wilson?

6 A Yes.

7 Q Is there anything else that you wish to raise before
8 this court today?

9 A Yes. Mr. Quattlebaum, that was the -- at the time, he
10 was the investigator for the prosecution office. He talked
11 to a witness. The witness identified the driver of the
12 vehicle. He could not see the driver's face. But
13 throughout my trial, they've always determined one thing,
14 that I am the only one driving, that I am the only one
15 taking them everywhere that they go, and that they are doing
16 no driving. Yet their private investigator, Mr.
17 Quattlebaum, Mr. Jesse Quattlebaum, talked to Ms. Strickland
18 personally. She told him that she seen the driver of a
19 vehicle the day -- the day -- the day before the incident
20 coming from the scene, and that the vic -- excuse me. That
21 the driver -- the window was down -- had his head turned and
22 threw up his hand as she rode by. She identified the -- she
23 identified them as two young -- two black males in the
24 front. Okay. At the time of this crime, my hair was 18
25 inches. If I'm driving, and I have my head turned, and you

1 cannot see my face, one thing you will see is my hair down
2 my back. So, you're not going to say that it's a black
3 male, because you cannot see my face. The only way you can
4 identify that there's a black male accurately is because of
5 the haircut that they have. The only people that had those
6 low haircuts were the guys that committed these crimes. So,
7 for the prosecution to take their theory and use it as I was
8 the one that put me in a place where you wanted me to be, I
9 feel like that was -- that was clear prosecutorial
10 misconduct. I feel like they knew exactly what they was
11 doing.

12 Q I'm going to approach again. Is this the investigation
13 report you were talking about?

14 A Yes, ma'am.

15 Q You got that in your discovery, correct?

16 A Yes, ma'am.

17 Q Do you wish counsel had used that to cross-examine?

18 A Yes, ma'am.

19 Q Do you think that, because it runs contrary to the
20 State's case, but it constitutes prosecutorial misconduct?

21 A Yes, ma'am.

22 MS. MARTO: Judge, at this time I would like to enter
23 this as Defense Exhibit 7, please.

24 THE COURT: Without objection?

25 MR. ZELENKA: That's correct, Your Honor.

1 (WHEREUPON, investigative report was marked as
2 Applicant's Exhibit Number 7 and entered into evidence.)

3 A Also, there was a conversation between Captain Toby
4 Horne and Darien when he was in the hospital. Captain Horne
5 spoke with him. And throughout my trial, Mr. Hubbard has
6 said that if there was any evidence that indicated that
7 there was another -- or that someone else was the lead
8 person, then he would -- it would be presented here today.
9 That's what he told the jury. Yet, Darien told Captain
10 Horne that the lead guy was the guy that sold -- that sold
11 the jewelry. He told him that pacifically (SIC). He --
12 Captain Horne asked him who was it. Darien says he doesn't
13 know, but it was James or Robert that did it. Well, he
14 doesn't say Lowman. He said the lead guy done it.
15 Specifically said who done it. The one. The lead guy. Then
16 says he doesn't know if it was James or Robert, but agrees
17 that it has to be one of them.

18 Q So, you're talking about a statement Mr. Darien made to
19 the police, Right?

20 A Right.

21 Q When did you find out about this statement?

22 A I got all this from Mr. Wise.

23 Q You got that from Mr. Wise?

24 Q Yes.

25 Q Do you know where Mr. Wise got it from?

1 A I don't know that.

2 Q Okay.

3 A But I didn't understand where -- again, the theory of
4 their story that I was the lead guy. They spoke on it
5 throughout the whole entire case that I am the lead guy.
6 But yet you got a statement from one of your guys that's
7 testifying that done the crime that says that one of the
8 guys that's also testifying is the lead guy and it was never
9 spoke on.

10 Q Is this what you received from Mr. Wise.

11 A Yes.

12 Q This is what you're referring to, right?

13 A Yes, ma'am.

14 Q And it's your understanding that, I guess, this was in
15 existence before the trial, right?

16 A I'm not sure. I definitely feel like if you're trying
17 somebody and you have a theory, whatever your theory is, you
18 supposed to investigate it. So, before you present it to
19 pursue down that path, you want to do a check to make sure
20 that it's accurate.

21 Q So, you think this is one of the things counsel should
22 have investigated before the trial?

23 A Yes, I do.

24 Q Do you think this is one of the things that the
25 prosecutor either should have investigated or disclosed?

1 A I do.

2 MS. MARTO: Judge, at this time, we would like to move
3 to have this entered as State's Exhibit -- or a Defense
4 Exhibit.

5 MR. ZELENKA: Object, Your Honor. We don't know where
6 that statement came from. It lacks a foundation. It hasn't
7 been properly identified.

8 THE COURT: You're saying you got this from Mr. Wise as
9 part of the packet?

10 THE APPLICANT: Yes, sir. I've got -- in my folder over
11 there.

12 THE COURT: But you're pretty sure this came in that
13 packet? I just want to make sure.

14 THE APPLICANT: Yes, sir.

15 MR. ZELENKA: Your Honor, this reflects it's a two-page
16 summary of a 3.5 hour long interview. We do not know who
17 made the summary, who took the summary. We do not know
18 where this document originated from. That's our objection.
19 He's failed to authenticate the document appropriately.

20 THE COURT: Yes, ma'am?

21 MS. MARTO: We would just, you know, request that this
22 be entered as it was something he received from Mr. Wise
23 along with it seems like pretty much everything else. Mr.
24 Wise did do a file review in this case and I would just
25 request --

1 THE COURT: What I'll do is I'll enter it as a Court's
2 Exhibit just so that you're protected.

3 MS. MARTO: Thank you, Judge.

4 THE COURT: So, it's entered as Court's Exhibit 1.

5 (WHEREUPON, interview summary was marked as Court's
6 Exhibit Number 1 and entered into evidence.)

7 A Captain Horne testified at court that he talked to
8 Darien on the 20th and that he did talk to him at the
9 hospital. So, it's in my transcript.

10 MR. ZELENKA: Objection. Calls for hearsay.

11 THE APPLICANT: Oh, yeah, yeah.

12 THE COURT: It's in.

13 Q Is that pretty much the basis of your prosecutorial
14 misconduct claim?

15 A Yes.

16 Q Is there anything glaring that you think that we left
17 out, or do you think that we covered all your issues pretty
18 well?

19 A I think that's all of them. I think we covered them
20 pretty well.

21 MS. MARTO: Answer any questions that the State has to
22 ask you.

23 CROSS-EXAMINATION

24 BY MR. ZELENKA:

25 Q Mr. Lowman -

1 A Yes, sir.

2 Q When you gave your statement to law enforcement, what
3 did you tell them?

4 'A I didn't tell them nothing.

5 Q You didn't tell them nothing?

6 A No, sir.

7 Q You didn't tell them you were fishing that night near
8 the location of the crime where your friends, your
9 accomplices, were committing this act? You didn't tell them
10 that?

11 A I told them nothing in relation to I was committing a
12 crime.

13 -Q Okay. What did you tell them?

14 A I didn't tell them nothing.

15 Q Well, you told law enforcement that you were fishing
16 near that area.

17 A Law enforcement told you -- not you -- told the Court
18 that I told them that I was fishing. That was their
19 statement from the get go.

20 Q Okay, so you're saying you didn't speak to law
21 enforcement at all? What did you tell them?

22 A Nothing. They told me that they was investigating me
23 for what they were. And I told them that if I find out
24 anything, I let them know.

25 Q Okay, you didn't tell them that you thought you'd get

1 about a thousand years for this?

2 A That's what they said in court.

3 Q Okay. Did you tell them that?

4 A No.

5 Q All right. When you hired Mr. Williams, did you go
6 over that statement that was given to law enforcement to Mr.
7 Williams? Did you go over that?

8 A I told Mr. Williams that I did not make any statement.

9 Q So, you denied that you gave any statement. Is that
10 what you told your lawyer?

11 A And I told him I had an alibi for a witness for my
12 situation. He gave me -- I have a form that he sent me that
13 says that I have an alibi. We didn't use the alibi when we
14 went to court.

15 Q Okay, what was your alibi?

16 A Alibi is that I live right there in that area. I have
17 a house there. That's why I was there.

18 Q So, how is that on alibi? You could have committed the
19 crime. You were that close to the crime during that time
20 period.

21 A My vehicle have GPS on it. That vehicle was never in
22 Johnston during that time. It was in Saluda the whole time.

23 Q Okay.

24 A If I was in Johnston, I couldn't have been in Saluda
25 because the vehicle is only one vehicle.

1 Q Okay. What was your prior record like at that time?

2 A At that time?

3 Q Yeah.

4 A I had an extensive record.

5 Q You had an extensive record?

6 A Yes, sir.

7 Q What type of crimes?

8 A Drugs. Drugs. As a mature age, younger age, all kinds
9 of stuff. I had a burglary. I had some grand petit, some
10 petit grand larcenies or something, stuff like that.

11 Q Okay. And some of those crimes were used because you
12 were served with the life without parole notice, correct?

13 A Yes, sir.

14 Q And that's what led to your life without parole
15 sentence that you have received in this case; is that
16 correct?

17 A Yes, sir.

18 Q After you were arrested, what type of communication, if
19 any, did you have with your co-defendants? Were you housed
20 in the same place? Were you separated? Did you talk to
21 them?

22 A No. Wilson was in Saluda when I got there, but we was
23 in two different pods. I was in the back and he was in the
24 front.

25 Q Okay, so you never talked to them, shared concerns

1 about what they were going to testify about one way or the
2 other?

3 A No.

4 Q Okay. What did you think was happening to their case,
5 their trials?

6 A It was brought to my attention that they had struck a
7 deal and that their deal was to testify against me.

8 Q And when did you learn that?

9 A I learned it when I was in the county because people
10 was talking -- talking from up from where they was at, and
11 when they come from up there, where they at they was coming
12 to the back. And it was like -- when you get in trouble,
13 you go to the front. If you're in general population,
14 you're in the back. So, when people act up, they go to the
15 front and they know that he was going in and out and he was
16 saying that he was missing his child.

17 Q Going in and out. Where was he going?

18 A They didn't know that he was going. He was going in
19 and out the pod, where they was at, you know, the police was
20 coming to get him.

21 Q Okay. Did you share that information with your lawyer,
22 Mr. Williams?

23 A No, I don't -- I don't recall sharing it with him. I
24 thought that -- I thought that he knew, because they talked
25 about it in court that they was changing in and out.

1 Q But what we're talking about is even before trial, you
2 had some impression that both the individuals, Wilson and
3 Darien, were given a deal.

4 A Yes. '

5 Q But did you know who the deal was with?

6 A No, not at the time, sir.

7 Q Okay, but did you share those communications with your
8 lawyer at all?

9 A Yeah, I did at the end. At the end of the trial.

10 Q Okay, and was that where there was that little bump up
11 where Darien was testifying and Solicitor Hubbard said he
12 had no knowledge of the federal plea bargain?

13 A Right.'

14 Q Okay. Now, it was suggested in your opening statement,
15 opening testimony, that you thought Mr. Williams didn't
16 spend an adequate amount of time with you. Is that correct?

17 A Yeah.

18 Q And roughly how much time do you think he spent with
19 you after your arrest up to the time of the trial?

20 Approximately how many meetings do you think you had?

21 A From the beginning of him getting on my case? I think
22 two.

23 Q You met with him two times?

24 A Uh-huh.

25 Q Did you have any phone calls with him?

1 A No, sir.

2 Q And in those two meetings, when was the first meeting?
3 Right after you were arrested? Right after you retained
4 him?

5 A I didn't. Yes, after I retained him he came down. He
6 told me that my family had came and gave him the retainer
7 fee and that he would be representing me. Don't talk to
8 nobody, and the do's and don'ts with having a lawyer. That
9 was it. I seen him one time after that and then was in
10 trial.

11 Q Okay, when was that next time you met with him?

12 A The next time I met with him, I was in Anderson.
13 Anderson City. And he came and he stayed for a little
14 while. And that was the last time that I seen him until
15 court.

16 Q And ---

17 A Last time I seen him. Someone from his office came and
18 I was in Lexington and got my -- I think, my sizes and stuff
19 for trial and stuff.

20 Q And what did he tell you about the status of the case?

21 A From my understanding between me and my family, we
22 thought that it was just a criminal conspiracy really. You
23 know, it wasn't -- I definitely didn't really know about
24 having -- I knew about -- I knew about it once I got noticed
25 of the intent to seek life without parole. And that's when

1 I was like, that don't carry -- criminal conspiracy don't
2 carry life, you know. So I got more like, well, maybe they
3 just trying to try me anyway. And, you know, but my lawyer
4 just telling me that, you know, he don't see nothing, them
5 being able to charge me with nothing but criminal
6 conspiracy.

7 Q So, you're saying your lawyer never indicated to you
8 the State thought that you were one of the movers of this
9 entire burglary that occurred at their home?

10 A Oh, no, sir. No, no. He -- being a part of it, and I
11 would say, like you said, one of the movers. Yeah, yeah, I
12 was aware of that. But as my -- as an attorney, he was
13 saying that, you know, there's no way that, you know, they
14 can -- you be charged with it. You know? You know,
15 sometimes you can be charged with things and people charge
16 you, yet, you know, it's a muscle move, you know. But I
17 didn't think that.

18 Q But when you were -- do you admit that you purchased
19 the weapon?

20 A I purchased the weapon?

21 Q Uh-huh.

22 A No.

23 Q Were you involved with the weapon at all?

24 A No. I never touched that gun. Did I buy the bullets?
25 Yeah.

1 Q Okay. Well, how did the shell casing get in your
2 vehicle?

3 A They was using my vehicle.

4 Q How did the shell casing get in the vehicle that was
5 where it was found? How did it get in there?

6 A I didn't know that. They were using my vehicle. They
7 were driving my vehicle. I let them drove the car.

8 Q That was your car?

9 A Right.

10 Q Okay. And whose car were you in when you got stopped
11 by law enforcement?

12 A Mine.

13 Q Okay. And with the shell casing in that car?

14 A They say they found one in there.

15 Q Okay. And did that shell casing match the weapon?

16 A I'm thinking it did, by the discovery. I'm thinking
17 that it did.

18 Q Okay. And you acknowledge that you spent time with
19 those three individuals; Mr. Goodwin, Mr. Wilson and Mr.
20 Darien. Correct?

21 A Yes, sir.

22 Q And you had communications with some of them when they
23 were up in Maryland?

24 A That's my uncle. One of them is my uncle, my mother's
25 brother.

- 1 Q And that's Mr. Goodwin?
- 2 A Yes.
- 3 Q And did you see Mr. Goodwin today?
- 4 A Yes, I did.
- 5 Q Did you talk to him today?
- 6 A Yeah.
- 7 Q Did you talk to him about the case?
- 8 A He's a quiet guy when it comes to the case.
- 9 Q But you know Mr. Goodwin has pled guilty to these
- 10 charges also, don't you?
- 11 A He said he pled guilty.
- 12 Q And why were you with those individuals on that day?
- 13 A Which day? That day that it happened?
- 14 Q Yeah.
- 15 A The day that it happened, we was together earlier that
- 16 day. Together earlier that day. We left, went -- I picked
- 17 them up from the motel, and I let them use my car. I went
- 18 to Johnston. Johnston is a safe haven for me. That's where
- 19 my residence at. My residence was a block away from where I
- 20 was pulled over.
- 21 Q Okay. You made a mention, on direct examination, about
- 22 plea offers. Did you want a plea offer in this case?
- 23 A I would have took a plea. I would have took a plea
- 24 agreement because I never wanted to deal with Saluda dealing
- 25 with trials. I have a fear. Not -- I'm uncomfortable. I'm

1 uncomfortable on the stand. I'm jittery, you know. And
2 prosecutors, y'all, that's y'all profession. You can't beat
3 a person at their profession. So, if they would have came
4 to me and said something that made sense, I would have
5 definitely had to consider it, because I know what they're
6 trying to do. You know, I would've definitely considered
7 it.

8 Q Okay. What would you have pled guilty to? Had your
9 lawyer made an offer to the prosecutors, what would you have
10 pled guilty to? Would you have pled to conspiracy?

11 A Honestly, you know -- I mean, honestly, I can look at
12 you and say that with the time that I have and what I went
13 through, I can say, yeah, I would have took it from what I
14 went through now. But I can't -- I'm feeling more that I'm
15 trying to defend myself with technicalities more than pure
16 innocence. So regardless of today, whether they need to get
17 overturned, the people that I know still in their heart,
18 still say they might still feel that I still feel he had
19 something to do with it. So, I still lose. I still lose.

20 Q So, you're saying you wouldn't have pled to conspiracy?

21 A With what I know now? Yeah, I definitely would've.

22 Q Okay. Would you have pled to burglary under a hand of
23 one hand of all? I mean, you're the one that raised the
24 allegation ---

25 A Yes, yes, yes. I ---

1 Q --- that you should have been given a plea offer.

2 A Yes. At that time, you know, we -- I'm coming in jail.

3 I'm locked up. I hear that the people that actually

4 committed the crime are using me as the scapegoat to fall.

5 And I know that they're presenting, or want to seek -- I got

6 a record, so I know how the two strike three strike goes,

7 you know. So, I definitely would have taken (SIC) anything

8 under consideration a lot, because I have a record. That's

9 why I didn't take the stand, because my record convicts me

10 itself. It makes me look like I'm capable, even if I didn't

11 do it. It makes me look capable.

12 Q Because of your prior burglaries?

13 A Yeah.

14 Q Okay. But as I understand your statement, you would

15 have strongly considered pleading guilty to burglary under a

16 hand of one hand of all theory. Correct?

17 A Talking about what I just said just now?

18 Q Huh?

19 A You saying what I just said? I'm not understanding the

20 question.

21 Q Well, maybe -- maybe I wasn't clear. If the State had

22 offered a plea to burglary, would you have pled guilty under

23 a hand of one hand of all theory?

24 A Under the hand of one hand of all theory, with what I

25 know about the law, I'm still in the same category that I'm

1 in now. Under the hand of one hand of all, plead guilty to
2 a burglary, that's a life sentence.

3 Q Could be.

4 A Could be. I know for a fact that the prosecution
5 didn't like me, so it would have been a life sentence. They
6 was pushing for it. Now, if you're saying before they was
7 pushing for the life sentence, then I would have thought
8 differently of it if they would have said, okay, well, we're
9 not going to use the two strike or three strike prong. Open
10 plea, I'd have to take into consideration because, at any
11 given time, you can lose and lose your life, or you can take
12 the hit and just learn from it and just stay away from it
13 ever happening again. So, I would have had the opportunity
14 to say, I can take this and I can still have some type of
15 life left and come home. And if I don't ever get in trouble
16 again, I don't ever have to worry about dying in prison.

17 Q Okay. One of your allegations was you thought your
18 lawyer should have argued a little better about the traffic
19 stop.

20 A Yes, sir.

21 Q And you acknowledge that your lawyer actually did
22 object to the traffic stop.

23 A He did.

24 Q There was a Terry hearing on the record before Judge
25 Griffith ---

1 A Yes, sir.

2 Q --- where the two witnesses were put up, Mr. Rutland
3 and Officer Harding.

4 A Yes, sir.

5 Q And there was an argument at the end. Solicitor
6 Hubbard argued that the traffic stop was done consistent
7 with the law because he saw the tinted windows, which gave
8 him reasonable suspicion to stop the vehicle, correct?

9 A Yes, sir.

10 Q And did your vehicle have tinted windows?

11 A It did.

12 Q It did. So there was justification under the law to do
13 the stop. And upon the stop, they learned that you're
14 driving while your license was under suspension, correct?

15 A Correct.

16 Q And based upon that, they were authorized to arrest you
17 for that particular offense, isn't that correct?

18 A That's correct.

19 Q And as a result of that -- were you the owner of that
20 vehicle?

21 A No, I wasn't.

22 Q And since you weren't the owner of the vehicle, law
23 enforcement was authorized to take that vehicle, correct?
24 Because it couldn't stay on the road.

25 A It wasn't on the road. It was on private property.

1 Q They still were authorized to take the vehicle, weren't
2 they?

3 A No.

4 Q Why not?

5 A Because it was on private property.

6 Q But it wasn't your vehicle.

7 A The vehicle and the paperwork is in my mother's hand.

8 Q Okay. Well, your mother wasn't there. She couldn't
9 drive off the vehicle, could she?

10 A No, sir.

11 Q All right. So, they took the vehicle, and then they
12 were authorized to preserve the contents of the vehicle to
13 do an inventory search, correct?

14 A Correct.

15 Q And in that inventory search they found the bullets --
16 and they found the bullets in the trunk, I believe.

17 A Uh-huh.

18 Q Is that correct?

19 A Yes, sir.

20 Q And had you put those bullets in the trunk?

21 A Those bullets was in Wilson's bag.

22 Q Okay. And the shell casing was found --

23 A Inside ---

24 Q --- within the vehicle.

25 A Inside the car. I don't know exactly where, but it was

1 inside the car.

2 Q Okay. And those arguments were made, and the Judge
3 found that there was reasonable suspicion to stop at that
4 point of time. Once they had the information about the DUS.
5 they're authorized to arrest. So, under state law, the
6 Judge found it was a legal stop.

7 A That wasn't the case though.

8 Q Pardon me?

9 A That wasn't what Officer Harding testified to. Officer
10 Harding testified that he was going to pull that vehicle
11 regardless. He hadn't seen it. They put up a roadblock
12 before my car came there.

13 Q Okay, but his testimony would speak for itself.

14 A Right.

15 Q Correct?

16 A Right.

17 Q Okay. But that information got before the jury. Your
18 lawyer made an objection at the conclusion of the Terry stop
19 determination prior to that issuance of that trial. And
20 your lawyer also objected to the chain of custody on that
21 particular bullet shell casing that was in the car, correct?

22 A (NON-VERBAL RESPONSE)

23 Q All right.

24 COURT REPORTER: Is that a "yes"?

25 THE APPLICANT: Yes, ma'am.

1 COURT REPORTER: Thank you.

2 Q Now, we've talked about your assertion that your lawyer
3 should have more thoroughly cross-examine Mr. Wilson, Mr.
4 Darien, concerning whatever plea deals they gave. Is that
5 correct?

6 A Yes, sir.

7 Q And have you learned that the State of South Carolina
8 made a plea deal, prior to the time of trial, with either
9 Mr. Darien or Mr. Wilson?

10 A Did I learn that they made a plea deal?

11 Q That the State of South Carolina had made a plea deal
12 with either Mr. Wilson or Mr. Darien. Is there any
13 knowledge that you have that there was a plea deal that they
14 had entered into with either of those individuals?

15 A After I went to trial or before?

16 Q Before the trial.

17 A Before the trial, you know, it really them doing
18 nothing. I just knew that it was a part. It was a -- it
19 was a merger between Fed and the State. I didn't -- at the
20 time, I didn't really know or understand what that meant
21 dealing with the prosecution. I didn't know. I didn't know
22 until after.

23 Q All right. But did your lawyer advise you that they
24 have made a -- that at least there had been a proffer
25 statement given to the federal authorities?

1 A Uh-huh.

2 Q You were already aware of that?

3 A I knew about a proffer.

4 Q Okay. And you knew what they said in their proffer.

5 And the proffer information was provided to you by the
6 government in May before your trial?

7 A Yes. Yes, sir.

8 Q Okay, so he had that information, you had that
9 information, and obviously the State had that limited
10 information, correct?

11 A Uh-huh. Yes.

12 Q Okay.

13 A Are you saying did I have the plea agreement knowledge
14 at the time that I went to court? Is that what you're
15 saying?

16 Q Did you have the information ---

17 A Of the proffer, yes.

18 Q Of the proper?

19 A Yeah.

20 Q Not on the cooperative agreement. Not of a plea deal
21 that the federal government had, but the proffer that had
22 been made by at least Mr. Wilson?

23 A Right. Yes, sir.

24 Q Okay. So you had that information. So, you knew that
25 there was contact going on between those two individuals and

1 the federal government?

2 A Yes, sir.

3 Q On whatever the federal government was looking at.

4 A Right.

5 Q But the federal government wasn't prosecuting you for
6 these cases. They weren't prosecuting you for the
7 burglaries. They weren't prosecuting you for that incident.
8 Isn't that correct?

9 A Yeah. No, they wasn't.

10 Q All right. Now, you made mention of the situation
11 which occurred during the trial where Mr. Wilson noted, or
12 made a reference, to you in prison. Correct?

13 A (NON-VERBAL RESPONSE)

14 Q And your lawyer, Mr. Williams, once that was said, he
15 immediately objected.

16 A Yes, sir.

17 Q Isn't that correct? There was an argument about that.
18 And the Solicitor made his assertions. The defense counsel
19 made his. And the Judge basically said he wasn't going to
20 -- he would have allowed a curative instruction to be given.
21 Correct?

22 A Right.

23 Q Essentially, saw slight impact with it, offered a
24 curative instruction where the jury would have been told,
25 you heard what just occurred. A reference to you, the

1 defendant on trial, being in prison previously, and tell
2 them to remove that from their mind with whatever decision
3 they were going to be making. Would have been something
4 like that. Correct?

5 A Correct.

6 Q And your lawyer, with the knowledge that he could have
7 had a curative instruction about that, in a situation where
8 he probably knew you were not going to testify and your
9 prior convictions would likely not be presented, he made a
10 choice not to ask for a curative instruction. Is that
11 correct?

12 A I'm not under -- I understand the part where you're
13 saying that he didn't ask for the curative instruction. I'm
14 not quite understanding the part where you're talking about
15 about for the...

16 Q Okay. At that point of the trial, were you going to
17 testify?

18 A No, sir.

19 Q Okay. So, you knew you weren't going to testify.
20 Correct?

21 A Yes, sir.

22 Q Your lawyer knew you weren't going to testify.

23 A Yes, sir.

24 Q So, your lawyer would not want it emphasized, again to
25 the jury, which may not have really heard what just

1 occurred. They heard it, but it may not have sunk in. He
2 wasn't going to ask for a curative instruction where the
3 Judge was going to specifically talk about prison and tell
4 the jury, "Do not use that in consideration of your
5 verdict." That's what they would have heard. Is that
6 something you would have wanted?

7 A I would have, because it would have been able to be
8 explained. If it was meant for me to -- if it was meant for
9 them to hear it that way, it was how it's supposed to go.
10 So, I feel like -- I feel like it could have been explained
11 and then people could have understood if that was the case.
12 I just feel like they said that we had already been in the
13 trial four days. That was not a good response to that
14 situation. That that was my issue, you know.

15 Q Okay. Well, the Judge denied the mistrial motion.

16 A He did.

17 Q Correct?

18 A He did.

19 Q So, he thought whatever had been said by Mr. Wilson
20 wasn't enough to basically stop the trial, let's start over
21 again. Correct?

22 A Correct.

23 Q When the bullets came in at 517 of the record, your
24 counsel did object to the chain of custody. Isn't that
25 correct?

- 1 A Yes, sir.
- 2 Q And as he had done before, so he made that objection at
- 3 that particular time. Correct?
- 4 A Yes, sir.
- 5 Q The judge denied it. So, that issue was preserved for
- 6 appeal. Isn't that correct?
- 7 A My -- Mr. Dudek told me that obviously it wasn't,
- 8 because he didn't raise it.
- 9 Q He didn't think it had merit.
- 10 A He think it had merit because of the other issues
- 11 connected to that that was allowed in.
- 12 Q Okay. But there was an objection at the entry of the
- 13 evidence. Correct?
- 14 A There was.
- 15 Q As far as the jury instructions, Judge Griffith
- 16 decided, and as he may have done regularly or may have done
- 17 the first time or other judges had done, he decided he was
- 18 going to charge the jury in advance of the closing arguments
- 19 and before submission of the case for jury deliberations.
- 20 Your lawyer didn't object to that. Is that correct?
- 21 A No, he did not.
- 22 Q Okay. And that's one of your issues, isn't it?
- 23 A Yes, sir.
- 24 Q Was there an opportunity for supplemental instructions
- 25 before it went to deliberation, after the arguments had been

1 given.

2 A The supplemental instructions. I'm thinking that
3 they're -- I'm trying to make sure that I understand that
4 those -- the -- are you saying that he could have made them
5 after -- after the --

6 Q It could have been. If there was a need for additional
7 instructions ---

8 A He could've made them ---

9 Q --- there was an opportunity for that to occur after
10 the closing arguments. Isn't that correct?

11 A Again, I'm not -- I don't know. But I would say that,
12 you know, you can always have time for anything, I guess.

13 Q Okay. Either side could have asked. Something could
14 have occurred in the argument, but there wasn't any
15 requests, either by your defense counsel or the prosecution,
16 to supplement the instructions that were given based upon
17 what he had now heard both sides argue. So, it went to the
18 jury without objections.

19 A Uh-huh.

20 Q But they could have if there was a need.

21 A Yeah.

22 Q So apparently your lawyer felt there was no need for
23 further supplemental instructions to be done in the case.
24 He was satisfied with what the jury had heard. Satisfied,
25 apparently, with the way that he had argued the case in a

1 lot of the jury instructions that have been given before.

2 Correct?

3 A Yes, sir.

4 Q Now, you've alleged as your last ground for ineffective
5 assistance of counsel, failure to object to the Applicant's
6 statements to the police on hearsay grounds. And that
7 reference is to the statement at 991 through 993, which is
8 in volume two, which was a statement that I started out at
9 discussing with you, reflecting that you admitted you had
10 been at Persimmon Hill fishing that day. You left the car
11 running. That the repo man had showed up. That you then
12 left, and you were subsequently arrested, and that you're
13 going to get a thousand years for this. That's what you
14 wanted counsel to object to as hearsay.

15 A Right.

16 Q But were you aware, under law, it's not hearsay.

17 A Under law it's not hearsay if I'm saying that I didn't
18 say it, and they're saying that I did say it, who said it?

19 Q Pardon me?

20 A That's what I'm saying. Just as I was stating that what
21 Mr. Horne said. And you said you object to hearsay. Even
22 though it's a record to show that he said it. How would
23 that not be the same thing?

24 Q Well because, as a matter of law, your statement is not
25 hearsay. The only way you could challenge the existence of

1 that statement was by what you did today, but didn't do at
2 trial. And that was to testify. To say, I didn't give that
3 statement. That's a way you challenge that statement.

4 A So, you just ---

5 Q And you and your lawyer agreed, apparently, because you
6 waived your right to testify after that statement had come
7 in.

8 A I'm not a legal lawyer. I feel like that was his job
9 to enlighten and tell me that. If he would have told me
10 that, I would have definitely done what I was supposed to
11 do, but I did not know.

12 Q Which is -- what were you supposed to do?

13 A Obviously you're saying I'm supposed to be testifying.
14 If I have to testify to prove these issues, then I would
15 have testified.

16 Q But you already knew that.

17 A I didn't.

18 Q At the time you waived. Your waiver was done after
19 that testimony had been given.

20 A And he did not tell me that in order for me to dispute
21 that claim, I had to testify. If he would have told me
22 that, then I would never have waived my right to testify.

23 Q But you knew you were the only other person there who
24 said it.

25 A This is what I'm saying. I'm not -- I'm hearing you,

1 but I'm not understanding what you're saying. When the
2 statement was made, he objected to it on the hearsay, and
3 you're saying that it wasn't. And the only way that I could
4 have defended that is by me taking the stand. If I would
5 have knew that I could take the stand to do that, then I
6 would have tooke (SIC) the stand. That's what I'm saying.
7 And you're saying that I knew that, but I did not know that.
8 It's nowhere, what someone said, hey, look, you can -- if
9 you're saying you didn't say that, you've got to take a
10 stand for it to be accurate for you to defend on this
11 matter. I did not know that.

12 Q Well, you're the only one that could have disputed it.
13 As a matter of fact. You knew that.

14 A That's why I got a lawyer for -- the lawyer speaks at
15 court, not me. I thought that if he's speaking for me,
16 that's his job to speak for that.

17 Q The jury could have found that the officer's testimony
18 wasn't credible. Just made that determination on their own,
19 and not believe that you had given that statement. That was
20 another possibility. Correct?

21 A They believed what the police said.

22 Q Now, you make claims of prosecutorial misconduct. One
23 of them is related to Exhibit 80, where there's some
24 information that you had and your lawyer had about cell
25 phones and certain phones not being working. Correct?

1 A Right.

2 Q And there was testimony in the record about cell phones
3 not being able to be broken into. Correct?

4 A Yes. Yes, sir.

5 Q Now, that occurred around page 859, 860 of the record,
6 if you recall. If you don't, I can show it to you. Let me
7 turn to 859 where Mr. Hines is testifying on cross by your
8 lawyer where he says, "Were you able to extract what came
9 from those five phones?" Answer, "Only two of them. So I
10 had a Bluestudio Self A2, an Apple iPad Mini, an Apple
11 iPhone 6, a ZTPZ 793C, a CoolPad 3622A, and HTCD 100L." "How
12 many phones is that?" He says, "Five." Sorry. So, answer.
13 "So out of those devices, the Apple iPad mini, the iPhone 6,
14 and the CoolPad all had passwords that I was not able to
15 bypass. They were code locked and set to disable device."
16 And it continues. "So you were able to extract from two of
17 the five phones that you had?" "Yes, sir." Are you saying
18 that's false testimony?

19 A No. See, what you're reading is the actual statement
20 about the phones in general, the whole phones. He's not
21 speaking on exhibit 80. He's speaking on the other phone.
22 Mr. Williams asked him the question, and it was six phones
23 in all. But he's only speaking about five.

24 Q Exhibit 3.

25 A That wasn't on his ---

1 A But that's not --

2 A But this is the chain. This is the chain of custody
3 for the phones.

4 Q So, is this what you're referring to? It's part of
5 Exhibit 3. Page -- designated 8/21/2018 page 34 of 53. Is
6 that what you're referring to?

7 A Yes, sir.

8 Q And what does that tell you?

9 A That's five. There were five devices.

10 Q Okay.

11 A On the back of that there's another device. That's six.
12 He only spoke on five.

13 Q Okay.

14 A There was never ---

15 Q So, he's not speaking -- which phone isn't he speaking
16 about?

17 A He named the HTC, but they was never a direct question
18 on the HCTC. But there was direct questioning about the HTC
19 towards working with Mr. Hubbard and Mr. Horne.

20 Q Okay.

21 A Ms. Fuller testified -- examined Mr. Horne. Never once
22 did she ask him anything about Exhibit 80. She asked him
23 about a phone number that was on Exhibit 80.

24 Q Okay. And that's her issue with the phones.

25 A Yeah. Yes. Yes. That phone was used to say that I

1 was aiding them to tell them what to do in my vehicle.

2 Q Okay. Another allegation of misconduct you made was --
3 I'm not sure this was developed necessarily on direct
4 examination, but obtaining the wrong gas station
5 surveillance footage when, had the right footage been
6 obtained, Applicant believes he would have been exonerated.
7 What are you talking about in that allegation that's been
8 raised?

9 A It was a video feed of me at the Ridge Spring Monetta
10 store. That was -- Darien Lee was in the car. That video
11 would have shown him in that vehicle would identify how I
12 got my vehicle and how I obtained possession of my vehicle.
13 Yet, they went in and got the video from a different time
14 when I was already locked up. That don't make sense at all.

15 Q Okay. And where did you get that information from that
16 the timing is different?

17 A Mr. -- my lawyer told me that they got -- that when he
18 represented -- when he got on my case, he said that the
19 video feed that they had from Circle K in Ridge Spring was
20 during the time he was locked up. He could tell because
21 police was coming in and out talking to the clerk that was
22 in there at that time.

23 Q Okay. And that lawyer that's telling you that is Theo
24 Williams?

25 A Yeah, he told me that.

1 Q Okay. I think we already went over your number D for
2 arguing that tinted windows was the basis for the stop.
3 That's been adequately discussed, wouldn't you agree?

4 A I disagree. It wasn't.

5 Q You're challenging for stating the Applicant made
6 statements to the police when an Applicant's position is
7 that the statements were never made. That's what we were
8 discussing before. Correct? Your statements about fishing,
9 why you were in the Persimmon Hill area, and a thousand
10 years for that. That's that statement, correct?

11 A Right.

12 Q You assert in here it wasn't developed for threatening
13 Stephen Brown with jail time did he not testify. You've got
14 that allegation in here too, correct?

15 A Yes. What do I -- I mean, he came to testify, but my
16 attorney didn't feel like we needed him to go forward with
17 this situation.

18 Q Okay. Mr. Brown was the individual that did what?
19 Found the key?

20 A Yeah, he said he found the key.

21 Q Yeah. Found the key in an area where you acknowledge
22 you actually were prior to the stop.

23 A Prior to the stop?

24 Q Yeah.

25 A When you say prior to the stop, are you saying that

1 that's where I was stopped at or ---

2 Q Yeah.

3 A -- that's the way that I -- that's a normal route?

4 Q Near where you were stopped at?

5 A Yeah.

6 Q Okay. And the key was the key to what?

7 A They say it was the key to the business.

8 Q Key to the what?

9 A The business.

10 Q The business. The jewelry store. Correct?

11 A Correct.

12 Q The jewelry store that was owned by the people that
13 were being burglarized at that particular time. Correct?

14 A Right.

15 Q All right. For fabricating a -- you allege that there
16 was misconduct, and you assert, for fabricating a fourth
17 person being on location after the Applicant's charges had
18 been pending for some time. What are you talking about in
19 that allegation?

20 A I was locked up. My warrant -- my warrant says that me
21 and two other people went in Mr. and Mrs. Tidwell home,
22 robbed them, tied them up, took \$3,000 worth of cash, and
23 did these things.

24 Q Okay.

25 A That's what my warrant says. And I got this warrant on

1 the 8th of March. There's no fourth person, but I'm in
2 trial as a fourth person.

3 Q Okay. So, that's where that argument comes from based
4 upon the way that warrant was written?

5 A And I didn't do it.

6 Q Okay. And your last allegation is for submitting that
7 calls were made involving a phone that was broken and could
8 not be extracted from. Have we talked about that?

9 A We talked about that.

10 Q And that's the information that you're asserting
11 supports that claim?

12 A Yes. I'm pretty sure that it should be easily agreed
13 upon.

14 MR. ZELENKA: Now, I think I've completed. Let me just
15 briefly --

16 THE COURT: Sure.

17 MR. ZELENKA: --- have a discussion before I close up.
18 Your Honor, at this time, I have no further questions.

19 THE COURT: Anything on redirect?

20 MS. MARTO: Nothing on redirect, Your Honor.

21 THE COURT: You can step down. Anything else you want
22 me to know, just generally? I mean, I'm have to read
23 through all this obviously.

24 THE APPLICANT: When you say that, Your Honor. Are you
25 saying that -- I want to ask, okay, are these due process

1 violations to the point to where I want that to where -

2 THE COURT: Yeah, that's what I'll have to decide after I
3 read it, but I've got all this to read, which is the record,
4 but they've done a pretty good job of narrowing down to the
5 application. I've got your original application.

6 THE APPLICANT: Thank you, Judge.

7 THE COURT: Now, if something else comes up, tell your
8 attorney if you think of something. We'll figure out some
9 way to get it into the record.

10 THE APPLICANT: Thank you.

11 MS. MARTO: Judge, we called Theo Williams.

12 THE COURT: Can we take a five minute break here.

13 (OFF THE RECORD)

14 THE COURT: You can call your next witness.

15 MS. MARTO: Thank you, Judge. We call Mr. Theo Williams
16 to the stand.

17 WHEREUPON, Robert Theodore Williams,
18 having first been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MARTO:

21 Q Good afternoon, sir. You represented Mr. Lowman on his
22 General Sessions charges, right?

23 A No one asked my full name, Your Honor, so I'm going to
24 go ahead and say it. Robert Theodore Williams, Sr.

25 Q Thank you, sir. You represented Mr. Lowman on the

1 underlying criminal charges, right?

2 A I did.

3 Q Do you recall when you took over the case?

4 A I did.

5 Q Okay, when did you roughly --

6 A Probably a year before we went to trial. Something
7 like a year.

8 Q How many times --

9 A About a year and a half, actually.

10 Q How many times did you meet with Mr. Lowman, roughly?

11 A I don't have any idea.

12 Q Okay.

13 Q He was in -- he was in -- he was down here in the
14 Lexington County area for a while. Then they shipped him up
15 to the upper part of the state. And I want to say the
16 person he was referring to who came up there and talked to
17 him up there was Ben Stitely, my law partner.

18 Q And you were the sole trial counsel on this case,
19 right?

20 A Well, I had a young lawyer sitting at the table, I
21 think, who was -- his name is Jason Young, but he didn't
22 participate in the trial.

23 Q Now, did you talk to Mr. Lowman about trial strategy
24 and a defense?

25 A We did.

1 Q Okay. And do you recall what those conversations
2 roughly consisted of?

3 A Are you asking me to characterize that?

4 Q Like, why did you determine what defense to use at
5 trial?

6 A Well, it was easy, actually, because the persons -- the
7 three people that went inside the house, were not him. So
8 it was -- the obvious answer to that is, he wasn't there.
9 He didn't do anything. He just happened to get stopped in
10 the car. And all the other evidence tended to point that he
11 knew the other people. That was the strategy, because they
12 couldn't identify him or anything like that.

13 Q But the argument was he was involved with these people,
14 he just wasn't inside the house. Is that fair?

15 A No, that's not fair. The testimony from the victims in
16 the case, as well as -- was essentially would not identify
17 him as being in the house at all. They brought him in
18 through all the circumstantial evidence as being in the
19 vicinity of the house and being a participant in the overall
20 scheme.

21 Q Okay. And it was your strategy to point out that he
22 wasn't involved at all.

23 A Correct.

24 Q Okay.

25 A Correct.

Robert Theodore Williams-Direct Examination

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1 Q Now, did you attempt to engage in any plea negotiations
2 with the State on this case?

3 A I did. And the Solicitor said that because of the
4 victims involved in this case, that there was -- would be no
5 way in the world that he would make an offer on anything.

6 Q Wow. Do you recall arguing, I guess, doing a motion to
7 suppress regarding the stop?

8 A Oh, yes.

9 Q And what was your strategy on that?

10 A The strategy on it was that they really didn't have a
11 basis to stop the vehicle. So, without a basis to stop the
12 vehicle, they wouldn't have a right to search the car.
13 That's essentially it.

14 Q And was that motion successful?

15 A No.

16 Q Okay. And again, well, you heard Mr. Lowman's
17 testimony, correct?

18 A I did.

19 Q And so the basis of the stop was -- well, the
20 pretextual basis for the stop was the tinted windows.

21 A Well, when the -- actually, what occurred, if I
22 remember correctly, is that the officer who was there, he
23 came by, he couldn't see what was in -- who was in the
24 vehicle or anything like that. And he had already known
25 that somebody was out there trying to, I guess, tow the

1 vehicle. So, he just stopped it, basically because there
2 was question about insurance, actually, and didn't want the
3 vehicle riding around without insurance. I think that's
4 what he indicated. Point is, once they stopped him, then he
5 was in trouble because he didn't have a driver's license.
6 And if you don't have a driver's license, you can't drive it
7 away, so they have to tow the vehicle.

8 Q Do you have any knowledge as to whether or not this was
9 an issue that was preserved on appeal?

10 A I don't know.

11 Q `You weren't involved?

12 A On the appeal?

13 Q Yeah.

14 A No. Appellate defense handled it. Bob Dudek handled
15 it.

16 Q Okay. And so he would be the best determiner of
17 whether or not -

18 A He would be. He would be the best determiner in
19 regards to why or why he didn't take that position.

20 Q Now, two of Mr. Lowman's co-defendants testified at
21 trial, right?

22 A Correct.

23 Q Okay. And what was your strategy concerning cross-
24 examination?

25 A That's an interesting question. To basically cross

1 them up and get them to say inconsistent statements, I
2 guess. The biggest defense he has, and the way the whole
3 trial was conducted, was basically disputing the police
4 officers in regards to what they had tried to do. Which had
5 to do with footsteps, which had to do with the lack of DNA,
6 which had to do with the lack of fingerprints, which had to
7 do with the lack of the ability to identify him as being
8 there, which had to do with the lack of tying the shell
9 casings in the car to him. You know, it's all the other
10 stuff that got him.

11 Q Now, did you have knowledge of Wilson and Darien having
12 being given proffer agreements at that time?

13 A Yes, we knew that they had a proffer agreement, but we
14 didn't understand that there was anything other than they
15 had proffered it. They would tell the truth in whatever
16 testimony that they gave. We didn't know that they were
17 going to get a specific amount of time reduced or anything
18 like that. Plus -- and the only way I think that would have
19 been effective would be the amount of State time that he was
20 facing was substantially more than what the federal time
21 was. That they were facing. But that would be the only
22 thing, I guess.

23 Q So, you had no awareness of federal plea agreements
24 being entered?

25 A The only thing I knew was that there was a proffer.

1 There were proffers which were issued. Not that there had
2 been an agreement on how much time or anything like that.

3 Q Did you make any attempts to investigate whether or not
4 one had been entered by them?

5 A Well, actually, the federal public defender sent me
6 information on that in regards to the two proffers that they
7 had entered.

8 Q Do you recall when they sent that?

9 A Like a week before.

10 Q Okay. And then ---

11 A Maybe two weeks before. It's dated, whatever they sent
12 me.

13 Q And then you found out that an agreement had been
14 entered, I think, right before redirect on one of the
15 witnesses. Right? Do you recall?

16 A Yes. That had to do with -- I'm trying to figure --
17 It's not -- The answer is yes, but I can't think of the
18 guy's name.

19 Q I think it was Mr. Darien.

20 A Correct.

21 Q Did that cause you, I guess, to question whether or not
22 Wilson had entered one as well?

23 A Well, we knew that Wilson had had a proffer. We didn't
24 know what the agreement was or if he had an agreement.

25 Q But I guess my question is, once you found out about

1 Darien, did that then cause you to want to investigate
2 Wilson's situation more at that point?

3 A I didn't want to go back into it.

4 Q Okay. Now, Mr. Wilson mentioned Mr. Lowman previously
5 being incarcerated, correct?

6 A Yes.

7 Q Now, did you consider, I guess, objecting when he
8 initially started talking about it as being non-responsive
9 to the question?

10 A No. I moved for a mistrial, which I thought at that
11 particular time was a whole lot better than just objecting
12 as not being responsive to the question.

13 Q Well, I guess what my question is, before he mentioned
14 the prison time, he kind of went on a tangent. Wouldn't you
15 say?

16 A Well, I'm not good at reading minds yet, but I had to
17 wait till she actually said something that was wrong, or he
18 said something that was wrong.

19 Q So, you made a mistrial motion, right?

20 A I did.

21 Q Okay. And it wasn't successful?

22 A Should have been. No, it wasn't. Sorry, Judge.

23 Q Why did you say you didn't want a curative instruction?

24 A Because you're just bringing it back up again. You
25 know, I would just assume that they just forget all about

1 the fact that he had been in prison before. And the more
2 times they hear it, the more it goes to the Judge's mind. I
3 mean, the jury's mind.

4 Q Now, we talked about various exhibits when Mr. Lowman
5 testified that were maybe exculpatory, or at least not
6 incriminating towards him directly. Do you recall seeing
7 that, the discovery?

8 A I don't understand your question yet.

9 Q Do you recall seeing things in the discovery that maybe
10 didn't point to Mr. Lowman as being one of the defendants in
11 the case?

12 A You'll have to give me an example.

13 Q There was a statement where Mr. Goodman was pinned as
14 being the orchestrator initially. Do you recall that?

15 A Yes.

16 Q Okay. Did you attempt to get that in or otherwise
17 cross-examine anybody at the case about that particular
18 point?

19 A No, I don't think I did on that particular point.

20 Q There was also a statement that said that the other
21 individuals in the case brought drugs down to South Carolina
22 every month. Do you recall that?

23 A I can't remember who said that.

24 Q Okay. Did you ---

25 A Who said that?

1 Q Travis Legions? No?

2 A No.

3 Q Okay. Did you attempt to, I guess, bring up the fact
4 that these guys were no strangers to South Carolina? Do you
5 recall?

6 A No.

7 Q Okay. Did you ---

8 A And, you know, part of the reason for that? If they
9 were no strangers to South Carolina, that meant that they
10 would more than likely may have known my client, because my
11 client was from South Carolina. I'd rather they just be
12 foreigners, some guys from up north.

13 Q So you'd rather, I guess, tell the jury that there was
14 no or minimal connection to Mr. Lowman with these guys, is
15 that correct?

16 A Correct.

17 Q Now, you challenged the chain of custody regarding the
18 bullets, correct?

19 A I did.

20 Q Okay.

21 Q Was that successful?

22 A No, it wasn't. It very seldom is.

23 Q Now, why did you all elect to have jury instructions
24 given before closing argument?

25 A We didn't elect to do that. There are several judges

1 that have taken the practice of doing that, and I think that
2 was Judge Griffith who did that. Judge Russo used to do it
3 also. And it's very awkward for defense lawyers to do that
4 because it kind of cuts out what you want to say in your
5 closing argument. The positive side of it is this, is that
6 when the judge says that, you know what the judge has
7 already said. So you can tailor your closing argument based
8 on what the judge has already instructed you. So you don't
9 say your argument, then forget to argue about something that
10 the judge is going to tell the jury. And I still don't like
11 it.

12 Q Okay. Did you make any attempt to, I guess, ask the
13 judge to flip the order?

14 A It was a new thing that they were doing. This case is
15 probably six or seven years ago. It was something that some
16 Circuit Court judges were doing, and there's probably not a
17 thing illegal about it at all whatsoever. It's just, I
18 don't know why they started doing that. They didn't always
19 used to do that, though.

20 Q Did you attempt to, I guess, object to Applicant's
21 statements to the police?

22 A You're talking about the Defendant?

23 Q Yeah.

24 A Well, I think he said those when he was not being
25 questioned in this case, though. I think they just stopped

1 him, or they ran across him, and he said that that's what he
2 was doing.

3 Q So, do you think they were admissible?

4 A It was an admission against hearsay. I think the answer
5 is yes, they were admissible if it's the defendant's.

6 Q Now, do you recall the wrong gas station video
7 surveillance being obtained in the this case?

8 A No, I do not. I'm not exactly sure what he's talking
9 about. Unless he's saying that they just got the wrong -
10 should have had a different time or something. I have no
11 idea.

12 Q Yeah.

13 A Unless that's it.

14 Q Yeah.

15 A You can't always get the police to pick up the right
16 video.

17 Q Okay. And do you think that failure to get that video
18 was somehow intentional? Do you have any knowledge of that?

19 A No, I think it's just typical. They went the wrong
20 time, I guess. They don't always do it right, but somehow
21 they get it right in the end most of the times.

22 Q Now, you recall Stephen Brown testifying?

23 A Yes, I do.

24 Q Oh, would you say -- did Mr. Brown seem like he wanted
25 to testify?

1 A Oh, no, he absolutely did not want to be there. And he
2 kept saying that he didn't know a thing about it. You know,
3 he just found the key. The key was there. He didn't find
4 it. He didn't see it on the ground. He didn't -- it was
5 clear he didn't want to be there. And then the judge took a
6 minute and told him, look, you know, just a few more minutes
7 and just go ahead and answer it. And then I got up, then I
8 got to ask him a question. Then he looked like he was mad
9 at me when I didn't even bring him there.

10 Q Okay. It's fair to say he was not there by choice.

11 A No. Huh-uh.

12 Q Do you recall how during the investigation and in the
13 discovery, they switched from having three people being
14 implicated in this case to adding a fourth?

15 A Well, they always said that it was three people, I
16 think, who were in the house. So, when you say switch, they
17 always had to have a fourth guy on the outside if what they
18 were going to say is that they were passing stuff out the
19 door. So, a fourth had to be involved in it.

20 Q Okay. So, you didn't see anything inconsistent over
21 time in the discovery?

22 A I wasn't surprised about it, because they had to have
23 somebody else. You couldn't have done it with three people.

24 Q Now, do you recall there being maybe a dead cell phone
25 they couldn't extract anything from?

1 A I assume it was a cell phone that was thrown in the
2 pond, maybe. There are several ponds around that par three.
3 And I think they probably found a gun. I think they found a
4 cell phone, and maybe found maybe a shoe or something. I
5 think they found three things in that pond, and that's
6 probably the one between the third and fourth hole. But
7 there's some issue in my mind about where the ponds are.

8 Q Do you recall calls being submitted involving a phone
9 that they weren't able to extract from? Do you have any
10 recollection of that?

11 A No.

12 Q Okay. But the record would probably be the best source
13 when it comes to -- the transcript would probably be the
14 best source as to ---

15 A The transcript would be the best source of any. You
16 know, after six or seven years. And the judge has to read
17 this transcript. And I'll tell you, I read it last night.

18 THE COURT: Okay, good. I'll be doing it tonight.

19 THE WITNESS: It's extremely long to comprehend it.

20 MS. MARTO: Oh, I read it, too. I got you. One
21 moment, Your Honor.

22 Q Again, there were three people in the house, right?
23 That was the State's theory of the case.

24 A Well, let's see. They had three people. They had one
25 person tied Ms. Tisdale (SIC) up. I think a different

1 person tied Mr. Tisdale (SIC) up. And during that time
2 span, there was somebody else who was going through the
3 house to make sure that there was nobody else in there to
4 see what they could find.

5 Q You recall if the Tidwells ever, I guess, affirmatively
6 identified somebody that was on the porch as opposed to in
7 the house?

8 A They had -- I think somebody said something about the
9 person outside, but I don't think that they could -- I don't
10 think they could identify that person. And it's kind of
11 interesting, if you want to -- the whole thing is
12 interesting, because you had a bunch of things about gloves.
13 You had the white gloves, you had the black gloves. You had
14 the uniform from Amicks. You just had all kind of stuff
15 floating throughout there. But the real -- the only thing
16 that you could really tell about the people who were inside
17 the house is that they were African American. One guy was
18 younger than the other one, and one guy was, I guess, a
19 little harsher than the other one. Even though, if you
20 believe what he said, he was kind in the end and pulled some
21 sort of blanket up on Ms. Tisdale (SIC).

22 MS. MARTO: No further questions.

23 COURT REPORTER: Can I get a clarification? Is it
24 Tidwell or Tisdale? One attorney is saying one thing and
25 the other attorney is saying another.

Robert Theodore Williams-Cross-Examination

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1 THE WITNESS: That's okay. I didn't mean anything by
2 it.

3 COURT REPORTER: I just want to make sure in case I have
4 to produce a transcript. Thank you.

5 THE COURT: Okay. Anything?

6 MR. ZELENKA: A few things, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ZELENKA:

9 Q Approximately how many times did you meet with the
10 Defendant?

11 A I don't know. A lot.

12 Q Was it more than two?

13 A It was.

14 Q Was it more than --

15 A Less than 10.

16 Q Huh?

17 A Less than 10.

18 Q Less than 10. Okay. And in those meetings with him,
19 did you go to the discovery?

20 A We did.

21 Q And how did you do that? Did you show him what the
22 State produced?

23 A I gave him copies of the discovery I thought. He should
24 have had copies of everything. And he's shaking his head
25 yes.

1 Q Okay. So, what he received on ---

2 MR. ZELENKA: Court's indulgence, because we had a few.

3 Q What he received on May 21, and the other time periods
4 that were reflecting both the chain of custody, the cell
5 phone information, the summary of the statement that he had
6 given, those all went to the defendant?

7 A He got a copy of everything that I had.

8 Q Okay.

9 A Which would be that.

10 Q Okay. And is that your normal practice?

11 A It is.

12 Q Now, in those meetings, did you discuss whether the
13 Defendant should testify to contradict the statement that
14 the law enforcement officer had taken from him about fishing
15 or what he said about he may end up with a thousand years
16 for this?

17 A Well, the way he was describing it a while ago is it's
18 kind of a question in my mind as to whether or not he was
19 making the statement about I could end up with a thousand
20 years out of this in response to maybe there was a statement
21 made by the police officer about something having already
22 occurred. It's not clear in my mind. It's clear in my mind
23 that he made the statement. It's clear in my mind that he
24 was at the pond where he had been fishing.

25 Q Okay. And did he acknowledge that information to you?

1 A He did. That was how he explained where he was. He
2 said he was at the pond fishing.

3 Q Okay. How did that play into the way you did the
4 defense and whether you needed to call the Defendant to
5 contradict law enforcement's statement.

6 A I see you're following. Like most trial lawyers, that's
7 exactly what I did. Because I've got, you know, if they're
8 going to say he was there, and they're going to say that
9 they ran into him, then they've already produced a statement
10 which indicates that he was at the pond fishing. So, if the
11 jury has to hear that, they're going to know that he was at
12 the pond fishing and I don't have to put the Defendant on
13 the stand with his prior record to go through a boatload of
14 other stuff. So, yes.

15 Q And why was that important?

16 A Because they could prove that he was around there. So
17 if I could put him at the pond fishing without putting him
18 on the stand, then I'm not an idiot. I'm actually giving a
19 location for him so that jury would have some other reason
20 than to believe that he was up there being a part of that.

21 Q So, how close was the pond to the location of the
22 burglary?

23 A Well, it depends on which pond the jury believes he was
24 at. There was one pond directly behind his house, which
25 would be where the Par three is. There was a pond across

1 from it, which is number eight. There's a pond there.

2 Q What do you mean number eight. You mean hole number
3 eight -

4 A Hole Number 8.

5 Q --- at Persimmon Hill Golf Course?

6 A There's also a pond which is off of number 11, which -
7 I'm wrong. There's a long par five that you go -- which is
8 off to the right side and you go back around.

9 Q And how often have you played that course to have that
10 understanding of the course?

11 A Well, I haven't played that course in a while, but I
12 used to play it every Saturday. So, I knew exactly where
13 Mr. Tidwell's house was. I knew exactly where everybody
14 else was in that neighborhood.

15 Q Okay, so you were very familiar with that area?

16 A Yes. I was.

17 Q Okay. And did your client indicate to you where he was
18 located?

19 A He just said the pond. And I liked that, because I
20 could suggest that pond was anywhere I needed it to be.
21 Because he said he was at the pond, meaning it could have
22 been one of those three ponds. So, they couldn't get him
23 because he wasn't going to be up there testifying. So, if
24 they want to say he's at the pond, that's fine.

25 Q Okay. And you say limited. Do you mean ethically

1 limited based upon what he had told you on how you handled
2 the defense?

3 A Well, ethically -- that's correct, because he said he
4 was at a pond. I don't know exactly which pond he was at.
5 He never told me which pond he was at.

6 Q All right.

7 A And I'm not sure he knew there were three ponds.

8 Q Now, there was a discussion about trial strategy. And
9 did your client indicate to you, as he indicated here today,
10 he was familiar with what eventually were the co-defendants
11 in the case before this incident occurred?

12 A Yes.

13 Q One of them, in fact, was a family member, Mr. Goodwin.

14 A He was.

15 Q And there was a connection to Maryland also. Do you
16 recall what that connection was

17 A Are you -- I assume you're referring to the fact that
18 he went to Maryland.

19 Q Correct.

20 A My client went to Maryland. And that's exactly where
21 he met those individuals up there.

22 Q Okay. And what was their connection from that meeting
23 in Maryland?

24 A You mean ---

25 Q According to your client.

1 A I think they knew his relative, Mr. Goodwin, who was
2 living up there or something.

3 Q Okay. With respect to plea offers, you indicated on
4 direct examination you did, in fact, approach the
5 prosecutor?

6 A I did.

7 Q Mr. Hubbard.

8 A And I distinctly remember that answer.

9 Q And that answer was what?

10 A He said that the Tidwells were the most respected
11 individuals in Saluda County, and there is absolutely no way
12 in this world that he's going to make an offer on that case
13 because of how well respected they are and pillars of the
14 community, if you will. I think he felt like that would
15 just be -- it would be bad for everything.

16 Q Okay. Yet the theory of the co-defendants in this
17 case, based upon their testimony, was they thought Mr.
18 Tidwell may have been something different, allegedly based
19 upon information they received from the Defendant. Correct?

20 A That was not only their theory, but it didn't indicate
21 how smart they were either, based on what they said went
22 down.

23 Q Okay. Why do you say that?

24 A Well, they would have to be idiots, because they go
25 over there behind the jewelry store, and they see where the

1 jewelry store is and then they see these two regular, I want
2 to say, middle aged people who leave and go to their house.
3 And supposedly from those co-defendants, they're saying,
4 well, we were being told that he was a drug dealer and that
5 he was selling his drugs. That's what they said. They said
6 he was selling drugs out of the jewelry store. And that
7 just -- I couldn't imagine. And I've actually been around
8 criminal law for a minute and it just -- I didn't think
9 people would say things like that. I don't -- I don't --
10 I'm not going to speculate what goes on the co-defendants'
11 minds.

12 Q You knew it was going to be a hard sell.

13 A Oh my gosh.

14 Q Now he's made a general allegation about failure to
15 investigate, but he also asserts that you were not a zealous
16 advocate at trial. What is your -- let me clarify that.
17 What was your trial demeanor towards the prosecutors in the
18 case, either Mr. Hubbard or Sutania Fuller?

19 A And in all honesty, in all honesty, I don't think that
20 Sutania would ever tell you that I was kind to her in that
21 trial. I objected to everything that she was up doing. And
22 I was objecting to leadings, I was objecting to foundation,
23 I was objecting to -- so, I don't know that, you know, I
24 don't know how I could be more zealous than that. I mean, I
25 tried to keep everything out. I tried to get mistrials and

1 tried to keep them from putting evidence in. And I don't
2 think -- I don't think the co-defendant actually -- I mean,
3 I don't think my client rather thinks that I wasn't really
4 attacking them. I'm trying to keep stuff out.

5 Q As to issues on appeal, you objected to the chain of
6 custody?

7 A I did.

8 Q When the evidence was presented.

9 A I did.

10 Q You objected pretrial to the Terry stop and the
11 information that was presented pursuant to that Terry stop
12 at the Terry hearing, correct?

13 A Correct.

14 Q You objected or you had a Jackson v. Denno hearing
15 where you challenged the admissibility of the Defendant's
16 statement.

17 A Right.

18 Q Correct? You moved for a mistrial.

19 A I did.

20 Q Somewhat vigorously. And again, you've explained why
21 you didn't request a curative instruction.

22 A That's true.

23 Q Now, your cross-examination of the witnesses.
24 Particularly, let's start with Mr. Wilson. You're aware
25 that Mr. Wilson, at the time, had been giving proffer

1 statements to the federal government?

2 A Correct.

3 Q Did that surprise you?

4 A' No, not at all.

5 Q And why didn't you bring out that fact more that the
6 proffer statements had been presented which may have been
7 consistent or inconsistent with the manner that he was
8 testifying?

9 A Well, you know, one way to look at a proffer statement
10 is that you're now telling the federal government that
11 you're going to tell the truth and nothing but the truth.
12 Or you can look at it that he's been promised something.
13 Well, he never was actually promised anything. And I don't
14 think either one of those defendants had actually been
15 promised anything. All they had to do was lie one time.
16 Then the feds would have gotten them on the federal charges
17 and it wouldn't have helped them on the state charges. So,
18 there was nothing saying that they were going to get a
19 certain amount of time if they lied.

20 Q And let me follow up with that briefly. Earlier, about
21 within the last few weeks, I provided you with a copy of the
22 cooperation agreement. Do you recall that?

23 A I do.

24 Q Is that the first time you've ever seen that agreement?
25 Do you recall.

1 A Can I see it one more time? I want to make sure I'm
2 commenting correctly on it.

3 Q Okay, I apologize.

4 A That's all right.

5 Q Plaintiff's Exhibit Number 2.

6 A You'll note the hesitation. You know, I've been
7 practicing law 47 years, and I can't tell you one hundred
8 percent that I've seen this. I feel like I've seen it,
9 because I've looked at it a million times since then.

10 THE COURT: I understand.

11 Q Did the prosecution, the State prosecution, ever
12 indicate to you that prior to the trial that they were aware
13 at all that there was a similar type of agreement with the
14 federal government?

15 A No, I think, I think I was of the -- I think everybody
16 knew that there was a proffer. I can't point the finger at
17 the Solicitor and say that he knew there was a plea
18 agreement in regards to Mr. Wilson. And the thing that
19 really brought it to a head, if you will, is that in the
20 trial of the case they actually had the attorney who was
21 representing the other co-defendant there.

22 Q That would be Mr. Darien?

23 A Correct. And it kind of stood out. It kind of stood
24 out like there was a difference. So, I can understand why
25 you would think, well, you know, maybe he's got his plea

1 agreement, but Wilson doesn't have his plea agreement. And
2 this -- I'm again kind of speculating. But then you wonder
3 why the attorney who represented Mr. Wilson wasn't there, if
4 indeed there had been.

5 Q Okay, but you chose not to pursue, even with the
6 information you had, inquiring of Mr. Wilson whether there
7 was an agreement, whether it was some other benefit for it.

8 A Because he testified that he had not been promised
9 anything. And I don't know that I could prove that he had
10 been promised anything. Everybody knew that he had
11 proffered, that he had, you know, that he had these federal
12 charges pending. But everybody also knows that if you lie
13 to the -- in any proceeding, in a State proceeding or in a
14 federal proceeding, then you lose any type of consideration
15 that you could possibly have. And that probably could have
16 been explained to the jury if it had been said. And that
17 only buttresses their reliability and believability. And I
18 tried to paint them as just being these evil guys who came
19 into the house.

20 Q And then it developed on Mr. Darien's testimony that it
21 was brought up again at the conclusion of his testimony.
22 And there was that inquiry, isn't that correct?

23 A It was.

24 Q And in fact you utilized that bump up in your closing
25 argument to challenge the abilities of the prosecution in

1 the case, didn't you? You brought it up.

2 A I did.

3 Q As a negative factor in the way the case was presented
4 by them. Correct?

5 A I did.

6 Q Again, the sign of your zealous presentation in this
7 case, wasn't it?

8 A I'm not known to be easy, and that's not self
9 laudatory. I mean, it's just the way it is, I guess.

10 Q Okay. Is there any way you could have further cross-
11 examined either of those individuals based upon what you
12 knew possibly about what folks will consider inconsistent
13 statements from the information you got from the proffers.

14 A You know, I skimmed that stuff last night. I can't
15 think of anything that could have done, or should have done,
16 or would have done having read through that transcript. I
17 could be wrong, but there's nothing I don't think that I
18 would change on what I did.

19 Q Okay. Let me show you Plaintiff's Exhibit Number 4
20 related to Mr. Goodwin. I'll ask if that refreshes your
21 recollection at all.

22 A I feel like I have seen it, but it doesn't refresh me a
23 lot.

24 Q Okay. Mr. Goodwin didn't testify at this trial, did
25 he?

1 A No.

2 Q And Plaintiff's Exhibit 4 indicates that Goodwin had
3 been in Montgomery County and that Goodwin utilized a
4 particular cell phone with a specified number listed in
5 Plaintiff's Exhibit 4. You know what, if anything, the
6 importance of that was with respect to this case?

7 A Unless that was one of the phones that was dealing with
8 the texting going back and forth, I have no idea.

9 Q And let me see if the last paragraph may refresh your
10 recollection.

11 A Well, it basically indicates that they could find Mr.
12 Goodwin. It says, now you can just say it. It says that
13 it's beneficial in locating Goodwin at a current location
14 where he might be keeping stolen firearms and jewelry and
15 other items that were taken from the March 7th situation.
16 Well, I mean, they had -- the defendants basically gave
17 testimony about what happened.

18 Q But he didn't.

19 A But he didn't.

20 Q Right.

21 A That is correct.

22 MR. ZELENKA: I'm about to wrap it up here, Your Honor.

23 Q The information about the wrong gas station video. The
24 Applicant, on direct, indicated that you had advised him of
25 that during your representation. Do you know what he's

1 referring to?

2 A Not really.

3 MR. ZELENKA: I have no further questions, Your Honor.

4 Thank you, Mr. Wilson -- Williams.

5 MS. MARTO: No redirect, Your Honor.

6 THE COURT: You may step down. How many more witnesses
7 do you have.

8 MS. MARTO: We have two. I think they're going to be
9 the shortest witnesses today.

10 MS. MARTO: We call Solicitor Hubbard to the stand.

11 WHEREUPON, Rick Hubbard, having
12 first been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. MARTO:

15 Q Good afternoon, sir. Thanks for your patience. So,
16 were you the primary prosecutor in this case?

17 A I was.

18 Q Okay. And did you have this case from its beginning?
19 I guess?

20 A I did.

21 Q Okay. Now, you had a chance to review the discovery in
22 this case, correct?

23 A I did.

24 Q Pretty extensively I'm presuming?

25 A I did. The way we set it up, Sutania Fuller, my co-

1 counsel, was really the organizer of the discovery. Being
2 the elected, I'm always running around. I'm a very hard
3 person to try a case with, because I'm always in and out of
4 a room. So, that's why I always work with someone like
5 Sutania, who's very organized. She's the real bookkeeper
6 and the brains behind the operation. I'm just kind of a
7 face.

8 Q So, a couple of Mr. Lowman's co-defendants testified at
9 trial, right?

10 A They did.

11 Q Were you aware of any agreements they had entered with
12 the federal government?

13 A I was not. I know -- I think the information we turned
14 over dealt with Mr. Wilson, that he had entered proffer. I
15 was not even aware that a proffer had been done with Mr.
16 Darien. But the way I approached this is right after this
17 incident I spoke with the U.S. Attorney involved in this
18 case, and he wanted to know if we just wanted to let them
19 handle it and we do nothing. And I said, absolutely not.
20 This was a major case in Saluda. It rocked several
21 counties, because it was such a big case and the serious
22 charges came out of the state side. Each defendant was
23 looking at life plus 95 years. I asked the Feds, whatever
24 y'all do, just don't get in our way. We're going first.
25 And that was kind of the agreement to the extent there was

1 any agreement. And by doing that, when they agreed to do
2 that, I knew that whatever they did, at best would run
3 concurrent. So I didn't really worry about the Feds at that
4 point.

5 Q So is it, I guess, your standard procedure not to, I
6 guess, worry about the Feds in a case like this?

7 A Not a standard procedure. It was this case.

8 A Okay.

9 A I knew what I had. In this case, each defendant,
10 including your client, were looking at life plus 95. The
11 Feds, based on their case, they were just looking at gun
12 charts. They weren't looking at burglary, they weren't
13 looking at kidnaping. They weren't looking at any of that.
14 They were just concerned about federal gun charges, which I
15 don't even know what they carried. But it was nowhere in
16 the ballpark of what we had. We were the heavy rock. They
17 agreed they were going to step aside, stay out of our way,
18 and that's how this case needed to be handled.

19 Q Now, you found out about Darien's federal plea
20 agreement, I think, midway through his testimony, maybe.

21 A No, proffer. I don't think he pled until like, well
22 after this trial. I think it was July, if I'm not mistaken.
23 So, he had not even pled.

24 Q And what did you find out about Wilson's federal
25 proffer?

1 A We had information that was provided by, I guess, ATF
2 about what they had done, and that was turned over to Mr.
3 Williams before the trial.

4 Q Now, do you recall anything about the gas station
5 surveillance in this case?

6 A I don't. It was nothing that was going to be of any
7 significance if law enforcement missed something. That
8 happens all the time. That's just evidence I don't have,
9 and it's nothing I can go back and correct.

10 Q Now, you recall, I guess, the basis for the stop of Mr.
11 Lowman, right?

12 A Yes.

13 Q Did you think that, I guess, the basis that was given
14 at trial was legally sufficient?

15 A Absolutely do. Don't have a question about it. In
16 fact, it was two things. One, you had a repo man active
17 that night looking for this defendant's car. He worked with
18 Hook & Book, and he was out looking for this car, not
19 because failure to pay, but for lack of insurance. So, when
20 he's tracking your client that night, while the armed
21 robbery and burglary is going on, he tracks him to the town
22 of Johnston, right next door in the neighboring county. He
23 stops, sees officers, and says, "Hey, if you see this car,
24 let me know. It has no insurance." That gave law
25 enforcement, I think, at least a reasonable basis to stop,

1 reasonable suspicion to stop the car if they saw it, to see
2 if there's insurance. Probably even PC. In addition to
3 that, when that car started coming back in town and he had
4 let them know, look, I think it's heading back this way.
5 Now, it looked like he was driving out of town. Now it's
6 turned around, coming back. Officers knew, all right, be on
7 the lookout for this car. And this young officer that we
8 talked about earlier, when he's driving by it, he drove
9 right by it and noticed it had dark windows. Everybody in
10 this case admitted these windows were very darkly tinted.
11 So those were two basis we brought up pre trial for the
12 judge to rule on. He says that was a basis for stopping the
13 car. And then once we identified Mr. Lowman behind the
14 wheel of the car and he was DUS, it was game over. He was
15 arrested and law enforcement had to take possession of the
16 vehicle.

17 Q Now, were you given any indication that, I guess, Mr.
18 Lowman gave statements to the police that were contrary to
19 what was presented at trial?

20 A Not contrary. He gave statements to two officers. You
21 had a SLED agent and a Sheriff's agent who's now with SLED.
22 He talked to both of them, and here's why they did. They
23 let him know, look, did you realize your car had a GPS
24 tracker on it? And he did not know that. And basically
25 that's how they were able to put him at the pond behind Mr.

1 Tidwell's house. We knew there was a car there. There was
2 tire tracks. We knew somebody had been there. In fact,
3 they could even see there was a dry spot where a car had
4 been that night. So, when they let him know, we can put
5 your car there, repo man followed him behind the house to
6 that pond. When he was confronted by these two officers,
7 that's when the story came out, oh, well I was fishing. And
8 they're like, well, okay, where's your fishing rod? Where's
9 your fishing gear? And the response was, I must have gotten
10 rid of it. And they mentioned again the GPS tracker. And
11 that's when they said -- both of these officers
12 independently, he said, he dropped his head and said, I'm
13 probably getting a thousand years for this.

14 Q Did you have any reason to believe that that wasn't
15 actually said?

16 A No. You know, it's almost like Mr. Williams said that
17 once he's there, he had to admit something. This business
18 that I heard today that he was at his house in Edgefield is
19 the first time I've heard that. But we know that's not true
20 at all, because he was stopped in the car in Johnston, you
21 know, while this armed robbery burglary is going on. So,
22 what he said on the stand was a complete fabrication.

23 Q Now, do you recall Stephen Brown testifying at trial?

24 A I do.

25 Q Would you say he voluntarily showed up to testify that

1 day?

2 A He did, voluntarily, with a subpoena. He was volun-
3 told. Mr. Brown was one of those characters. He was in a
4 car with some family members. Somebody in his family saw
5 the keys. It's like the next day or day after your client
6 was stopped, right where he stopped. And that's where they
7 found these keys. The significance of the keys is those
8 were the keys that our witnesses said they handed Mr. Lowman
9 during the armed robbery burglary. He got in his car, being
10 followed by the Hook & Book guy, drove to Johnston to go
11 open up the jewelry store while this robbery is going on.
12 So, he admitted that either those keys were picked up there
13 and he's the one that turned them in. So, he was a good
14 Samaritan, and he didn't really want to get involved because
15 I think he knew Mr. Lowman. But he agreed to come. He
16 testified. I had no problem with him on the stand. It was
17 clear he didn't want to be there. Mr. Williams got up, he
18 got sideways real quick. And the Court. Mr. Williams was
19 very kind to him. But the Court is the one that intervened,
20 and even took a break to let him calm down and to assure
21 him, look, all we're trying to do is just have you testify
22 about these keys. So, that's it.

23 Q Was he threatened with jail time if he didn't testify?

24 A He was not. We always let people know when they get a
25 subpoena that the significance of that -- I think I have a

1 duty to let to let them know. This isn't just an invitation
2 to a party that you can reject. At that point, you're not
3 answering to me. You're answering to somebody that wears a
4 black robe. So that's a duty I have to everybody I give a
5 subpoena to.

6 Q Did you prep Mr. Brown for testifying?

7 A I -- prep him?

8 Q Yeah.

9 A I talked to him about what I was going to testify -- he
10 was going to testify about. Yes. I do that with all
11 witnesses.

12 Q Did you tell him what to say on the stand?

13 A No. Basically what I wanted to know is what did he do?
14 And it was already clear he had already talked to law
15 enforcement before he saw me. He's the guy that turned the
16 keys in. That's all I wanted to know. And that's his
17 entire purpose in this case. He was just a bystander, good
18 Samaritan. He came in, and the keys were what were
19 significant, not Mr. Brown.

20 Q Now, so you had this case the entire time, right?

21 A Yeah.

22 Q Was there ever a time when you went from believing
23 there were three co-defendants in on the job to expanding to
24 a fourth? Or was it always the theory that there were four
25 people involved?

1 A My memory of this is there were always four people
2 involved. What happened is your client was picked up pretty
3 quick. And the problem was picking up the other three. They
4 went back to their home state of Maryland. So, you know, I
5 know the Tidwells, I believe, were saying there were three
6 in the house, but that's again going from memory. I don't
7 know when they developed the three individuals in Maryland,
8 but we always knew your client.

9 Q Now, do you recall there being some phones that were
10 either dead you couldn't use or turn on during trial?

11 A Here's my memory, and I was getting refreshed with my
12 co-counsel. And I think there's been some confusion on your
13 client's side. When Mr. Horne testified, he was talking
14 about, I believe, the CoolPad phone. And it was set. It
15 was code locked and set to disable. But what you can do
16 with a phone that's even got a code lock on it is you can
17 call 911. That is a bypass safety feature. That is how he
18 got the number for that phone. And then we got, all right,
19 who was the cell service through to confirm the phone number
20 and who it belonged to. And that was Mr. Goodwin, one of
21 the co-defendants. At that point, then they looked at Mr.
22 Wilson's phone, because Mr. Wilson said during the armed
23 robbery, they get a text from the Defendant saying, I'm not
24 coming. I got stopped. Traffic stop. And so, the text
25 information we got from Mr. Wilson's phone did not have the

1 language, it didn't have the data, but it confirmed what Mr.
2 Wilson was saying, that he had gotten a text message during
3 the course of that armed robbery from the Goodwin phone.
4 Well, we know it wasn't a text from Mr. Goodwin, because he
5 was in the house with Mr. Wilson. And we also know, after
6 the fact, when we stopped your client, when your client was
7 stopped in Johnston, the phone belonging to Mr. Goodwin was
8 in the car with him. And he was the only person with that
9 phone. The disabled or broken phone, I think, is the HTC
10 phone that I don't know whose phone that is or what
11 significance it had.

12 MS. MARTO: One moment, Your Honor.

13 Q Now my client's talking about Exhibit 80 that was
14 entered at his trial. Right.

15 A I think that's the CoolPad phone. Yes. Now again, my
16 co-counsel knows a little bit more about the phones, but I
17 believe that's the CoolPad phone.

18 Q I'm going to pass this up.

19 A Sure.

20 Q This was, I think, obtained from a copy of the
21 discovery. And then on the flip side, there's discussion
22 about how the, I guess, phone wasn't able to be extracted
23 from. Do you have any recollection of that?

24 A Right. Well, what we did, the information from the
25 CoolPad phone, it wasn't an extraction from the phone. What

1 we did, we got the phone number from that, which you can do
2 by just making that call and getting cell service. The
3 phone that the extraction is from the phone service phone
4 information was Wilson's phone. That's their phone. So I
5 don't. There may have been an extraction or may not have
6 been on the CoolPad. Ms. Fuller may be able to answer that
7 a little bit more completely. And for the record, what I
8 was looking at was a page of an affidavit from a search
9 warrant, not exhibit 80.

10 Q Okay. This was part of the discovery, right?

11 A Right.

12 Q And that was concerning ---

13 A Right. We turned all that over. There was a lot. Like
14 a good banker's box full of information.

15 Q Okay. And that was concerning one of the phones that
16 was found. Because there were a bunch of phones that were
17 found, right?

18 A There were a number of phones, and then we had phones
19 belonging to the victims that were thrown in the pond. We
20 had several phones in the car.

21 MS. MARTO: At this point, we would like to move to
22 enter this as Applicant's Exhibit 8.

23 MR. ZELENKA: I've got a qualifying objection, Your
24 Honor. It's got some handwriting on it. Where one of the
25 lines on page two, there's a handwritten designation that

1 says Exhibit 80. That's incorrect with that reference, and
2 that should be stricken from the admission. That's not part
3 of the warrant.

4 THE COURT: Are you okay with redacting that?

5 MS. MARTO: Yeah, I'm fine with redacting that.

6 THE COURT: Subject to changing that with a redacted
7 copy, I will allow that to be introduced. That's number 8?

8 COURT REPORTER: Yes, sir.

9 (WHEREUPON, search warrant affidavit was marked
10 Applicant's Exhibit Number 8 and entered into evidence.)

11 Q The CoolPad, that's a like an iPad or a tablet?

12 A Excuse me? I missed the first part.

13 Q The CoolPad you're talking about, that's a tablet,
14 right?

15 A That I don't know. I just know it's a CoolPad.

16 Q Okay. Sounds good.

17 MS. MARTO: No further questions.

18 MR. ZELENKA: I'll try to be brief.

19 CROSS-EXAMINATION

20 BY MR. ZELENKA:

21 Q Mr. Hubbard, how long have you been Solicitor?

22 A I took office in 2017. I've been a prosecutor since
23 '94.

24 Q And when this case was tried, how long had you been a
25 prosecutor in South Carolina?

1 A '94 to 2018.

2 Q Okay. And in that role as a prosecutor, you understand
3 under Rule 3.8, your obligations to turn over exculpatory
4 and mitigating evidence?

5 A I do.

6 Q As well as Rule 5?

7 A I do.

8 Q And Brady. And as part of that disclosure, we've
9 already talked about it, but May 21, 2018, you sent a packet
10 of materials. And let me just have you review that for
11 identification, not for admissibility.

12 A All this looks like information we sent. It's got my
13 letterhead on the front, and then we had a Bates stamp
14 system. So, I can see what was sent and when it was sent.

15 Q All right. And in that documentation that you sent at
16 page, I believe it was 33. Twenty-nine, excuse me. Page 29
17 was the documents that have been referred to about the
18 proffer.

19 A Yes. As to Mr. Wilson?

20 Q Yes.

21 A Yes. And that was sent out May 21, 2018.

22 Q Okay. And does that appear to be page 29 and 30?

23 A It is.

24 Q And what did that information provide to you at that
25 particular time.

1 A That the U.S. Attorney had met with Mr. Wilson and had
2 done a proffer interview in April 26, 2018. That the U.S.
3 Attorney handling that case, Mr. Holloway, advised Mr.
4 Wilson that he cannot make Wilson any promises regarding the
5 prosecution of the State charges in Saluda County, advised
6 that he would make the Saluda County Solicitor aware of any
7 assistance Wilson provided the government. And that Mr.
8 Wilson, at that time, had provided, again, a detailed
9 description of the plan they had to rob Danny and Linda
10 Tidwell. That his co-defendants were Joshua Darien, Robert
11 Goodwin, and Abin Lowman. And that his statements were
12 generally consistent with the statement he had previously
13 provided to an ATF agent, or a TFO agent, Terry Casey, March
14 22, 2017, shortly after all of this.

15 Q Your Honor, we'd like to introduce this as Respondent's
16 Exhibit Number 1.

17 THE COURT: Any objection?

18 MS. MARTO: No objection.

19 THE COURT: Without objection.

20 (WHEREUPON, proffer discovery was marked as
21 Respondent's Exhibit Number 1 and entered into evidence.)

22 Q Now, at the time of trial, what was your understanding
23 of the existence of any plea deals between you, your office,
24 and Mr. Wilson?

25 A There were no offers. There were no offers for anybody

1 at this point in time. What we told Mr. Wilson and Mr.
2 Darien, cooperate, we'll consider their cooperation. In
3 some cases, we'll do a plea where they plead to something,
4 hold it in abeyance here. Like in most cases, we say
5 testify truthfully. We make you no promises. In fact, I
6 was the one that put Darien up and I made him, or asked him,
7 are you guilty of burg first, two counts of kidnapping,
8 armed robbery, and conspiracy, and he answered affirmative
9 on all those. And I think Mr. Wilson admitted his role
10 completely on the stand as well.

11 Q Okay. So, when Mr. Wilson testified, the State had
12 absolutely no deal with him?

13 A No deal.

14 Q And as far as you know, under your ethical
15 responsibilities, that was an honest statement that was
16 being said by Mr. Wilson to the Judge in the court at that
17 particular time.

18 A It was absolutely honest. We don't even begin to sit
19 down and discuss negotiations until after they testify,
20 because cooperation to me is not doing a proffer. It is
21 sitting down in a witness stand, under oath, answering
22 truthfully at a trial. And then after that, we also knew we
23 were going to get input from our victims, and we didn't do
24 that until after trial. So, it was premature to even
25 discuss what we were going to do to these two individuals,

1 Mr. Darien and Mr. Wilson.

2 Q Okay. And that was the same with both of them?

3 A It was.

4 Q Okay. And when did you first learn of the existence of
5 the cooperation agreement that the federal government had
6 with Mr. Wilson.

7 A That, I don't have a date in my head on. I mean, I
8 know what they sent us that they had done a proffer. But as
9 far as a plea agreement, I was not aware of a plea agreement
10 even during the course of the trial. And then as to Mr.
11 Darien, I didn't even know -- I don't even think we had
12 anything saying he had done a proffer at that point.
13 Although, I figured he would be doing one. And I think he
14 entered his plea, or they ended up pleading, much later
15 after this trial on the federal cases.

16 Q All right. When did you first see that agreement?

17 A You say that agreement. What we just put in evidence?

18 Q Plaintiff's Exhibit Number 2.

19 A Okay. I was thinking you were talking about the two
20 pages we just put in, which was not an agreement. That's
21 why I was confused.

22 Q Right.

23 A This agreement, I don't recall ever seeing. During the
24 course of the trial, I never laid eyes on a plea agreement.
25 Never got a call from Holloway, that I ever remember, saying

1 we've entered into one. Let me send you one.

2 Q Okay. And was the first time you saw that agreement
3 within the last couple of weeks?

4 A It is. Preparing for this case.

5 Q Okay. Now, what was the role of Sutania Fuller in the
6 case?

7 A She was co-counsel. She, like I said, has a real gift
8 for organization. She helped put this case together. All
9 of our files -- we work together with our paralegal who now
10 works for your office. Much my chagrin. She's no longer
11 here. But the two of them, they were masterful at making
12 sure we had everything and that all the documentation we had
13 was sent over to the defense side. But Sutania is also very
14 gifted at how to present a case. She's a superb trial
15 lawyer. So, basically we approached it, although this is my
16 case and I might take the lead, she's an equal in my opinion
17 when I'm sitting down with her. And even though she was
18 still fairly new at the time, she's my equal.

19 Q Okay. And just so the record is clear, the paralegal
20 that we stole from you is Carly Jewell?

21 A Carly Jewell now works with Creighton Waters and does a
22 great job.

23 MR. ZELENKA: I'm just double checking. I don't
24 believe I have any further questions at this time.

25 THE COURT: Anything else?

1 MS. MARTO: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. MARTO:

4 Q Were you present for any of the federal court
5 appearances for Wilson or Darien?

6 A I was not.

7 Q Okay. Do you have any recollection on emailing or
8 communicating with Mr. Lowman's attorney about the federal
9 proffers?

10 A Mr. Lowman's attorney?

11 Q Yeah. So, with Mr. Williams.

12 A About the proffers? What's your question again? I got
13 lost there.

14 Q Do you recall speaking with Mr. Lowman's federal lawyer
15 about his case?

16 A I don't know who his federal lawyer is. I think the
17 only person I really dealt with was Mr. Holloway, the U.S.
18 Attorney handling it. And then the day that we put up
19 Darien, his federal attorney showed up, like Mr. Williams
20 said, and wanted to make sure that we were all on the same
21 page. Put it all on the record.

22 MS. MARTO: No further questions, Your Honor.

23 MR. ZELENKA: Nothing further.

24 MS. MARTO: And then we would call Ms. Sutania Fuller
25 to the stand.

1 DIRECT EXAMINATION

2 BY MS. MARTO:

3 Q Good afternoon, ma'am. Thank you for your patience. So
4 you were, I guess, co-counsel with Mr. Hubbard on this case?

5 A That's correct.

6 Q Okay. Were you involved in this case from the
7 beginning?

8 A Not from the very beginning.

9 Q Okay. Do you know, roughly, how long before trial you
10 got the case?

11 A I honestly don't remember.

12 Q Okay.

13 A I'm sorry.

14 Q No, you're good. You had a chance to review the
15 discovery in full in this case?

16 A At the time, yes.

17 Q Do you recall any discussion or knowledge about a
18 federal proffer, or plea agreement, regarding Mr. Wilson or
19 Mr. Darien?

20 A No. The only thing I recall is in April we received an
21 email saying that they -- that he had proffered and sat
22 down, and we received the ATF report shortly after that.
23 And then we turned that over in discovery. I didn't see the
24 plea agreement until Mr. Zelenka sent it to us last Monday,
25 maybe, or Sunday night. He was up late.

Sutania Fuller-Direct Examination

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1 Q If you had a copy of that at the time, would you have
2 turned it over to counsel?

3 A If I had a copy?

4 Q Yeah.

5 A Yes. Everything we have we turn over.

6 Q Now, do you recall anything about the wrong gas station
7 surveillance footage being obtained in this case?

8 A I do not. I was sitting here trying to remember what
9 he's referring to, but I cannot. I don't have independent
10 reflection about what he's talking about.

11 Q Now, the basis of the stop as I think Mr. Hubbard
12 testified to, was the tinted windows and the insurance
13 issue. Right? Is that correct?

14 A What Mr. Herbert testified to?

15 Q Yes.

16 A Correct.

17 Q Okay. And would you agree that those were the, I
18 guess, arguments for admitting, you know, evidence regarding
19 the stop?

20 A Correct.

21 Q Do you think that those issues are, I guess,
22 admissible? Like, do you think the stop was valid and that
23 everything should have come out?

24 A The stop was absolutely valid and everything from it
25 was admissible at trial.

1 Q Now, do you recall police statements Applicant made by
2 the pond?

3 A Correct. Yes.

4 Q Okay. Were you given any indication that those were
5 false?

6 A No.

7 Q Now, do you recall Stephen Brown testifying?

8 A I do.

9 Q So, he was not happy about having to testify for the
10 State, was he?

11 A He wasn't.

12 Q Okay. Is there ever any threat of jail time outside
13 of, I guess, subpoena power for him, you know, electing not
14 to testify?

15 A We did not threaten to put him in jail.

16 Q Did you talk to him before?

17 A We met with him prior to.

18 Q Okay. Did you tell him what to say in any way?

19 A No.

20 Q What did those discussions revolve around, I guess?

21 A Generally we went over, I believe, it's either a
22 statement or a report that was in discovery. Told him this
23 is what we would call him to the stand for. He was served
24 with a subpoena already. He, of course, expressed that he
25 didn't want to testify against nobody, and I didn't see

Sutania Fuller-Direct Examination

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1 nothing. I remember that. And that was generally it. Like,
2 well, this is the limited purpose we're calling you for.
3 But he didn't -- I don't think he used the word "snitch",
4 but he didn't take too kindly to bearing witness against
5 someone else.

6 Q Now, do you recall if it was always the State's
7 position that there were four co-defendants involved, or was
8 it initially that there were three involved and then a
9 fourth was added on later on? Do you recall at all?

10 A It's always been four.

11 Q And then, do you recall any information about, I guess,
12 phones that were dead and could not be extracted from coming
13 out?

14 A I do.

15 Q Okay. What do you recall about that?

16 A So, there were several phones that were seized in the
17 vehicle and there were phones seized from the pond if I
18 remember correctly, but I want to say the majority of them
19 came from Mr. Lowman's vehicle at the time of the traffic
20 stop. Along with co-defendant's identification and his
21 identification of the car. The CoolPad is a cell phone you
22 can purchase at Walmart. Boost Mobile prepaid type phone,
23 and that was the phone that Toby Horne used to dial 911. He
24 walked over to dispatch and, as it's coming up, looked on
25 the screen and -- I want to say -- if I remember correctly,

1 because we're going through evidence. There was either a
2 sticky note or something on the back of the device, and he
3 hand wrote the 240 phone number. Separately, Maryland, in
4 their effort to assist us in locating Goodwin, had ran a
5 search on the phone if I remember correctly. And T-Mobile
6 provided the subscriber information with a Robert Goodwin
7 which corroborated what Wilson and Darien indicated, that
8 Lowman had taken Goodwin's phone and that's what he was
9 using to communicate with them. In terms of the other
10 phone, like Solicitor Hubbard indicated, I think Mr. Lowman
11 is just reading discovery wrong. I looked at it. Before
12 trial, I make a trial Bible, and my notes say it's a CoolPad
13 phone. It's a 240 HTC phone. So, his suggestion of
14 prosecutorial misconduct that was put in evidence that we
15 thought was a lie is not true. The HTC phone was not
16 acceptable. They attempted to boot it up and it could not.
17 The CoolPad phone, as well as there was one other device,
18 was password protected and you could not access it and
19 accessing would set the device to disable. I believe that's
20 what he testified in trial. And generally that's what was in
21 his report that was turned over in discovery.

22 MS. MARTO: One moment, Your Honor. No further
23 questions.

24 MR. ZELENKA: Court's indulgence one moment, please.

25

CROSS-EXAMINATION

1 BY MR. ZELENKA:

2 Q Ms. Fuller, how long have you been practicing law?

3 A I graduated law school in May of 2012. So, is that 11
4 years? I was sworn in November of '12. So, this year will
5 be 12 years.

6 Q Okay. Briefly describe your prior professional
7 experience.

8 A So, after our graduation, I clerked for Circuit Court
9 Judge Clifton Newman for a year. We went to 18 different
10 circuits, I remember that. And he came here several times,
11 and that's when Solicitor Hubbard -- well, he was Deputy at
12 the time -- and Chris Mills approached me, and I tried to
13 leave my clerkship early, but Judge Newman wouldn't let me
14 leave. And then I started here in July after my birthday,
15 July 22, 2013 is when I started here.

16 Q And what type of cases did the Eleventh Circuit
17 initially give you to handle?

18 A A general docket initially. So, anything from forgery,
19 shoplifting, some possession cases, assault second, property
20 crimes, drug cases, counterfeit good cases. I tried that
21 with Theo Williams, and then probably less than a year
22 murder cases.

23 Q And when this case came up to trial, approximately how
24 many jury trials had you been involved in?

25 A Jury trials? A handful. Maybe just a couple as second

1 chair, one as first chair. One as first chair. So, this was
2 '18, not many. But it was forgeries, shopliftings,
3 counterfeit goods, started a possession case, indecent
4 exposures, and so just a handful of those types of cases but
5 nothing major crime.

6 Q Okay. How was discovery handled through your office at
7 that time?

8 A We use a system called Spartan CMS and so everything
9 thing would come in. Working with our tri-county is a little
10 different. So, those things are like manual files that we
11 have to load in, because here in Lexington the Sheriff's
12 Department we can download them from your system. Even now
13 it's even better, but back then -- so, we had to actually go
14 to Saluda, go through the files. I think initially when it
15 came in Paul Taylor did the initial sort, but usually once I
16 get involved I usually request permission, or kind of start
17 over, just to ensure that by the time I'm touching the case
18 everything is -- I've laid my eyes on personally. And so,
19 at that point we did a full audit and some things that they
20 receive may have been duplicates, because I like to prep
21 things a certain -- or have things prepped a certain way so
22 that they're easily tracked and we're not confused once it
23 comes to trial time. And we knew, I think by the time I got
24 involved, we knew life notice was going to be served. I
25 believe I drafted the life notice and pulled prior records.

1 The Solicitor signed it. So, it was very -- and Carly was
2 beyond OCD, worse than me. And so, everything was Bates
3 stamped and then she even put page dividers to help. It was
4 supposed to help me, but it helped defense too, because she
5 would put cover sheets in between every statement so we
6 could account for everything that we turned over.

7 Q Okay. In part of your preparation for this case with
8 some of the issues that were raised, did you go back and
9 review the discovery materials he had provided at the time
10 of the trial?

11 A I did. I looked at cover letters and tried to gauge
12 based on the plea agreement you sent me the date so I could
13 easily go to the batch of discovery that was turned over on
14 or about that date, which was turned over -- I believe if
15 memory serves -- in May. So, shortly after we got it after
16 the ATF agent wrote his additional report. And so, I did
17 find that packet and I sent it to you to show that we did
18 turn over the information from the ATF.

19 Q All right. And that was essentially the packet May 21,
20 2018, which had what we introduced as Respondent's Exhibit 1
21 page 29 and 30.

22 A That's correct. And one thing that we ensured that we
23 did to prepare this discovery is - so Carly, I believe,
24 would have prepped this probably three days prior. But I
25 always have her update the date on the each document in the

1 cover letter to reflect the date that we actually sent it
2 out. So this would've actually gone out on May 21, 2018.

3 Q And did you also review that material to see if there
4 was any indication that you had received a cooperation
5 agreement involving either Mr. Darien or Mr. Wilson?

6 A I did. I reviewed all of that to ensure one, if we had
7 received it, and two, if it had been provided. And I found
8 that we had not received it, therefore it couldn't have been
9 provided because we didn't receive it. And then I searched
10 my email to just checks and balances to make sure that we
11 weren't provided it and absolutely didn't turn it over. I
12 did not find it in my email at all. And that's when I found
13 the email simply notifying us that the proffer had taken
14 place.

15 Q And why was that important to you to make that
16 determination?

17 A Well, I don't want to mess up. So, I wanted to -- I
18 was confident in my procedure, as well as Carly's procedure,
19 in terms of how discovery is handled. But obviously
20 everyone makes mistakes. But I wanted to double check to
21 ensure that, you know, we had something and inadvertently
22 didn't turn it over, but I was able to confirm without a
23 shadow of a doubt that I never received it. We don't have
24 it, therefore we never turned it over.

25 Q Okay. And just for clarity, let me ask if you can

1 identify that one page.

2 A This is the cover letter to this document.

3 MR. ZELENKA: Your Honor, would you like to move this
4 cover letter in to clarify that information.

5 THE COURT: Any objection?

6 MS. MARTO: No objection.

7 MR. ZELENKA: This will be Respondent's Exhibit Number
8 2.

9 (WHEREUPON, cover letter was marked as Respondent's
10 Exhibit Number 2 and entered into evidence.)

11 Q In your understanding of Brady and Rule 3.8 and the
12 obligations that are placed upon the prosecution in this
13 case, and in any case, was it important to you to basically
14 ferret out any information that was either exculpatory or
15 mitigating in this case to make sure that's provided to the
16 defendants before their trial?

17 A Yes. Exculpatory, mitigating, or impeachment. Yes. We
18 do our due diligence. I personally do my due diligence,
19 probably above and beyond required. I like to look at this
20 as an open book. Protecting personal information the way we
21 need to, but other than that I have.

22 Q Okay. Let me provide you Plaintiff's Exhibit Number 2.
23 And as to when, if at all, you have ever seen that or a
24 similar document before.

25 A This is this document I was referring to you that you

1 emailed us last week, either Sunday or Monday. It was
2 sometime, once we got noticed that we had to be here. Then
3 I became concerned because I have court protection. But I
4 know that it has been pending for a while, so we wanted to
5 get it done. But that was the first time that I laid my
6 eyes on this document was when you emailed it to us.

7 Q Okay. And you reviewed your record to see if there was
8 any indication you'd ever received this before. Is that
9 correct?

10 A Right. I knew I had never seen it before. I always
11 tell everyone, including my boss, like, once I get down to
12 trial, I'm down to a single document. I kind of have, not a
13 photographic memory, but, like, image memory. And so, I
14 literally go through everything, and so did Carly. Carly
15 can literally look at something and like, I've never seen
16 that before. And so, that's one of our strong suits. So I
17 know I had never seen this document before.

18 Q Okay. And let me provide you again with Plaintiff's
19 Number 2 and ask you if you can identify any of the
20 signatures on that document. Not identifying the signatures,
21 but who apparently signed that document.

22 A This would have been Mr. Wilson, as well as Justin
23 Holloway.

24 Q Okay. And Justin Holloway is an Assistant U.S.
25 Attorney?

1 A At the time he was. Yes.

2 Q Okay. There's no signature by either Rick Hubbard, or
3 you, or the Attorney General as being in agreement with that
4 document, is there?

5 A No, there isn't. And even the document I read said
6 that in here somewhere. It says that the Eleventh Circuit is
7 not part of the -- it would have no impact.

8 Q All right. Again, just -- I think you may have
9 adequately discussed it in your direct examination, but cell
10 phone Exhibit 80, particularly what is cell phone Exhibit 80
11 in this case?

12 A Based on my notes, and I haven't been wrong before in
13 terms of my final notes, because I checked that. Exhibit 80
14 is the CoolPad. I did look at the record, and the record
15 only says phone. It doesn't say the CoolPad. But that's
16 been the entire thing. And if you look at the evidence on
17 the back of it, I remember seeing a sticky note with a 240
18 number. And I'm like, where'd this number come from? And I
19 don't know if there was necessarily a paper trail other than
20 the officer explained it to us. And so I have in my notes
21 Toby Horne to explain CoolPad 240 number.

22 Q I have no further questions. Thank you very much.

23 REDIRECT EXAMINATION

24 BY MS. MARTO:

25 Q Do you recall, at any point, Goodwin being labeled as

1 the, I guess, orchestrator of the incident?

2 A Not by local law enforcement. What you're referring to
3 is Goodwin was the last to be found. He was hiding real
4 deep. And part of their crew up there and how they operate,
5 they put that in their report. That's never been part of our
6 report. And so that is Paleggi, I believe. I read that and
7 I was like - But it's never -- it's a game of telephone.
8 It was Toby talking to the Feds, the Feds talking to the
9 U.S. Marshals, the U.S. Marshals speaking to them. And
10 that's how they wrote it up. Because he was -- I want to
11 say, I was looking at the timeline. He wasn't arrested
12 until maybe July. It was months later. We got Wilson
13 pretty quickly after that. Darien, his little scuffle, and
14 then it was several months later it was Goodwin. But in his
15 arrest report is where you see that. That was an outside
16 agency. That never came -- that was never a theory from
17 Saluda County Sheriff's Office.

18 MS. MARTO: No further questions, Your Honor.

19 THE COURT: You can step down. Thank you very much.

20 MS. MARTO: No further witnesses, Your Honor.

21 THE COURT: Anything in rebuttal?

22 MR. ZELENKA: Your Honor, I just want to make sure that
23 the Court has before them, takes notice of the record on
24 appeal, the transcript, the three-volume transcript of that,
25 the Anders brief that was prepared by Mr. Dudek, the opinion

1 of the Court of Appeals, our return, and the Application for
2 Post Conviction Relief, and the Amended Application. I want
3 to make sure those are before the Court as a matter of
4 : record.

5 THE COURT: I appreciate it. Just for the record, you
6 brought them to me this morning in these beautiful boxes
7 here. I appreciate it.

8 MS. MARTO: Thanks, Judge.

9 THE COURT: Obviously, as I told you, I'm going to have
10 to take this under advisement, because I want to read
11 everything. I look at these pretty carefully because I
12 understand what's at stake. You'll hear from me sometime.
13 - Not too long.

14 ***END OF REQUESTED TRANSCRIPT OF RECORD)***

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Saluda County, South Carolina, on the 19th day of March, 2024.

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

Tara T. Scott, CVR
Official Court Reporter
January 6, 2025

00436 – Joshua Darien Interview Holy Cross Hospital - 00105 in "000" file

This audio interview is more than 3.5 hours long.

Det. Chad Bludgey at hospital in Maryland with Det. Paris Tappalupa and Joshua Darien.

Miranda warnings at 01:30.

Sounds like he waives his rights in writing.

Questioning starts at 4:00 with conversation about Darien's pain level (it's a 4), he's not under the influence of drugs, he's alert/not fuzzy. He says he's working on his GED, went through 11th grade. Nurse told PO he last received 2 mg morphine 4 hours ago.

Conversation about the case begins at 06:15 with officer telling him that he's going to go back over the stuff they talked about yesterday. Darien confirms that he wants to talk to officers and wants to make sure that SC officers are going to be able to hear the conversation. Officer offers to put them on speakerphone. Darien says he just wants to make sure they hear his side. They agree to have a 3-way speaker call. Sounds like they're all hooked up at 12:00 but we can't really hear what the guys on the other phone are saying (sounds like they're introducing themselves).

At 13:50 officer starts - "of the people that you were down there in SC, who have you known the longest." Darien says James, says he met him in August of 2016. Says he met James b/c his girlfriend lives out by James, they met out there and smoked a couple times. Darien knows James to sell weed to make money. Darien and James haven't talked about committing crimes, though James talked about his prior offenses. Darien is from SC originally, goes there once a year to see family. Darien has lived in Montgomery county 3 years. Officer asks about "the other two gentlemen, or three gentlemen rather," asks if Darien ever met them in Montgomery county before. Darien says "I met the one guy, Lee, I can't remember his name but I met him the same exact day I went down to south Carolina."

James
Drug
Dealer

16:00 food services comes to the room and officer tells them to come back later.

16:15 officer asks him to walk him through it. Darien says James and Lee had more talk, that Darien saw Lee out there before, on Castle Blvd, but never talked to him before. He's seen Lee and James smoking. One day James approached him because Darien asked him if he knows anyone over 25 because he's trying to get a rental car to go "down there" to see family because he doesn't have a car right now. Darien previously told James about that, so one day James and Lee were there in a car, a Chevy impala. Lee was driving and said it was his girlfriend's car. Darien then says he had seen Lee in a Mercury before. "He" said he could get him a rental car "down there" because he has a girl that gets him a rental car any time he needs, as long as she gets a security deposit of like \$100. Darien says that would be fine and said he's ready to go now. So they went to Darien's house to get ready, he was expecting to go down for a few days. They left Maryland on a Tuesday. They slept in a car that night. Something about Wednesday. Officer says Tuesday was the 7th and Wednesday was the 8th and Darien says that sounds right.

19:00 Darien says he didn't tell his mom where he was going, but he did tell her he was leaving for a couple days because he didn't expect to be there more than a day. Darien's mom's parents live down there, so he was going to go down there. He just said he's from Aiken, which is about an hour away from where Darien is from. So Darien, James, and Lee left. Darien doesn't know the guy's real name, he

His Family
is Close

ENGAD 800-831-8888	COURT'S	
	EXHIBIT NO. 1	228
	IDENTIFICATION/EVIDENCE	
	DKT. # 22-CP-41-75	
DATE: 3/19/24		

The Bank The Place Lead guy

went in there or when, says "all I know is this is the one they had in mind." PO asks who would have took it there, 01:21:00 Darien says "the one the lead guy." Then says he doesn't know if James or Robert did it, but agrees it would have been one of them. Darien says he drove a chevy impala over about 7 months ago, not sure what this is about. Darien says that's why he thinks they brought it there.

01:23:00 PO asks if Wilson had jewelry in South Carolina. Darien says he never saw it. PO says that someone involved in this who has spoken to police said that Darien had jewelry at one point and hid it in south Carolina. Darien says that's not true. Basically Darien is saying that this Cash For Gold has been used as a Fence in the past. PO says they can go get the surveillance video and don't have to reveal that Darien is the one that told them to get it. Darien says he didn't take it over there.

At 1:25:00 Darien says, "James went over there Thursday." PO asks how he knows and Darien says he told him and after that he came over "and I just knew." PO says thank you and that's very helpful. Darien says he didn't go with him, says it was the day after they got back. At 01:26:20 Darien says, "I didn't do the robbery." He then says he didn't go into the house. PO says, "Where were you?" Darien says, "We'll talk about this later." PO says, "Okay, so the day after Wilson and Robert and those other idiots went inside, I keep forgetting the other guy's name, Lowman, is that right?" Darien says, "Yeah." PO says, "They went inside, did what they were going to do, you guys came back on the bus. Hid down in South Carolina for a while, came back on the bus, got back to Montgomery county and went your separate ways." Darien agrees. PO says, "but the next day," and Darien says the next day we basically got into a fight because Darien says "look, I been here in South Carolina this long, I've been buying hotels, I'm spending all my money, and you still haven't given me my rental car where the whole reason I came down here was to get my rental car. That's when everybody said I was acting like a little bitch, so that's why when I came back I went my separate ways and when James came by I was like I can't deal with you." PO asks about when James was in jail, Darien agrees they talked on the phone. Darien says that James' mother cautioned him that there was a fugitive warrant for Darien's arrest. Darien says that was Monday (and today is Friday).

At 01:28:30 PO says that Δ is going to get a bed in the hospital but that uniformed officers will be with him all night. PO says he's going to leave and call Darien's mom.

Audio ends at 01:29:22

Never
saw
it
3:00
PM
I
don't
know

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense

1330 Lady Street, Suite 401

Columbia, South Carolina 29201-3332

Post Office Box 11589

Columbia, South Carolina 29211-1589

Telephone: (803) 734-1330

Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 24, 2019

Mr. Abin Lee Lowman, #248506
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your appeal

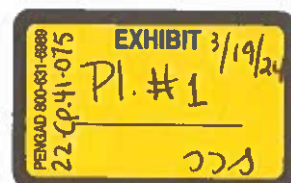
Dear Mr. Lowman:

Enclosed please find a copy of the Anders Brief of Appellant and the Record on Appeal in your case, which I have filed with the South Carolina Court of Appeals. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your appeal. That memorandum should be sent to the Court of Appeals, and **not to me**. The petition to be relieved is a standard part of the Anders procedure, it does not mean that I do not wish to represent you.

In your case, the number of issues were limited. This mistrial issue was the best-preserved issue for you particularly since it was preserved. There was not a contemporaneous objection when the fruits of the arguably illegal stop were admitted into evidence. The only other issues were your statement to the police (p. 91 of the transcript); the Waffle House photographs (Tr. p. 334); the objection to a chain of custody on the bullet (Tr. p. 517); and a directed verdict motion (Tr. p. 996). While there was evidence you did not enter the house, there was an abundance of evidence that you planned and aided and abetted in the burglary, making a serious directed verdict argument impossible. If there are other legal issues not apparent from the trial transcript, you can raise at a later date after your direct appeal is over in post-conviction relief (PCR).

Please contact me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate DefenderRMD/csb
Enclosure

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA

vs.

JAMES CHRISTOPHER WILSON

Criminal No: 8:18-00030

PLEA AGREEMENT

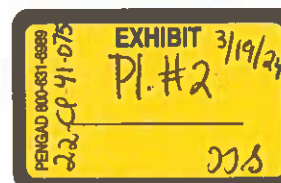
General Provisions

This PLEA AGREEMENT is made this 26th day of April, 2018, between the United States of America, as represented by United States Attorney BETH DRAKE, Special Assistant United States Attorney Justin Holloway; the Defendant, James Christopher Wilson, and the Defendant's attorney, Richard Vieth.

IN CONSIDERATION of the mutual promises made herein, the parties agree as follows:

1. The Defendant agrees to plead guilty to Counts 1 and 2 of the Indictment now pending, which charge "Hobbs Act Robbery," a violation of Title 18, United States Code, Section 1951(a); and "Brandishing a Firearm in Furtherance of a Crime of Violence," a violation of Title 18, United States Code, Section 924(c)(1)(A)(ii).

In order to sustain its burden of proof, the Government is required to prove the following:



Count 1

- A. The Defendant obtained or attempted to obtain property from another without that person's consent;
- B. The Defendant did so by wrongful use of actual or threatened force, violence, or fear; and
- C. As a result of the Defendant's actions, interstate commerce or an item moving in interstate commerce was actually or potentially delayed, obstructed, or affected in any way or degree.

The penalty for this offense is:

18 U.S.C. §§ 1951(a) and 2 - a maximum term of imprisonment of twenty (20) years, a fine of \$250,000, a term of supervised release of three (3) years in addition to any term of imprisonment, plus a special assessment of \$100.

Count 2

- A. The Defendant committed a crime of violence prosecutable in a court of the United States;
- B. The Defendant, as a principal, aider and abettor, and/or co-participant, knowingly used, carried, or possessed a firearm;
- C. The use or carrying of the firearm was during and in relation to, or the possession of the firearm was in furtherance of, the Defendant's crime of violence; and
- D. During the Defendant's crime of violence, the firearm was brandished.

The penalty for this offense is:

18 U.S.C. § 924(c)(1)(A)(ii) - a mandatory minimum term of imprisonment of seven (7) years consecutive to any other sentence, a fine of \$250,000, a term of supervised release up to five (5) years in addition to any term of imprisonment, plus a special assessment of \$100.

- 2. The Defendant understands and agrees that monetary penalties (i.e., special assessments, restitution, fines,

and other payments required under the sentence) imposed by the Court are due immediately and subject to enforcement by the United States as civil judgments, pursuant to 18 U.S.C. § 3613. The Defendant also understands that payments made in accordance with installment schedules set by the Court are minimum payments only and do not preclude the Government from seeking to enforce the judgment against other assets of the Defendant at any time, as provided in 18 U.S.C. §§ 3612, 3613, and 3664(m).

The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands that any monetary penalty imposed is not dischargeable in bankruptcy.

- A. Special Assessment: Pursuant to 18 U.S.C. § 3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.
- B. Restitution: If at issue, the Defendant agrees to make full restitution under 18 U.S.C. § 3556 in an amount to be determined by the Court at the time of sentencing, which amount is not limited to the count(s) to which the Defendant pled guilty, but will include restitution to each and every identifiable victim who may have been harmed by his scheme or pattern of criminal activity pursuant to 18 U.S.C. § 3663. The Defendant agrees to cooperate fully with the Government in identifying all victims.

C. Fines: The Defendant understands that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572.

3. Provided the Defendant complies with all the terms of this Agreement, the United States agrees to move to dismiss the remaining counts of the Indictment (and any other indictments under this number) at sentencing. The Defendant understands that the Court may consider these dismissed counts as relevant conduct pursuant to §1B1.3 of the United States Sentencing Guidelines (U.S.S.G.).
4. Defendant understands that if Defendant is not a United States citizen, the felony conviction in this case may subject Defendant to removal, also known as deportation, which may, under some circumstances, be mandatory. The Court cannot, and Defendant's attorney also may not be able to, advise Defendant fully regarding the immigration consequences of the felony conviction in this case. Defendant understands that by entering a guilty plea Defendant waives any claim that unexpected immigration consequences may render Defendant's guilty plea invalid.
5. The Defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with any bond executed in this

case. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either express or implied, the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw his plea of guilty to the offense(s) enumerated herein.

Cooperation and Forfeiture

6. The Defendant agrees to be fully truthful and forthright with federal, state, and local law enforcement agencies by providing full, complete, and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete, and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within

this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on the part of the Defendant, the Defendant understands that:

- A. the Defendant will not be permitted to withdraw his plea of guilty to the offenses described above;
- B. all additional charges known to the Government may be filed in the appropriate district;
- C. the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and
- D. the Government will use any and all information and testimony provided by the Defendant pursuant to this Agreement, or any prior proffer agreement(s), in the prosecution of the Defendant of all charges.

7. The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that his refusal to take or his failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole election, in the obligations of the Government within the Agreement becoming null and void.

8. The Government agrees that any self-incriminating information provided by the Defendant as a result of the cooperation required by the terms of this Agreement, although available to the Court, will not be used against the Defendant in determining the Defendant's applicable guideline range for sentencing pursuant to the U.S.S.G. The provisions of this paragraph shall not be applied to restrict any such information:

- A. known to the Government prior to the date of this Agreement;
- B. concerning the existence of prior convictions and sentences;
- C. in a prosecution for perjury or giving a false statement;
- D. in the event the Defendant breaches any of the terms of the Plea Agreement; or
- E. used to rebut any evidence or arguments offered by or on behalf of the Defendant (including arguments made or issues raised *sua sponte* by the District Court) at any state of the criminal prosecution (including bail, trial, and sentencing).

9. Provided the Defendant cooperates pursuant to the provisions of this Plea Agreement, and that cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person, the Government agrees to move the Court for a downward departure or reduction of sentence pursuant to

U.S.S.G §5K1.1, Title 18, United States Code, § 3553(e) or Federal Rule of Criminal Procedure 35(b). Any such motion by the Government is not binding upon the Court, and should the Court deny the motion, the Defendant will have no right to withdraw his plea.

10. The Defendant agrees to voluntarily surrender to, and not to contest the forfeiture of, any and all assets and property, or portions thereof, which are subject to forfeiture pursuant to any provision of law, including but not limited to, property in the possession or control of the Defendant or Defendant's nominees. Specifically, the defendant agrees to voluntarily surrender and not contest the forfeiture of property identified in the Indictment, and any forfeiture Bill of Particulars, and a money judgment in amount to be determined by the Court, representing the amount of gross proceeds of the offense(s) of conviction.

Following the entry of this plea agreement, defendant agrees to the Court's prompt entry of a Preliminary Order of Forfeiture incorporating a money judgment as mandated by Fed.R.Crim.P. 32.2, which shall in any event, be submitted for entry before sentencing. Defendant acknowledges that he understands that the entry of a forfeiture money judgment is part of the sentence that will be imposed in

this case, and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J) or otherwise, at any time his guilty plea is accepted.

Firearms

Zastava, Model CZ99, 9mm semi-automatic pistol

Serial Number: T101291

Seized from: James Christopher Wilson

Ammunition

13 rounds of 9mm ammunition

Seized from: Abin Lee Lowman

With regard to each and every asset listed in the Indictment or seized in a related investigation or administrative, state, or local action, the Defendant stipulates and agrees:

The Defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The Defendant also hereby agrees to waive all constitutional, statutory and procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

To its forfeiture herein, if necessary as substitute property under 21 U.S.C. § 853(p), as made applicable by 18 U.S.C. § 982(b)(1) or any other statute, or in a separate administrative or civil judicial proceeding.

That the Defendant has or had a possessory interest or other legal interest in each item or property.

To assist the United States in the recovery of all assets by (i) taking whatever steps are necessary or requested by the United States to pass clear title to the United States; (ii) preventing the disbursement of any moneys and sale of any property or assets; (iii) not encumbering or transferring any real estate after the Defendant's signing of this Plea Agreement; and (iv) directing all financial institutions to turn over and surrender to the United States all funds and records regarding accounts listed in any document signed by the Defendant pursuant to this plea agreement, as criminal proceeds or substitute property.

The Defendant waives all rights to notice of forfeiture under Rule 32.2 and of any other action or proceeding regarding such assets. The Defendant consents and waives all rights to compliance by the United States with any applicable deadlines under 18 U.S.C. § 983(a). Any related administrative claim filed by the Defendant is hereby withdrawn.

Pursuant to Rule 32.2(b)(4), the Defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the Defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the Defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

If the United States discovers that the Defendant has not fully disclosed all assets, the United States may seek forfeiture of any subsequently-discovered assets, and the Defendant agrees to the immediate forfeiture of any such assets.

The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant agrees that Federal Rule of Criminal Procedure 11 and U.S.S.G. § 1B1.8 will not protect from forfeiture, assets disclosed by the Defendant as part of his cooperation. The Defendant further agrees to submit to a polygraph examination on

the issue of assets if it is deemed necessary by the United States.

The Defendant agrees to waive any double jeopardy claims the Defendant may have as a result of a forfeiture proceeding against any of these properties as provided for by this Plea Agreement and agrees to waive any claims that the forfeiture described herein constitutes an excessive fine.

Forfeiture of the Defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the Defendant in addition to forfeiture. The United States may use the value of forfeited property for restitution, but is not required to do so.

The assets to be forfeited specifically include, but are not limited to, a money judgment representing the amount of gross proceeds of the offense(s) of conviction.

The Defendant agrees that the United States shall, at its option, be entitled to the forfeiture of any property (substitute assets) of the Defendant up to the value of the money judgment. The Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the Defendant's sentence.

The Defendant agrees to take all steps necessary to identify and locate all substitute assets and to transfer custody of such assets to the United States before the Defendant's sentencing. The Defendant agrees to take all steps necessary to assist the government in obtaining clear title to any substitute assets before the Defendant's sentencing. In addition to providing full and complete information about substitute assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

11. The Defendant further agrees to voluntarily abandon all right, title, interest, and claim in the firearm and ammunition described above, to wit: a Zastava, Model CZ99, 9mm semi-automatic pistol (serial number T101291) and 9mm ammunition.

Merger and Other Provisions

12. The Attorneys for the Government agree to recommend that the Defendant not be prosecuted or, alternatively, be sentenced to concurrent time for any similar or related state crimes stemming from the incidents on or about March 8, 2017, so long as the Defendant complies with the terms of this Plea Agreement. The Defendant understands that this is only a recommendation and is not binding upon the 11th Circuit Solicitor's Office. Furthermore, the Defendant fully understands that he has no right to withdraw his guilty plea should such recommendation not be followed by the 11th Circuit Solicitor's Office.
13. The Defendant represents to the Court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the

Defendant and his attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witnesses, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings, the right to call witnesses on the Defendant's behalf and compel their attendance at trial by subpoena, the right to confront and cross-examine the Government's witnesses, the Defendant's right to testify on his own behalf, or to remain silent and have no adverse inferences drawn from his silence; and that the Defendant, with the advice of counsel, has weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to this Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

14. The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any

proceedings under 28 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect the Defendant's sentence. This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments in or responses to any post-sentencing matters.

15. The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C.

§ 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

16. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations, and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations, and statements, whether made prior to,

contemporaneous with, or after this Agreement, are null and void.

4/26/18
Date

James Wilson
JAMES CHRISTOPHER WILSON, DEFENDANT

4/26/2018
DATE

Rich Vieth
RICHARD VIETH
ATTORNEY FOR THE DEFENDANT

BETH DRAKE
UNITED STATES ATTORNEY

4/26/2018
Date

Justin Holloway
JUSTIN HOLLOWAY (11684)
SPECIAL ASST. UNITED STATES ATTORNEY

**U.S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Amount**

This statement reflects your special assessment only. There may be other penalties imposed at sentencing. This Special Assessment is due and payable at the time of the execution of the plea agreement.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	08:18-00030
DEFENDANT'S NAME:	JAMES CHRISTOPHER WILSON
PAY THIS AMOUNT:	\$200.00
PAYMENT DUE ON OR BEFORE:	(date plea agreement signed)

**MAKE CHECK OR MONEY ORDER PAYABLE TO:
CLERK, U.S. DISTRICT COURT**

PAYMENT SHOULD BE SENT TO:
Clerk, U.S. District Court
Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, SC 29201

OR HAND DELIVERED TO:
Clerk's Office
Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, SC 29201 (Mon. – Fri. 8:30 a.m. – 4:30 p.m.)

INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER (Do Not send cash)

ENCLOSE THIS COUPON TO INSURE PROPER and PROMPT APPLICATION OF PAYMENT



South Carolina Law Enforcement Division Fusion/SSI Case Status Report

**INFORMATION DATES**Opening 3/10/2017

Progress _____

Completed 3/13/2017**Status**☐

Open

☐

Suspended

☒

Completed

Case Number

39-17-0219

Cross Reference No. _____

Request Type

Cellebrite Download

Character Code

Choose an item.

Character Code

Choose an item.Character Code 12 Burglary/Housebreaking

Hines, GT

Case Agent/Analyst
(last name, initials)Assisting Agent/Analyst
(last name, initials)

Johnson, CL

Supervisor
(last name, initials)

Requesting Agency

Saluda SO

Contact Name

Toby Horne

Contact Information _____

Date Received

3/10/2017

Incident Date _____

Date of Field Work

N/ACourt Orders obtained(#) N/A

Exigent Yes/No

No

Subject Name

Jerry Kirk

Telephone # _____

Service Provider _____

Date of Birth _____

Add'l Phones _____

Add'l Providers _____

Device Make

BLU / Apple / ZTE / Coolpad / HTC

Device Model

See Narrative Below

Device Serial # _____

Search Warrant obtained by

☐

SLED

☒

Other Agency

Misc # _____

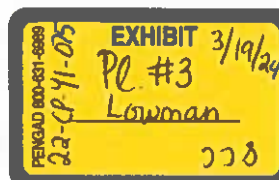
Other Agency

Saluda SOChain of Custody maintained by ☐ SLED ☒ Other AgencyOther Agency? Saluda SOWeapons Recovered No

If yes, type: _____

CrimeNtel Entered NoIf no, why not? No Intel**Report Summary:****Introduction**

On March 10, 2017 S/A Tommy Hines received a request from Captain Toby Horne of the Saluda County Sheriff's Department in reference to a Home Invasion Investigation in Saluda, SC. Cpt. Horne advised that Jerry Kirk had been arrested for potential involvement in a Home Invasion in Saluda. Cpt. Horne provided a BLU Studio Selfie 2, an Apple iPad Mini, an Apple iPhone 6, a ZTE Z793C, a Coolpad 3622A, and an HTC D100L cellular telephones along with corresponding search warrants.



S17-0125, S17-0291, S17-0153, S17-0172

May 21, 2018 Page 33 of 153

Attachments

Copy of Search Warrants
Copy of Extraction Reports (Network Folder)
Copy of Chains of Custody

Summary

On March 10, 2017 S/A Hines attempted to extract the data from the devices. S/A Hines was able to extract the data from the BLU and ZTE devices. The Apple iPad Mini and iPhone 6, along with the Coolpad, were password protected, and unable to be accessed. The HTC device would not power on, even using the backup power system provided by Cellebrite. S/A Hines returned the devices to Cpt. Horne and provided copies of the Cellebrite Extraction Reports on March 13, 2017.

S/A
Tommy
Hines

Digitally signed
by S/A Tommy
Hines
Date: 2017.03.14
09:47:14 -04'00'

Submitting Agent & Date:

Lt. Approval & Date:

 3/16/17



SALUDA COUNTY SHERIFF'S OFFICE

John C. Perry, Sheriff

 100 LAW ENFORCEMENT DRIVE
 SALUDA, SOUTH CAROLINA 29138
 Office: (864) 445-2112 Fax: (864) 445-8829

RECEIPT FOR PROPERTY

CASE NUMBER		DEPARTMENT	LOCATION
201703-531		SALUDA COUNTY SHERIFF'S OFFICE	100 Law Enforcement Drive, Saluda, SC 29138
NAME OF PERSON PROPERTY IS OBTAINED		ADDRESS	
Saluda SO Evidence			
LOCATION OF PROPERTY			
SO			
PURPOSE FOR WHICH OBTAINED			
Examination			
ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLE(S)	
1	1	IPAD S/N F4NKK7C0193	
2	1	iPhone IMEI: 352015071064143	
3	1	ZTE Trac Phone: 803-634-3884 S/N 28216053	
4	1	Coolpad ~~XXXXXXXXXX~~	
5	1	HTC Verizon 4G	

CHAIN OF CUSTODY

ITEM NO.	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE
1-5	3/10/18	Printed Name: T. HORNES Signature: [Signature]	Printed Name: S/A Tommy HINES Signature: [Signature]	Exam
1-5	3/13/17	Printed Name: TOMMY HINES Signature: [Signature]	Printed Name: Tommy Hornes Signature: [Signature]	RETURN
		Printed Name: [Blank] Signature: [Blank]	Printed Name: [Blank] Signature: [Blank]	

Exhibit 3

S17-0125, S17-0291, S17-0153, S17-0172

May 21, 2018 Page 35 of 153



SALUDA COUNTY SHERIFF'S OFFICE

John C. Perry, Sheriff

100 LAW ENFORCEMENT DRIVE
SALUDA, SOUTH CAROLINA 29138
Office: (864) 445-2112 Fax: (864) 445-8829

RECEIPT FOR PROPERTY

CASE NUMBER	DEPARTMENT	LOCATION
201703-881	SALUDA COUNTY SHERIFF'S OFFICE	100 Law Enforcement Drive, Saluda, SC 29138
NAME OF PERSON PROPERTY IS OBTAINED		ADDRESS
Saluda SO Evidence		
LOCATION OF PROPERTY		
SO		
PURPOSE FOR WHICH OBTAINED		
Examination		
ITEM NO	QUANTITY	DESCRIPTION OF ARTICLE(S)
1	1	Blue Cellphone taken from Kirk, Jerry during Arrest

CHAIN OF CUSTODY				
ITEM NO	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE
1	3/10/18	Printed Name: T. HINES Signature: [Signature]	Printed Name: S/A TOMMY HINES Signature: [Signature]	DATA EXTRACTION
1	3/13/17	Printed Name: Tommy HINES Signature: [Signature]	Printed Name: Tommy HINES Signature: [Signature]	RETURN
		Printed Name: Signature:	Printed Name: Signature:	
		Printed Name: Signature:	Printed Name: Signature:	

Detective Chad Bleggi, Montgomery County Department of Police, Special Investigations Division is assisting the Bureau of Alcohol Tobacco Firearms and Explosives (ATF) based out of South Carolina with an on-going home invasion burglary involving a firearm. ATF Special Agents have provided information and statements which have identified Robert GOODWIN as the organizer of the home invasion which took place on March 7th, 2017. Information has been obtained which have led investigators to believe that GOODWIN has returned to Maryland and is likely residing in Montgomery County.

Detective Bleggi spoke with Special Informant [REDACTED] regarding GOODWIN. [REDACTED] indicated that GOODWIN is currently using a cellular telephone with the contact number (240) 474-6655. [REDACTED] indicated that he/she has knowledge of GOODWIN recently being in Montgomery County and in the Silver Spring area. [REDACTED] stated that GOODWIN does not remain in one location for extended periods and may be difficult to locate.

Detective Bleggi conducted a query and found that telephone number "240-474-6655" is affiliated with T-Mobile and has been identified to be associated with "Robert Goodwin" via the Reverse Phone Gateway Detail.

Detective Bleggi confirmed that Robert GOODWIN currently has an outstanding felony warrant from South Carolina for the same above referenced incident.

Detective Bleggi believes that a pen register and geographic locator pings would be greatly beneficial in locating GOODWIN and a current location where he may be keeping stolen firearms, jewelry and other items taken from the March 7th, 2017 incident in South Carolina.

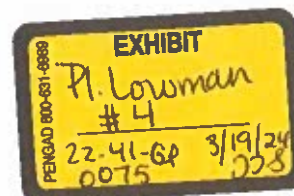


EXHIBIT #5

S17-0125, S17-0291, S17-0153, S17-0172

February 16, 2018 Page 1 of 131

Detective Bleggi Notes



VOLUNTARY STATEMENT

CASE # 32-17-0038

LEAD # _____

LAST NAME <u>Legon</u>	FIRST NAME <u>Travis</u>	MIDDLE NAME <u>Lamont</u>	AGE <u>39</u>	D.O.B. [REDACTED]
NICKNAME/AKA	M ☒ F ☐	SSN [REDACTED]	STREET ADDRESS [REDACTED]	
CITY <u>Aiken</u>	STATE <u>SC</u>	ZIP <u>29801</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION <u>Taxi driver</u>	
EMPLOYER <u>Aiken Taxi</u>	EMPLOYER ADDRESS <u>310 Beaufort St</u>			
DRIVER'S LICENSE [REDACTED]	DATE AND TIME OF INTERVIEW <u>3-23-17 11:45 am</u>			
LOCATION OF INTERVIEW <u>310 Beaufort St</u>				
INTERVIEWING AGENT <u>JC BUSBEE</u>	DEPARTMENT <u>MIDLANDS</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Travis Legon understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the 12 grade in school.

I pick two guys up from Burger King said they wanted to go to Columbia Bus station told me they was from New York they was only here to visit then was in a hurry one was short with glass they light skin with Afro

Phup Burger King - Richland Ave 3-9-17 About 1:00 pm

took to Columbia Bus Station near Ex 63

Said they bring Drugs down to South Carolina and they bring them every month

TL

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

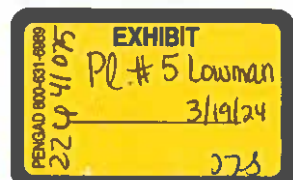
Date: 3-23-17 Time: 11:53

Travis Legon
Signature of person giving voluntary statement

WITNESS: JC BUSBEE

WITNESS: _____

I certify that I have been given a copy of this statement consisting of 1 pages.





VOLUNTARY STATEMENT

CASE # 32-17-0038

LEAD # _____

LAST NAME <u>Strong</u>	FIRST NAME <u>Charles</u>	MIDDLE NAME <u>Joshua</u>	AGE <u>31</u>	DOB [REDACTED]
NICKNAME/AKA <u>Josh</u>	M ☒ F ☐ S ☐	STREET ADDRESS [REDACTED]		
CITY <u>Aiken</u>	STATE <u>SC</u>	ZIP <u>29801</u>	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE [REDACTED]	WORK TELEPHONE [REDACTED]	CELL TELEPHONE [REDACTED]	OCCUPATION <u>Taxi Driver</u>	
EMPLOYER <u>Aiken Taxi Transport</u>		EMPLOYER ADDRESS <u>310 Beaufort St NE Aiken SC</u>		
DRIVER'S LICENSE NUMBER/STATE <u>SC</u>		DATE AND TIME OF INTERVIEW <u>3-23-17 11:30</u>		
LOCATION OF INTERVIEW <u>Aiken Taxi</u>				
INTERVIEWING AGENT <u>SC BUSBEE</u>	DEPARTMENT <u>MIDLANDS</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Charles Strong understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the 11th grade in school.

I got the call to go and pick someone up at the Burger King on Richland Ave. I got there about 12:30. ~~I took them to~~ there were three guys waiting. I took the taller black guy with the tattoo on his face. He told me he was wanting to go to Ridge Spring. I don't remember the name of the apartments but there was a horseshoe driveway right beside it. ~~when~~ I dropped him off on the horseshoe driveway and he walked to the apartments. The fare was around \$2.00. He told me his friends were going to Columbia bus station. The day I picked them up was on march 9th 2017.

CJS

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 3-23-17 Time: 1150

[Signature]

Signature of person giving voluntary statement

WITNESS: SC BUSBEE

WITNESS: _____

I certify that I have been given a copy of this statement consisting of 1 pages.

3/2/2017 11:50:28 PM(UTC-5), +14434845268, Deleted
These country folks they Shoot for fun

they talking about Guns

Status: Sent
Delivered: 3/2/2017 11:50:28 PM(UTC-5)
Read: 3/2/2017 11:43:42 AM(UTC-5)

1185	Participants: +14434845268 ... +17189028060 Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1245.txt	Start Time: 3/2/2017 11:49:59 PM(UTC-5) Last Activity: 3/2/2017 11:49:59 PM(UTC-5) Number of attachments: 0	Yes

3/2/2017 11:49:59 PM(UTC-5), +17189028060 (), Deleted
But do they know how to use it tho

Status: Read
Read: 3/2/2017 11:50:07 PM(UTC-5)

1186	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1246.txt	Start Time: 3/2/2017 11:49:00 PM(UTC-5) Last Activity: 3/2/2017 11:49:00 PM(UTC-5) Number of attachments: 0	Yes

3/2/2017 11:49:00 PM(UTC-5), +14434845268, Deleted
A fight on the way out is manageable. A fight on the way in and the whole move is over

Status: Sent
Delivered: 3/2/2017 11:49:00 PM(UTC-5)
Read: 3/2/2017 11:49:00 PM(UTC-5)

1187	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1247.txt	Start Time: 3/2/2017 11:46:53 PM(UTC-5) Last Activity: 3/2/2017 11:46:53 PM(UTC-5) Number of attachments: 0	Yes

3/2/2017 11:46:53 PM(UTC-5), +14434845268, Deleted
Hope it's that easy but tbh i don't think it's gonna be a walk in the park they gonna fight back I seen what they got today they got some bigger and better shit and my shit not no lil shit

*you seen what they got
you already got your weapon*

Status: Sent
Delivered: 3/2/2017 11:46:53 PM(UTC-5)
Read: 3/2/2017 11:48:56 PM(UTC-5)

1188	Participants: +14434845268 ... +17189028060 Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1248.txt	Start Time: 3/2/2017 11:45:45 PM(UTC-5) Last Activity: 3/2/2017 11:45:45 PM(UTC-5) Number of attachments: 0	Yes

3/2/2017 11:45:45 PM(UTC-5), +17189028060 (), Deleted
Just gotta be quick and precise right ?

Status: Read
Read: 3/2/2017 11:45:48 PM(UTC-5)

1189	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1249.txt	Start Time: 3/2/2017 11:44:25 PM(UTC-5) Last Activity: 3/2/2017 11:44:25 PM(UTC-5) Number of attachments: 0	Yes

3/2/2017 11:44:25 PM(UTC-5), +14434845268, Deleted
By any means

Status: Sent
Delivered: 3/2/2017 11:44:25 PM(UTC-5)
Read: 3/2/2017 11:45:00 PM(UTC-5)

1190	Participants: +14434845268 ... +17189028060 Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1250.txt	Start Time: 3/2/2017 11:44:13 PM(UTC-5) Last Activity: 3/2/2017 11:44:13 PM(UTC-5) Number of attachments: 0	Yes

3/2/2017 11:44:13 PM(UTC-5), +17189028060 (), Deleted
So what are you gonna do ?

Status: Read
Read: 3/2/2017 11:44:17 PM(UTC-5)

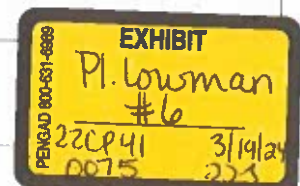


Exhibit #8

1191	Participants: +14434845268 ... +17189028060 Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1251.txt	Start Time: 3/2/2017 11:43:34 PM(UTC-5) Last Activity: 3/2/2017 11:43:34 PM(UTC-5) Number of attachments: 0	Yes
3/2/2017 11:43:34 PM(UTC-5), +17189028060 (), Deleted Jesus Status: Read Read: 3/2/2017 11:43:42 PM(UTC-5)			
1192	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1252.txt	Start Time: 3/2/2017 11:43:29 PM(UTC-5) Last Activity: 3/2/2017 11:43:29 PM(UTC-5) Number of attachments: 0	Yes
3/2/2017 11:43:29 PM(UTC-5), +14434845268, Deleted But I didn't come down here for nothing..... Status: Sent Delivered: 3/2/2017 11:43:29 PM(UTC-5) Read: 3/2/2017 11:43:29 PM(UTC-5)			
1193	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1253.txt	Start Time: 3/2/2017 11:42:54 PM(UTC-5) Last Activity: 3/2/2017 11:42:54 PM(UTC-5) Number of attachments: 0	Yes
3/2/2017 11:42:54 PM(UTC-5), +14434845268, Deleted Tomorrow is the big day but I feel like were overpowered in the <u>artillery</u> Status: Sent Delivered: 3/2/2017 11:42:55 PM(UTC-5) Read: 3/2/2017 11:42:55 PM(UTC-5) on the 2 nd			
1194	Participants: +14434845268 ... +17189028060 Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1254.txt	Start Time: 3/2/2017 11:42:20 PM(UTC-5) Last Activity: 3/2/2017 11:42:20 PM(UTC-5) Number of attachments: 0	Yes
3/2/2017 11:42:20 PM(UTC-5), +17189028060 (), Deleted Why ? Status: Read Read: 3/2/2017 11:42:21 PM(UTC-5)			
1195	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1255.txt	Start Time: 3/2/2017 11:42:12 PM(UTC-5) Last Activity: 3/2/2017 11:42:12 PM(UTC-5) Number of attachments: 0	Yes
3/2/2017 11:42:12 PM(UTC-5), +14434845268, Deleted Smh I'm beyond frustrated rn Status: Sent Delivered: 3/2/2017 11:42:13 PM(UTC-5) Read: 3/2/2017 11:42:18 PM(UTC-5)			
1196	Participants: +14434845268 ... Source: iMessage: +14434845268 Source Extraction: File System, Logical (2) Body file: chat-1256.txt	Start Time: 3/2/2017 11:40:20 PM(UTC-5) Last Activity: 3/2/2017 11:40:20 PM(UTC-5) Number of attachments: 0	Yes
3/2/2017 11:40:20 PM(UTC-5), +14434845268, Deleted Ahh you'd be stuck w me for life Status: Sent Delivered: 3/2/2017 11:40:21 PM(UTC-5) Read: 3/2/2017 11:42:18 PM(UTC-5)			

Prosecution
ProsecutorialState V. Abin Lee Lowman

On May 21, 2018, I, Investigator Jesse Quattlebaum of the 11th Circuit Solicitor's Office, accompanied Solicitor Hubbard and Assistant Solicitor Radlein to Newberry to speak with Charles Harmon in reference to the above case. Mr. Harmon indicated that Colby Strickland and Fred Wideman may have knowledge about the case.

On May 21, 2018, I spoke with Fred Wideman via telephone about the incident. Mr. Wideman stated that on the evening before the incident, he and his two brothers were standing in the parking area of Persimmon Hill Golf Club talking after playing a round of golf. Mr. Wideman stated that his brother, saw a vehicle that Mr. Wideman described as a light color Mercury or Crown Vic. Mr. Wideman stated that he remembered the vehicle having a different color roof. Mr. Wideman stated that the vehicle passed by the golf course a total of three times at a slow rate of speed. Mr. Wideman stated the vehicle appeared suspicious to the three brothers, to the point that one of his brothers questioned if he should return to his vehicle and retrieve his firearm. Mr. Wideman stated that he could not see who was driving the vehicle or how many passengers were inside because the windows were tinted. I ended my conversation with Mr. Wideman.

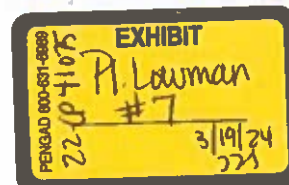
On May 22, 2018, I sent a message to Colby Strickland requesting that she call me in reference to the above case. Mrs. Strickland called me on the morning of May 23, 2018. I asked Mrs. Strickland if she had any knowledge of the case. Mrs. Strickland stated that on the evening before the incident, she was on her way home and turned onto Persimmon Drive, she guessed between a few minutes after five o'clock and five-thirty. Mrs. Strickland stated that as she turned onto Persimmon Drive, she observed a cream-colored or silver-in-color Grand Marquis or Crown Victoria with a blue rag-top parked at the stop sign at the intersection of Persimmon Drive and SC Highway 121. Mrs. Strickland stated the driver's window was down and she observed a black male in the driver's seat and a black male in the passenger's seat. Mrs. Strickland stated that the driver's head was turned to the right and did not see his face. Mrs. Strickland stated that the driver waved at her by "throwing up his hand", and turned right onto SC Highway 121 toward Saluda. Mrs. Strickland stated that once she arrived home, she was there briefly, and left to go back to Saluda with her husband. Mrs. Strickland stated that roughly half-way to Saluda from her home, she observed the same vehicle parked on a side pull off pointed in the direction of Persimmon Hill. Mrs. Strickland stated that she mentioned to her husband that the vehicle was the same one that she had seen coming off of Persimmon Drive earlier. I ended my conversation with Mrs. Strickland.

what would be
the day I was
supposed to have too
return there

2 people

* *


Investigator Jesse Quattlebaum

11th Circuit Solicitor's Office

I have it

Received
After
Court was over

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

AFFIDAVIT

Personally appeared before me, one Lt. W.R. Padgett, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

The Electronic devices seized via lawful search warrant in Edgefield County and released to Saluda County. The devices were seized from the vehicle in which Abin Lowman was operating when arrested. Devices are listed as follows: iPad S/N: F4NKK7CW193; iPhone IMEI: 352015071064143; ZTE True Phone 803-634-3884 S/N: n8n16653; Coolpad Phone and HTC Phone. As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to device information, passwords, encryption keys, access codes, SIM passwords, files, programs, ringtones, pictures, videos, audio, phonebooks, date books, call history, voice-mail, email, MMS messages, SMS Messages, instant messages, databases, applications, and geographical information taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation. Proof of ownership to include correspondence, registration keys or similar items.

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED

The Electronic devices seized via lawful search warrant in Edgefield County and released to Saluda County. The devices were seized from the vehicle in which Abin Lowman was operating when arrested. Devices are listed as follows: iPad S/N: F4NKK7CW193; iPhone IMEI: 352015071064143; ZTE True Phone 803-634-3884 S/N: n8n16653; Coolpad Phone and HTC Phone. As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to device information, passwords, encryption keys, access codes, SIM passwords, files, programs, ringtones, pictures, videos, audio, phonebooks, date books, call history, voice-mail, email, MMS messages, SMS Messages, instant messages, databases, applications, and geographical information taken from, derived from or contained in the computer components and storage media described in the above listed systems or devices seized pertaining to this investigation. Proof of ownership to include correspondence, registration keys or similar items.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

The affiant, W.R. Padgett, is employed by the Saluda County Sheriff's Office as an Investigator. The affiant has been a certified law enforcement officer in the state of South Carolina for almost thirteen years. The affiant is a commissioned law enforcement officer empowered to enforce the laws of this state to include serving arrest warrants and search warrants. The affiant has almost five years of experience in working investigations. The affiant has attended and completed several hours of specialized training in working fugitive investigations, conducting undercover surveillance, cellular telephone forensics, and at various schools.

As a result of the affiant's experience and training, a search warrant is requested based on the following facts: While investigating a burglary, and kidnapping that occurred at 106 Birdie Ct in Saluda County deputies located video footage of Mr. Lowman's vehicle near the incident location. Investigators then learned that Lowman was arrested near the time of the incident in Johnston which is less than 10 miles from the incident location. Once the investigators contacted the tow company it was learned that the vehicle was equipped with a GPS and the tow driver was attempting to reposes the vehicle. The tow driver give a statement that he found the car with GPS at a location on Fairway TRCE and according to Google distance measurement the vehicle was approximately 900 feet from the victim's residence. These five devices were seized from the vehicle in Edgefield County via a search warrant signed and executed by Edgefield Deputies.

Sworn to and Subscribed before me
9 day of March, 2017.

Signature of Judge

Affiant

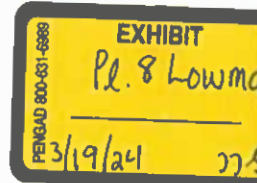
Address

100 LAW ENFORCEMENT DR
SALUDA, SC 29138

Phone

(864) 445-2112

Lowman Devices



RETURN

I received the attached Search Warrant, and have executed it as follows:

On _____, at _____ o'clock PM. I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with The Device

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Due to the exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of these devices(s), the results of any forensic analysis will be maintained by law enforcement for any subsequent legal proceedings.

DATA EXTRACTED FROM ZTE DEVICE AND STORED IN ELECTRONIC FORMAT

IPAD PASSWORD LOCKED AND UNABLE TO BE DOWNLOADED

IPHONE PASSWORD LOCKED AND UNABLE TO BE DOWNLOADED

HTC DEVICE COULD NOT POWER ON, UNABLE TO BE DOWNLOADED

GOOGLE DEVICE LOCKED AND UNABLE TO BE DOWNLOADED.

← Exn. B. 1 50

This inventory was made in the presence of _____ AND _____.

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me
this _____ day of _____, 2017.

Signature of Judge

(Signature of Officer Executing Warrant)

Lowman Devices

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

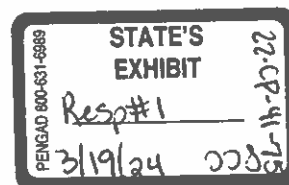
Title of Investigation: Tidwell Home Invasion; LOWMAN, GOODWIN, DARIEN, WILSON	Investigation Number: 763055-17-0115	Report Number: 12

SUMMARY OF EVENT:

On April 23, 2018, Special Agent (S/A) Nick Matkins and Special Assistance United States Attorney (SAUSA) Justin Holloway conducted a proffer interview with James Christopher WILSON at the Anderson city jail. Present during the interview was WILSON's attorney, Rick Veith.

NARRATIVE:

1. On April 23, 2018, S/A Matkins and SAUSA Holloway met with James Christopher WILSON at the city jail in Anderson, South Carolina. S/A Matkins and SAUSA Holloway met with WILSON for the purpose of conducting a proffer interview prior to WILSON's guilty plea scheduled for April 26, 2018. The interview was audio recorded.
2. SAUSA Holloway began by explaining the purpose of the interview. SAUSA Holloway also reviewed WILSON's federal charges and briefly discussed WILSON's plea agreement and cooperation with both the state and federal prosecution of WILSON's co-defendant(s). SAUSA Holloway advised WILSON that he could not make WILSON any promises regarding the prosecution of his state charges in Saluda County, but advised that he would make the Saluda County solicitor aware of any assistance WILSON provided the government.
3. WILSON again provided a detailed description of the plan to rob Danny and Lynda Tidwell, as well as the actions by WILSON and his co-defendants Joshua DARIEN, Robert GOODWIN, and Abin LOWMAN during the planning, preparation, and execution of the home invasion. WILSON's recollection was generally consistent with the statement he had previously provided to S/A Matkins and Task Force Officer (TFO) Terry Casey on March 22, 2017.



Prepared by: Timothy N. Matkins	Title: Special Agent, Greenville Field Office	Signature: 	Date: 05/14/2018
Authorized by: Michael W. Dixon	Title: Resident Agent in Charge, Greenville Field Office	Signature: 	Date: 5/17/2018
Second level reviewer (optional): Wayne L. Dixie, Jr	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

Title of Investigation: Tidwell Home Invasion; LOWMAN, GOODWIN, DARIEN, WILSON	Investigation Number: 763055-17-0115	Report Number: 12

4. There were two occasions where the information provided by WILSON during the proffer interview was inconsistent with information WILSON had given during the March 22, 2017 interview. The first inconsistency was WILSON'S account of where the firearm was purchased. During the initial interview WILSON stated that he and his three co-defendants had driven approximately two (2) hours to a city that started with the letter "S" to purchase the Zastava 9mm pistol. During the April 23, 2018, interview WILSON stated that he believed that the city where they purchased the firearm started with a "G." The second inconsistency was regarding the jewelry that was stolen from the Tidwell's home. During the initial interview WILSON informed S/A Matkins that he and his co-defendant DARIEN had discarded the jewelry in the woods behind the hotel beside the Waffle House. During the April 23, 2018 interview, WILSON admitted that he and DARIEN retrieved the jewelry from behind the hotel near the Waffle House and took it with them to Maryland. When asked why he did not tell S/A Matkins this information during his prior interview, WILSON stated that he did not want to get the individual to whom he sold the jewelry in trouble (because she knew nothing about the robbery or that the jewelry was stolen).
5. Due to another appointment on his schedule, Attorney Veith was unable to stay throughout the entire interview. However, both WILSON and Attorney Veith agreed that WILSON was comfortable continuing to speak with S/A Matkins and SAUSA Holloway without Attorney Veith present.

Attachment:

- CD containing audio recording of proffer interview with James Christopher WILSON on April 23, 2018

STATE OF SOUTH CAROLINA



S.R. HUBBARD III
SOLICITOR, ELEVENTH JUDICIAL CIRCUIT

May 21, 2018

Robert T. Williams, Esquire
Post Office Box 2390
Lexington, SC 29071

Andrew Farley, Esquire
137 East Butler Street, Suite 2
Lexington, SC 29072

Derek Chiarenza, Esquire
Post Office Box 340
Lexington, SC 29071

Thomas M. Leddy, Esquire
1522 Lady Street, Suite B
Columbia, SC 29201

Re: *State v. Abin Lowman, Robert Goodwin, James Willson, Joshua Darien*

Dear Defense Counsel:

Please find an attached PDF file containing discovery date stamped May 21, 2018 and consecutively numbered from 1-153, as well as three discs labeled the following on the above referenced case:

1. A CD labeled "Tidwell Home Invasion 17-0115 – James Wilson Proffer Interview"
2. A DVD labeled "State v. Lowman, Goodwin, Wilson, Darien – T-Mobile, US Inc. Tracking ID: 1819391"
3. A DVD labeled "State v. Lowman, Goodwin, Wilson, Darien – iPhone 5S-8 (A1533)"

Please note that while the third listed DVD has information that has previously been turned over, there are folders on this disc that were not included.

Personal identifying information may be redacted to include: social security numbers, victim/witness addresses, and/or phone numbers.

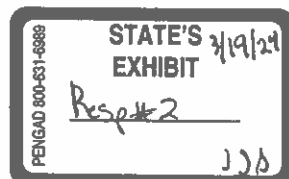
If you have any questions regarding this matter, please do not hesitate to contact me. I look forward to working with you towards a conclusion to this matter.

Sincerely,

/s/

S.R. Hubbard III
Solicitor

Enclosures
/CJG



STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Abin Lowman, #248506,)

Case No.: 2022-CP-41-057

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)
_____)

This matter comes before this Court by a *pro se* application for post-conviction relief dated March 9, 2022. In his application, he challenges his convictions for burglary in the first degree, armed robbery, 2 counts of kidnapping and criminal conspiracy. The Respondent filed a Return in the matter on March 15, 2024. The Applicant, through counsel Chelsey Marto, filed an amended application on March 15, 2024. He alleges allegations of ineffective assistance of counsel and prosecutorial misconduct.

On March 19, 2024. An evidentiary hearing was convened before this Court. The Applicant was present and represented by his appointed counsel, Chelsey Marto. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received by the Applicant, his trial counsel Robert "Theo" Williams, Solicitor Rick Hubbard, and Assistant Solicitor Sutania Fuller. This Court makes the following findings and conclusions:

Procedural History

Applicant, Abin Lowman, is presently confined in the South Carolina Department of Corrections, pursuant to orders of commitment from the Saluda County Clerk of Court. Applicant was indicted at the June, 2018 term of the Saluda County Grand Jury for the offenses of burglary in the first degree, armed robbery, two counts of kidnapping, and criminal conspiracy. R. 1065 -

1074. His case was called to trial on June 18, 2018, before the Honorable Eugene C. Griffith, Jr., and a jury. Robert Theodore Williams, Sr., represented Applicant. Solicitor Richard Samuel Hubbard and assistant solicitor Sutania Fuller represented the state. R.1.

On June 22, 2018, the jury found Applicant guilty on all counts. R. 1057, 11. 13-20. Judge Griffith sentenced Applicant, based upon his prior record and the service of the life without parole notice, to life imprisonment concurrent on all of the convictions with the exception of criminal conspiracy. On the criminal conspiracy conviction, Judge Griffith sentenced Applicant to five years imprisonment, concurrent. R. 1062, 11. 14-19.

Direct Appeal

The Applicant appealed to the South Carolina Court of Appeal. He was represented in the appeal by Chief Appellate Defender Robert M. Dudek. On July 29, 2019, counsel made an Anders Brief Of Appellant and petition to be relieved as counsel pursuant to *Anders v. California*. 386 U.S. 738, 87 S.Ct. 1396 (1967) raising the following arguable issue:

Whether the court abused its discretion by refusing to declare a mistrial where codefendant James Wilson testified on direct examination for the state that appellant allegedly chose him as an accomplice in the crime because Wilson had "looked out for him" when appellant got out of prison, since evidence appellant had been in prison was an impermissible comment on his character, it was extraordinarily prejudicial, it denied appellant a fair trial, and a mistrial was the only cure for the prejudice.

Anders Brief of Appellant, p. 1. On May 18, 2021, the South Carolina Court of Appeals dismissed the appeal after Anders review. *State v. Lowman*, Unpublished Op. No. 2021-UP-172 (S.C. Ct. App. May 18, 2021). The remittitur was issued on June 28, 2021.

Attachments

Respondent attaches, and incorporates by reference, the following:

1. Direct Appeal Materials:

- a. Anders Brief of Appellant.
 - b. Record on Appeal - 32 volumes –
 - c. State v. Lowman , Unpublished Op. No. 2021-UP-172
(S.C. Ct. App. May 18, 2021)
2. Other materials.
- a. Saluda Clerk of Court Records related to the materials.
 - b. SCDC records related to the conviction.

Allegations

In his original applications, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- 1. Ineffective Assistance of Counsel.
- 2. Prosecutorial Misconduct

(PCR App. at 3).

Amended Application

In the Amended application dated March 11, 2024, the Applicant, through counsel Chelsey Marto, alleges:

- 1. Ineffective assistance of counsel for:
 - a. Proceeding forward with the wrong trial strategy. Specifically, counsel should have argued to the jury that Applicant was not involved with the other defendants in the case, nor was within the vicinity of the crime at the time of the home invasion.
 - b. Failure to obtain a favorable plea offer.
 - c. Failure to present a zealous defense at trial.
 - d. Failure to preserve important issues on appeal.
 - e. Failure to effectively cross-examine witnesses, especially Wilson and Darien concerning their prior inconsistent statements.
 - f. Failure to object to Wilson's tangent about why Applicant selected him to commit the crime as being non-responsive. (Tr. 782).
 - g. Failure to successfully move for a mistrial based upon Wilson's statement about Applicant recently being released from prison.
 - h. Failure to request a curative instruction when counsel's motion for a mistrial was denied. (Tr. 785).

- i. Failure to investigate potential plea resolutions Applicant's co-defendants had.
 - j. Failure to cross-examine Wilson concerning the federal plea resolution he had entered several months before the trial.
 - k. Failure to argue pre-trial that there was no reasonable suspicion backing the traffic stop.
 - l. Failure to argue pre-trial that there was no probable cause to believe an offense was committed because of the tinted windows.
 - m. Failure to challenge Applicant's arrest based upon a lack of exigent circumstance.
 - n. Failure to challenge the chain of custody regarding the bullets. (Tr. 517).
 - o. Failure to object to jury instructions being given before closing arguments.
 - p. Failure to object to Applicant's statements to the police on hearsay grounds. (Tr. 991-93).
2. Prosecutorial Misconduct:
- a. Applicant believes prosecutorial misconduct occurred because of alleged falsehoods the investigators and Applicant's co-defendants stated at trial.
 - b. For not disclosing that Wilson had entered a plea agreement months before Applicant's trial.
 - c. For obtaining the wrong gas station surveillance footage when, had the right footage been obtained, Applicant believes he would have been exonerated.
 - d. For arguing that the tinted windows was the basis for the stop.
 - e. For stating that Applicant made statements to the police when Applicant's position is that the statements were never made.
 - f. For threatening Steven Brown with jail time if he did not testify.
 - g. For fabricating a fourth person being on location after Applicant's charges had been pending for some time.
 - h. For submitting that calls were made involving a phone that was broken and could not be extracted from.

FACTUAL BASIS OF CASE

Danny Tidwell and his wife, Lynda, were the owners of Tidwell's Jewelry Store in Johnston, South Carolina. They had owned and operated that jewelry store for forty-two years. R. 162, l. 12 - 163, l. 3. They owned three jewelry stores, although the main store was in

Johnston. R. 163, 11. 7-20.

The Tidwells lived in a large house on the Persimmon Hill golf course subdivision in Saluda, South Carolina. R. 164, 1. 14 - 165, 1. 13. Mr. Tidwell remembered on March 8, 2017, he and Lynda, followed their usual routine of driving home from Johnston to Saluda after the jewelry store closed for the evening at six o'clock. However, on this particular night, Mr. Tidwell stopped at a Mexican restaurant near their home to purchase a take-out dinner. R. 167, 1. 11 - 172, 1. 24.

At around seven o'clock that night, they went by his daughter's house in the same golf course subdivision, and then Tidwell drove the extra block or so home. "I noticed a car that was not familiar to me at all. It's only seven neighbors that live back in that part and I know all of them and I know what they drive and it just was different. I didn't really think about it other than that's odd. I wonder who they are visiting or it was just strange. I had never seen that car before." R. 172, 120-173, 1. 25. The strange car was a Mercury Marquis owned by Applicant's mother. R. 174, 11. 1-5.

As usual, Tidwell went to sleep at about 8:30 that night, and he testified that his wife usually was "not too far behind me. Tidwell remembered awakening to a noise that he thought was their under-the-counter ice machine in his kitchen. R. 175, 11. 9-23. However, Tidwell said the next thing that happened was "I hear men in my house hollering, 'ATF. ATF. Come out with your hands up.' I rolled over and wake [awakened] my wife. She might have already been awakened. I don't know. But I asked her, I said, we need to cooperate thinking that it was law enforcement." R. 182, 11. 1-15. Tidwell thought it was law enforcement but that they had "the wrong address." Tidwell and his wife were placed on the carpet, and they had their hands tied behind their backs with zip ties. R. 182, 11. 16-24.

Tidwell said he quickly realized the men were not law enforcement based on their vulgar language, and from them demanding to know "Where's your valuables? Where's your belongings? Don't lie to me. I'll blow your F'ing head off." R. 182, l. 25 - 183, l. 11. Tidwell told one of the three inquiring men that he did not have a safe in his house. One of the men then asked Tidwell how he could own a jewelry store, and not have a safe in his house. R. 183, l. 12- 190, l. 23. Tidwell gave one of the men the alarm codes, the safe combinations for the jewelry store safe, as well as the store keys. R. 191, l. 7 - 197, l. 14. Tidwell said the men assured him that they would not hurt his wife or him as long as they cooperated.

| At one point, Tidwell said he asked one of the men, "If I could pray. I didn't want to offend anybody. And then he said, 'What are you, a Jew?' And I said no. I'm Christian. And he said, 'Yeah. You can pray.'" R. 197, l. 21 - 198, l. 11.

Tidwell remembered it became quiet, and he saw headlights from a car leaving the area on his ceiling. Mrs. Tidwell got free, untied Danny Tidwell, and they searched for a phone to call the police but all of the phones were gone. Tidwell and his wife then came up with a plan where they would run out of different doors in the house to different neighbor's houses to ensure one of them could safely call the police. No one was injured, and Saluda police officer Dale Hallman was the first police officer on the scene that morning. R. 199, l. 2 - 203, l. 18.

Other police officers soon arrived. The robbers had taken Tidwell's car, a .380 caliber pistol, a silver money clip with about \$3,000 in it, and another \$1,000 from the house. An additional .45 caliber pistol, a pocketknife, and their cell phones were also all stolen. R. 205, l. 17-214, l. 12.

Neither Tidwell nor his wife could identify any of the burglars. They did, however, remember that there were only three men inside the house. One black man was said to be wearing dark glasses, and another man apparently wore "military" like boots. R. 215, 1. 10 - 236, 1. 19.

Tidwell also remembered that about \$100,000 in jewelry was stolen from their bedroom drawers, as well as his wife's diamond ring. R. 247, 11. 5-24. However, the jewelry store was not burglarized and robbed that night or in the early morning as allegedly was planned. R. 236, 11. 3-10.

The state's theory of the case was that one of the accomplices gave Applicant the key to the jewelry store, the alarm code, and the safe combination given to him by Mr. Tidwell during the burglary. Applicant was driving his Grand Marquis to the jewelry store in Johnston to burglarize and rob it when he was stopped by the police. There was a lengthy pre-trial motion to suppress the fruits of the traffic stop of Applicant's Grand Marquis on the basis that the traffic stop was a pretext to assist a repossession agent, James Rutland, in repossessing the Grand Marquis, and not for any legitimate law enforcement reason. This, the defense argued, rendered the traffic stop illegal. The trial judge ruled the traffic stop was legal because the repossession agent, Rutland, told the Johnston police that Lowman was driving without insurance, a legitimate reason to stop Lowman. In addition, the judge accepted the state's claim that law enforcement also had the right to stop Lowman because of the very dark tint on the Grand Marquis, which appeared to be illegal. R. 93 - 141.¹

¹ There was no contemporaneous objection by the defense when the ammunition found in Lowman's trunk, or a shell casing found on the passenger side of the vehicle, or other incriminating items were entered into evidence. R. 515, 1. 1-517, 1. 23.

Tidwell's wife, Lynda Tidwell, remembered the burglary lasted approximately two hours. Her necklace, bracelet, three rings, and a watch were among the items stolen during the burglary. R. 278, 1. 4. - 279, 1. 25. Mrs. Tidwell also remembered after the men left and the car lights disappeared that they went to the neighbor's house and were able to get the neighbors to call the police. R. 296, 1. 20 - 298, 1. 24.

The Tidwells' car had an OnStar tracking device on it. Consequently, the police were able to trace the stolen car to "Old Camp Log Road in Aiken County," where they found the car abandoned. The car was abandoned not far from a Waffle House. R. 307, 1. 12 - 308, 1. 11; R. 321, 11. 8-18.

When law enforcement went to the nearby Waffle House in Aiken County, they went through the trash can in the men's room. They found Mr. Tidwell's apparent silver money clip and a white glove there. 2 R. 328, 1. 22 - 329, 1. 25. Mr. Tidwell never identified the money clip as being his clip.

As a result of surveillance tapes at the Waffle House and one of the Wal Marts in Aiken County where the ammunition was purchased, the suspects, in addition to Applicant, became Joshua Darian, James Christopher Wilson, and Robert Goodwin. R. 386, 11. 3-7.

Lowman's mother purchased the Grand Marquis for Lowman from Jiggie's Truck and Auto Sales in October 2016. R. 407, 1. 11 - 409, 1. 24. The car came with a GPS contract which allowed the car lot to disable the vehicle if there was no insurance on the vehicle, or if the purchaser was behind on the payments. R. 411, 1. 9 - 418, 1. 22. The owner of the car lot was Sheila Rutland. Her husband, James Rutland, was the repossession agent for Hook and Book Recovery Services.

James Rutland remembered that the Grand Marquis was traced on the night of March 7, 2019, to the golf course near the Tidwell home. R. 427, 1. 12 - 431, 1. 22. Rutland found the vehicle there but was unable to repossess it because of the narrow dirt road it was on. Rutland actually had to drive on the golf course to turn around. He was worried about "tearing up the golf course or getting stuck." R. 441, 11. 6-25; r. 470, 1. 20 - 471, 1. 8.

In the interim, Applicant returned to the car and drove away in it. Rutland followed Applicant in the vehicle from the golf course to Johnston. Rutland informed a female police officer in Johnston that there was no insurance on the Grand Marquis Lowman was driving, and that he intended to repossess the vehicle that night. R. 441, 11. 6-25; r. 470, 1. 20 - 471, 1. 8.

Both Rutland and the Johnston police officers claimed that Lowman was not stopped that evening so that Rutland could repossess the car. When Lowman was stopped, he did not have a driver's license. He was arrested for driving under suspension. R. 481, 1. 24-489, 1. 20. He was arrested on the night of the robbery, March 8, 2017. No ticket was apparently issued for the tint on the car windows being illegal. R. 652, 11. 10-16.

A box of nine millimeter ammunition was found in the trunk of the vehicle. R. 494, 1. 1 - 495, 1. 3; r. 515, 1. 1 - 516, 1. 11. In addition, a nine millimeter shell casing was found inside the front passenger seat of the car, along with multiple cell phones and identification cards for Robert Goodwin and Lowman. In addition, walkie talkie handheld radios were found inside the car. R. 556, 1. 2 - 557, 1. 18.

James Wilson was arrested in Maryland on March 11, 2017. R. 652, 11. 17-23. Joshua Darian was also arrested in Maryland on March 24, 2017. R. 653, 11. 4-14. Robert Goodwin was

arrested in Maryland on July 10, 2017. R. 653, 11. 16-21. James Wilson and Joshua Darian testified for the state against Lowman.

James Wilson

James Wilson was charged with burglary in the first degree, two counts of kidnapping, armed robbery, and criminal conspiracy in this case, the same charges for which Lowman was also indicted. R. 689, 11. 14-24. Wilson claimed the solicitor had not promised him anything in return for his testimony against Lowman. Wilson then maintained that Lowman, Robert Goodwin, and Joshua Darian were the other participants in this crime. R. 689, 1. 14-690, 1. 12.

Wilson was from Guyana, South America. He lived in Maryland. Before March, 2017, he had never been to South Carolina. He was twenty-two years old at the time of the burglary. Joshua Darian was eighteen years old. R. 691, 1. 17 - 692, 1. 5.

Wilson claimed that Lowman told him he could come to South Carolina and participate in the robbery of some drug dealers who ran a jewelry store. There was going to be at least \$300,000 involved in the robbery. R. 694, 1. 1 - 695, 1. 1.

Wilson said he was told that Lowman would provide a rental car, the guns, and that they would be given money for hotels, food, and any extra expenses. "Pretty much all we had to do would be to go in there and pretty much rob them, tie them up, lay them down. I was to get the codes." R. 695, 1. 11 - 696, 1. 25.

Wilson said on the day of the robbery, Joshua Darian was driving because Lowman's driver's license had been suspended. Wilson said Lowman went in the Tidwell Jewelry Store that afternoon to buy a ring.³ R. 710, 1. 3 - 711, 1. 22. Wilson said the purpose of this purchase was so Applicant would know the layout of the jewelry store he was to burglarize later that evening. R.

711, 11. 19-22; r. 738, 11. 7-11. Lowman was supposed to rob the jewelry store while the other three men held Mr. and Mrs. Tidwell as prisoners in their golf course home. R. 738, 11. 4-11.

Wilson explained that that night, he went into the Tidwell home with Darian and Goodwin while Lowman remained on the back porch. R. 751, 11. 7-10. Wilson said he was led to believe that the Tidwell Jewelry Store was a front for a drug operation. "People come in there and they look to buy, act like they're buying jewelry . . . but they're buying drugs. He said it was an old bank, had a bank vault in the business and he was going to clean the bank vault out." R. 752, 1.9-753, 1. 12.

Wilson said the men entered the house, they beamed their flashlights into their eyes, and screamed: "ATF." R. 753, 1. 13 - 754, 1. 7. They then tied up Mr. and Mrs. Tidwell with the zip ties, obtained the security codes, the combination to the safe, and the store keys for Lowman. They then held the Tidwells as prisoners. R. 754, 1. 17 - 757, 1. 20.

A short time later, Lowman sent a text message to Wilson informing him that he had been "pulled over" by the police. "I really thought he was lying. I didn't believe him to be honest with you because I kind of figured once I realized there was nothing in the house, I kind of figured it was, he kind of used us to go and rob the jewelry store so I'm thinking that he just robbed the jewelry store and just left us. I didn't believe him at all but just to be on the safe side I left. I left the house." R. 766, 1. 23 - 767, 1. 8.

Wilson, Darian, and Goodwin then traveled in the Tidwells' stolen car to Aiken, South Carolina. Wilson explained: "I knew it had OnStar on it so I knew we had a limited time in the car. So once we got back to Aiken, I figured it was time to get rid of the car so I parked it in this like in the woods or whatever." R. 769, 11. 15-22. Wilson saw police officers swarming in the area,

and he threw his gun into a bush by the Waffle House. Wilson would later lead the police to find the gun he threw into the bushes there. R. 772, 1. 4 - 773, 1. 19.

Wilson related that the men were chased through the woods by the police from the Waffle House area for about two hours. They then called a cab and got a ride back to the Econo Lodge in Aiken. From there, Wilson caught a cab to Columbia, and he took a Greyhound bus back to Maryland. R. 774, 1. 15 - 776, 1. 6. Wilson said he only received about \$700 for his part in the crime. R. 823, 11. 19-23.²

Joshua Darian

² Mistrial Motion

Wilson testified on direct examination that "I always had my doubts about this whole situation." He said he did not trust Lowman, and he wondered why Lowman chose him to be a participant in the crime. "[H]e knew a lot of people, so why did he pick me? And his best answer was I looked out for him rather than some of his home boys when he first got of, I guess, prison. Something about the whole situation didn't sit right with me so I took a picture of his ID just in case anything foul happened." Defense counsel told the judge he had a matter of law at this point. R. 782, 11. 6-21.

Defense counsel then moved for a mistrial, noting there had been no evidence of Applicant's prior criminal record before the jury, and that the jury now knew Lowman had been in prison. R. 782, 1. 25 - 783, 1. 6.

The solicitor argued that she did not intentionally elicit this testimony that Lowman had been in prison. The solicitor also urged there was not enough prejudice from the mention of Lowman having been in prison to justify a mistrial. Further, the solicitor reasoned the jury was later going to hear a stipulation that Lowman had two prior burglary convictions. "I think we can minimize this and not cause any prejudice to the defendant at this stage in the trial." R. 783, 11. 8-23.

The judge also noted the indictments placed the jury on notice of Lowman's two prior burglary convictions. The judge also reasoned that Lowman's character had already been placed at issue through testimony about Lowman planning the robbery. Defense counsel countered, "That's his [the witness's] opinion [of the plan]." R. 784, 11. 8-19. The judge agreed with defense counsel's statement, and he said he could give a curative instruction, but that he was not granting a mistrial. Defense counsel agreed that a curative instruction in this situation would only make the matter worse. The judge then denied the mistrial motion and warned the solicitor to tell his witnesses not to mention Lowman's prior criminal record or prison again. R. 784, 1. 20-785, 1. 24.

Joshua Darian also claimed there was "no deal" in return for his testimony against Lowman. Darian, like Wilson, was facing the same charges. R. 892, 1. 5 - 893, 1. 2. Darian testified that "Wilson let him in on the plan" to rob drug dealers located in South Carolina. The burglary and jewelry store robbery were expected to result in about \$250,000 in stolen money. R. 896, 1.2-897, 1. 23.

On the night of the robbery at the Tidwell home on the golf course, Darian said Lowman remained outside while he went inside the Tidwell home with Wilson and Goodwin. R. 925, 11. 15-22. The men inside were going to provide Lowman with the keys to the jewelry store, the alarm code, and the safe code. R. 926, 11. 16-20.

Darian said his role was "like to be a scavenger over the house, look around in the house trying to find the drugs." R. 928, 11. 15-17. Darian testified once they had the keys and code that Lowman left to go to the jewelry store. Darian said they repeatedly assured the Tidwells that they were not going to harm them. Darian said he got a blanket and a pillow for Mrs. Tidwell while she laid on the floor. R. 929, 1. 13 - 931, 1. 24.

The solicitor again had Darian repeat that he had no deal with him for his testimony against Lowman. Darian also said he had no promises from the federal government for his testimony against Lowman. The federal authorities had apparently charged the men with firearms violations and impersonating federal officials. R. 945, 11. 5-25.

However, the solicitor later asked to recall Darian so Darian could admit that he was making a proffer with federal authorities that would cause a decrease in his federal sentence. Darian still claimed the deal with the federal authorities would have no effect on his state court

charges, although this Court can take judicial notice of the fact Darien's state court sentence ran ultimately was ordered to run concurrent to his federal sentence. R. 980, 1. 5 - 981 , 1. 4.

At the end of the state's case, the judge read the jury a stipulation that Lowman had two prior convictions for burglary in Edgefield County on March 17, 1998, and March 20, 2000. R. 995, 11. 13-23.

DISCUSSION

Strickland v. Washington Standard

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Moreover, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is an applicant's burden to prove, by a preponderance of the evidence, an entitlement to relief. Rule 71.1 (e), SCRPC. See also *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the

circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816; *see White v. Singletary*, 972 F.2d 1218, 1220 (11th Cir. 1992) (instructing reviewing courts evaluating a claim of ineffective assistance of counsel to “at the start presume effectiveness” and “always avoid second guessing with benefit of hindsight”). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” Dunn v. Reeves, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; *see also* Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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.” Strickland, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both Strickland components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v.*

Whiteside, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court will make the findings and conclusions in the order as set out in the amended application for post-conviction relief. Bases upon its review of the entire record and exhibits presented, this Court finds that the entire application must be dismissed. The Court finds as follows:

- I. Ineffective assistance of counsel for:
 - a. **Proceeding forward with the wrong trial strategy. Specifically, counsel should have argued to the jury that Applicant was not involved with the other defendants in the case, nor was within the vicinity of the crime at the time of the home invasion.**

In his first specification, Lowman contends that his counsel used the wrong strategy and argued that he was not involved with the other defendants and was located in a different area at the time of the home invasion. Lowman testified that he felt counsel could have done a better job and felt more investigation should have been done. Lowman stated the strategy was that they had bad people around him who were committing crime. He claimed he had no knowledge of the crime and was convicted of hand of one hand of all. He felt in his mind it was criminal conspiracy. Lowman stated he was in Edgefield and Johnston. He felt that there was an alibi there, but it was not used.

During cross-examination, the Applicant claimed that he said nothing to law enforcement, and not that he was fishing nearby. Lowman asserted that all he said was if he found out something he would let them know. However, he claimed the officers put words in his mouth. Lowman stated that he told counsel Williams that he did not give a statement, and that he had an alibi. Lowman claimed that he said to Williams that he was at his house at the time of the crime, that his vehicle was not in the area at the time of the crime per GPS.

Lowman confirmed that his prior record was extensive at the time. The record included drug crimes, burglary, petty and grand larceny. The Applicant claimed he did not speak to codefendants after the arrest.

Lowman learned that they had a plea deal while he was in county jail. Lowman stated he did not share this with counsel. Lowman claimed that he thought counsel knew and it was discussed in court. Lowman attempted to clarify that he did not know who the deal was with. Lowman stated he shared the information with Counsel at the end of the trial.

Counsel Theo Williams testified that he took his case about a year before trial. He stated that he had no idea how many times they met. He testified that he met with the Applicant more than twice which was what the Applicant suggested. He estimated it was less than ten times. He stated that they went over discovery they received from the State and he gave Lowman a copy of the discovery, as is his normal practice. He stated that he had meeting with Lowman and also his partner Ben Stitely also met with him in Anderson. In addition, he stated that his associate Jason Young also was involved in the representation, but did not participate in the trial.

Williams testified that he spoke with Applicant about defense strategy. Williams stated that it was an easy strategy. He stated that the theory of defense was that none of the three people that went into the victims' house was Lowman and that the victim testimony did not identify Applicant

as having been there. Counsel further stated that it was only circumstantial evidence brought Lowman into the crime because he knew the people involved. Their strategy was that he was not involved at all in the incident.

Counsel was entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies. Harrington v. Richter, 562 U.S. 86, 107, 131 S. Ct. 770, 789, 178 L. Ed. 2d 624 (2011). Under the first prong of Strickland, we apply a “strong presumption” that a trial counsel's strategy and tactics fall “within the wide range of reasonable professional assistance.” Strickland, 466 U.S. at 689, 104 S.Ct. 2052. For a lawyer's trial performance to be deficient, his errors must have been so serious that he was not “functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 687, 104 S.Ct. 2052. And the reasonableness of a lawyer's trial performance must be “evaluated from counsel's perspective at the time of the alleged error and in light of all the circumstances, and the standard of reasonableness *405 is highly deferential.” Kimmelman v. Morrison, 477 U.S. 365, 381, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986); see also Strickland, 466 U.S. at 689, 104 S.Ct. 2052.

“[C]ounsel's strategic decisions will not be found to be deficient performance if he articulates a valid reason for employing the strategy.” Stone v. State, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017). “Under certain circumstances, [] counsel may employ a strategy of not objecting—even when counsel has a good argument for exclusion—if counsel reasonably perceives the benefits of doing so are outweighed by some other consideration.” Id. at 383, 798 S.E.2d at 568. “The necessary converse of this principle is that counsel's decision to employ a certain strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound.” Id. at 384, 798 S.E.2d at 569.

The Applicant has failed in his burden of proof to show deficient performance. Consistent with counsel's credible testimony, the record shows that during the opening statement his argument was the Lowman did not commit the crime, only three people went inside the house, the Tidwells did not identify him, no stolen items were located on him, and guilt by association is inadequate to convict Lowman. Tr.p. 156-162. In his closing statement, counsel Williams urged the jury not to jump to conclusions, the possibility that Lowman is being set up, that only three people were involved, not four according to the victims, why were there two searches of the vehicle, and why was other evidence not put in to support the state's conclusions. Tr.p. 1038-1054.

This Court finds that the theme of the defense throughout the trial was to attack the codefendants credibility and testimony and rely upon the fact that only three were in the house and that none of the three were the Applicant. This Court finds that it was sound strategy reasonably based upon counsel's understanding of the state's discovery and evidence in the case. Counsel also had sufficient meetings with the Applicant to develop the strategy based upon counsel's credible testimony. The Applicant has failed to any present credible evidence to support a strategy different than the one counsel actually presented to the jury. This specification must be dismissed.

b. Failure to obtain a favorable plea offer.

In this allegation, he contends that counsel was ineffective in failing to secure a favorable plea offer. He claimed he wanted a plea offer, but asserted his counsel never spoke with the solicitor about it.

On cross-examination, Lowman stated that if one was offered, he would have taken one. Lowman stated that he did not want to deal with a trial in Saluda. He stated that he was uncomfortable on the stand. Lowman felt that in a trial he would have to beat them at their own profession. However, he would have considered a deal that made sense. When asked, he stated he

would have pled guilty to criminal conspiracy in hindsight with what he knows now. He felt that he had to deal with technicalities and felt he was scapegoat. Lowman stated he was aware of two strike three strike. Lowman confirmed that he would have taken anything under consideration due to his record. He felt he would be in the same situation if he pled guilty to burglary. He noted an open plea would have to be considered. He would have had opportunity to take a plea to have some time left instead of worrying about dying in prison.

Counsel Williams testified that he approached the Solicitor to engage in plea negotiations but was advised that there was no way that the State was going to offer anything in this case. Williams testified that he was told by the Solicitor that the Tidwells were the most respected individuals in Saluda County. He was told that there was no way he would make an offer on this case.

A defendant in a criminal case, however, has “no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial.” Weatherford v. Bursey, 429 U.S. 545, 561, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977). “[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” State v. Armstrong, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975). However, a defendant has no constitutional right to plea bargain. State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct.App.1996), *aff’d as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997). Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999).

Criminal defendants also have a Sixth Amendment right to effective assistance of competent legal counsel, including during the plea-bargaining process. Lafler v. Cooper, 566 U.S. 156, 162 (2012); Padilla v. Kentucky, 559 U.S. 356, 364 (2010). However, Applicant appears to argue that he wants “better legal representation” merely because he wants a more advantageous

plea bargain or at least a plea bargain offer. The prosecutor, not counsel, is responsible for any plea bargain offers.

This Court must find that counsel performed competently in his handling of plea bargains. He approached the Solicitor to see if the government was open to discussing pleas. The Solicitor, as is his right, indicated there would be no plea offers in Mr. Lowman's case. Lowman has failed in his burden in his showing either deficient performance or prejudice in light of both counsel Williams and Solicitor Hubbard's credible testimony that there would be no bargaining in this case. It must be denied.

c. **Failure to present a zealous defense at trial.**

Lowman contended his counsel did not present a zealous defense at trial. On cross-examination Lowman testified that he had two meetings total with counsel Williams and no calls before trial. Lowman claimed at the second meeting, he stayed "for a little while." Lowman complained that he got his status of his case before trial from someone in his office. However, as noted earlier, this Court found credible that counsel Williams alone met with the Applicant more than two but less than ten times, reviewed the discovery and discussed strategy. His complaint is not supported by credible evidence.

Lowman also claimed that he did not know about the “hand of one, hand of all” principle of culpability.³ He also testified that he was confused about LWOP with criminal conspiracy.⁴ Lowman stated that his lawyer never indicated to him that State thought he was the leader,⁵ just that he was a part of it.⁶

Lowman was of the opinion that there was no way he could be charged with crime. He asserted that he did not purchase the weapon and never touched the gun. He confirmed that he bought the bullets, that they were using his vehicle, and therefore the shell casing was in the vehicle. Lowman acknowledged that when he was stopped by law enforcement in his car, the shell casing was found there at that time. (State Exhibit 79 He thinks the casing matched the weapon. Lowman admitted that he spent time with codefendants, including his uncle, Mr. Goodwin.

³ Under the doctrine we refer to in South Carolina as “the hand of one is the hand of all,” the State proves the defendant guilty by proving he had a mutual plan or agreement with another person to commit one crime, and during the course of committing that initial crime, the other person committed a second crime they had not agreed to commit. State v. Harry, 420 S.C. 290, 299, 803 S.E.2d 272, 276 (2017); see also Butler v. State, 435 S.C. 96, 97-98, 866 S.E.2d 347, 348 (2021) (“Under the theory the ‘hand of one is the hand of all,’ when two people join together to commit a crime, and during the commission of that crime one of the two commits another crime, both may be criminally liable for the unplanned crime if it was a natural and probable consequence of their common plan to commit the initial crime.”). State v. Sellers, 442 S.C. 140, 148, 898 S.E.2d 116, 120 (2024).

⁴ The Applicant was served with life without parole notice by the Solicitor on May 14, 2018. Saluda Public Index. See Tr.p. 1061-62.

⁵ This assertion by the Applicant is also not credible. The Solicitor indicated that he was not doing any negotiation on the case. As reflected in his closing statement, the state’s theory was that Lowman was the person who made the plan, chose the people who would help carry out the plan, and that he was in charge. Tr.p. 1026-1027.

⁶ This Court finds that his claimed lack of knowledge about “hand of one, hand of all” doctrine is not credible. The State’s facts were that Lowman was involved in the creation of the crime, provided the transportation, provided the gun yet never entered the Tidwell’s home when he dropped the perpetrators. The defense strategy was to question the link that tied him in as to the burglary, even though he did not enter. This Court finds that he failed to credibly show he was not advised of the principle of the law applicable to his culpability.

Lowman admitted that he spoke Goodwin on the day of the PCR hearing, but he did not talk about the case. Lowman confirmed that Goodwin had pled guilty. Lowman also admitted that he was with the codefendants earlier in the day. Lowman stated that he picked them up from the motel and let them use his car. He stated his residence was a block away from where he was stopped.

Counsel Williams testified that there was information in a statement that described the various roles of the conspirators. Counsel did not recall precisely who provided the information that the others would bring drugs down to S.C. and does not recall that the codefendants were described as strangers to S.C. Williams stated that if the evidence showed that the perpetrators were familiar, it was more likely that they knew Applicant.⁷ Williams stated he wanted to avoid that being suggested to the jury as much as possible. Williams indicated that he thought the codefendants theory of the facts was a hard sell. In hindsight, he did not think Sutania Fuller, one of the prosecutors, would say he was kind to her. Williams stated he objected to a great deal of things during the trial.

This Court finds that the Applicant has failed to show that counsel was deficient under Strickland on this specification. As noted herein, counsel was zealous in that he challenged the stop of the vehicle, challenged the inconsistencies in the statements given the codefendants Wilson

⁷ The record showed that Robert Goodwin was the Applicant's uncle from Maryland. Goodwin was connected with James Wilson who Wilson stated he had known for about a month before the incident. Wilson met Lowman through Goodwin. Tr.p. 692-693. Wilson asserted that Lowman approached him to see if he wanted to commit a robbery in S.C. Tr.p. 694. Joshua Darien was originally from S.C. (not Saluda or Edgefield areas) and had lived in Maryland for four years at the time of the incident. Tr.p. 892-893. Darien claimed the first time he met Lowman was two weeks before the incident in Maryland and had known Wilson for about one year and had lived with Wilson. Tr.p. 895. He claimed he did not know Robert Goodwin at that time. Tr.p. Darien claimed that Wilson let him in on a plan to rob drug dealers in S.C. Tr.p. 896. Darien claimed that he thought Wilson was unfamiliar with S.C. At the initial stages, Darien just thought the plan consisted of Lowman, Wilson and himself and not Goodwin. Tr.p. 899. It was only after they arrived in S.C. did he meet Goodwin who was with Lowman. Tr.p. 903-904.

and Darien, questions that lack of recording of the inculpatory statement the Applicant gave to Padgett, and sought to urge reasonable doubt as to the charge in the closing statement. Counsel strategy was a reasonable strategy based upon the circumstantial evidence tying him to the codefendants.

d. Failure to preserve important issues on appeal.

In this specification, it appears to be based upon the July 25, 2019 letter from appellate counsel Robert Dudek in his response to why he filed a no merit Anders Brief and did not raise certain issues in the appeal. In the pertinent portion of the letter, appellate counsel Dudek indicated the following:

In your case, the number of issues were limited. This mistrial issue was the best preserved issue for you particularly since it was preserved. There was not a contemporaneous objection when the fruits of the arguably illegal stop were admitted into evidence. The only other issues were your statement to the police (p. 91 of the transcript); the Waffle House photographs (Tr. p. 334); the objection to a chain of custody on the bullet (Tr. p. 517); and a directed verdict motion (Tr. p. 996). While there was evidence you did not enter the house, there was an abundance of evidence that you planned and aided and abetted in the burglary, making a serious directed verdict argument impossible.

Dudek Letter to Lowman, July 24, 2019.

The record shows that the mistrial issue concerning the related to the response about prison that was actually raised by Mr. Dudek in the Anders brief. The appellate court, after reviewing the matter, granted the appellate counsel's request to be relieved under Anders v. California, 386 U.S. 738 (1967).

Appellate counsel Dudek asserted that there was a failure on trial counsel's part to object when the fruits of the seizure were introduced into evidence at trial as precluding the argument about their introduction from being presented in the appeal. However, the Terry Stop was litigated pretrial as noted below: Tr.p. 92-142. It will be addressed below in that specific allegation.

As set forth below, on this issue, the Applicant has failed to show deficient performance and prejudice under Strickland.

e. Failure to effectively cross-examine witnesses, especially Wilson and Darien concerning their prior inconsistent statements.

In this allegation he claims his counsel should have more effectively cross-examined witnesses. He felt counsel did not have adequate information. Counsel was aware that the state's theory was that nothing would have happened without Lowman's involvement. Lowman testified that with the evidence he has now, the state's theory does not match the evidence because his co-defendants lied.

Counsel Williams testified that he was aware that Wilson had been giving proffer statements. It did not surprise him that the codefendants claimed they had not been promised anything and that there was nothing tempting them to lie.

A review of the examination of Wilson and Darien show that counsel did examine Wilson and Darien about the inconsistent statements they made. He inquired about what he told law enforcement as to why he came to S.C. on whether it was to buy a car or commit a robbery. Tr.p. 802-803. He inquired about whether he was straight with law enforcement when he told them about what went on originally and where the jewelry was left and when it was sold in Maryland. Tr.p. 805-807. Counsel challenged Wilson on whether he had been accurate in his statements to law enforcement on where the gun was purchased and when he purchased the items. Tr.p. 808-810. He also challenged him on what he told law enforcement that when he bought the bullets on whether they were in there looking at video games and at which Walmart. Tr.p. 811-812. Counsel inquired about his statement to law enforcement that he did not want to give them the names of who he sold the jewelry to in Maryland because he did not want them to get into trouble. Tr.p. 824.

Similarly counsel Williams sought to impeach Joshua Darien with his prior statements. He inquired about the first interview with law enforcement after the arrest while he was in the hospital due to a head injury. Tr.p. 952. He sought to impeach him on whether he told law enforcement that he went to Summerville rather than Spartanburg to pick up the gun. Tr.p. 955. Counsel Williams also inquired about the number of times Darien went over his testimony with the Solicitor or law enforcement. Tr.p. 967. In particular, Williams question him about the reason to be riding around was to buy a car for Lowman's mother. Tr.p. 968-969.

"Trial counsel's decisions regarding the selection of the best defense plan... involved tactics well within professionally reasonable conduct that should not be second-guessed by this Court under Strickland." Hunt v. Nuth, 57 F.3d 1327, 1332 (4th Cir. 1995); see DeLozier v. Sirmons, 531 F.3d 1306, 1326 (10th Cir. 2008) ("[C]ounsel's decisions regarding how best to cross-examine witnesses presumptively arise from sound trial strategy"); U.S. v Nersesian, 824 F.2d 1294, at 1321 (2d. Cir. 1987) ("Decisions whether to engage in cross-examination, and if so to what extent and in what manner, are similarly strategic in nature.").

"Impeachment strategy is a matter of trial tactics, and tactical decisions are not ineffective assistance of counsel simply because in retrospect better tactics may have been available." Henderson v. Norris, 118 F.3d 1283, 1287 (8th Cir. 1997). Where trial counsel conducts a thorough and meaningful cross-examination of a witness, counsel's failure to employ a trial strategy that, in hindsight, might have been more effective does not constitute unreasonable performance for purposes of an ineffective assistance of counsel claim. Cardwell v. Netherland, 971 F. Supp. 997, 1019 (E.D. Va. 1997). As such, counsel's cross-examination was reasonable, and Lowman fails to satisfy the first prong of Strickland.

This Court must find that the Applicant failed in his burden of proof in showing that counsel was deficient. The record shows that counsel attempted to impeach with the statements given law enforcement to develop credibility issues. Absent a showing that there were other specific areas of impeachment that should have been used, he has failed in his burden of proof.

f. **Failure to object to Wilson's tangent about why Applicant selected him to commit the crime as being non-responsive. (Tr. 782).**

The Applicant next complains about the "tangent" that occurred during Wilson's testimony. In particular, he cites to Tr. 782. In that portion of Wilson's testimony, counsel William inquired about the statements he gave law enforcement.

In pertinent part, the following occurred:

Q. Now, I'm going to show you State Exhibit 76 and ask you to hold it and tell me if you recognize it?

A. I do .

Q. How do you recognize it?

A. It's Mr. Lowman's ID. I took a picture of it when we first got to South Carolina.

Q. Why did you take a picture of his ID when you first got to South Carolina?

A. Because I always had my doubts about this whole situation. Uhm, I kind of didn't really trust Mr. Lowman. I was asking him the whole way, why, why pick me? Because he knows a lot of people so why did you pick me? And his best answer was I looked out for him rather than some of his home boys when he first got out of, I guess, prison. Something about the whole situation didn't sit right with me so I took a picture of his ID just in case anything foul happened.

Q. And about the ID, is there anything significant about it that –

MR. WILLIAMS: Your Honor, I have a matter of law to take up outside the presence of the jury.

THE COURT: Okay. Step back in the jury room. Have you right back out here. (Whereupon, the jury entered the jury room at 12:30 p.m.)

THE COURT: All right. Mr. Williams.

MR. WILLIAMS: Your Honor, I would move for a mistrial.

Tr.p. 781, l. 25- p. 783, l.1.⁸

The Applicant complained that this evidence caused Lowman to be in fear of taking the witness stand. He felt counsel should have done more. Lowman felt the comment about prison should have been objected more strongly by his counsel. He also felt in hindsight that counsel should have moved for a curative instruction after counsel's request for a mistrial was denied. (See allegation (h) below).

Counsel Williams testified that he moved for mistrial. He felt this was a better strategy than to simply argue than objecting on the basis of nonresponsive to the question.

⁸ In response to the motion Assistant Solicitor Fuller declared:

MS. FULLER: Thank you, Your Honor. The standard for mistrial, of course, is prejudice to the defendant that would be cause. In this case one of the charges is burglary in the first degree and it is gonna come out that he has two prior burglaries. Of course, it was never the State's intention — The State definitely intends to give the defendant a fair trial and never intentionally elicit that he had gone to prison and I don't think the witness intended to suggest anything in that nature. At this point, Your Honor, I don't think there's enough prejudice I have tried to move on from the issue so it's not highlighted as much. Later in trial the jury will learn about the two priors and take from that whatever they may. I think we can minimize this and not cause any prejudice to the defendant at this stage in the trial.

Tr.p. 783, l. 8-23. Later in the trial, a stipulation was presented concerning the prior offenses to support burglary in the first degree: as State Exhibit 115.

THE COURT: Ladies and gentlemen, there's some question of fact that y'all will not get the answer to because they're in dispute, but then when the parties agree, it's called stipulating. We agree to these facts, okay? The Prosecutors and Mr. Williams and Lowman have agreed to tell you that this fact is an agreed upon fact. Mr. Abin Lee Lowman has two prior convictions for burglary. He was convicted in Edgefield County of burglary on March 17th of 1998 and on March 20th of the year 2000. So he has two prior burglary convictions. That's the stipulation and it's in the record.

Tr.p. 995, l. 13-23.

The Court must conclude that the mistrial choice was consistent with his theory on not requesting a cautionary instruction. If he was successful in having Judge Griffith grant a mistrial, the matter would start anew with a new trial. If the objection was limited to “nonresponsive” to the question, the objection may have been sustained, but the result would have resulted in a possible cautionary instruction which Williams was seeking to avoid. This Court cannot find counsel deficient in his choice of objection strategy. Further, even if the objection as nonresponsive would have been made and sustained, this Court finds for reasons set out by the trial court that it was limited and not unduly prejudicial, he has failed to show a reasonable probability that the result of the proceeding would have been different under Strickland.

g. Failure to successfully move for a mistrial based upon Wilson’s statement about Applicant recently being released from prison.

This claim is without factual merit. The record shows that counsel did move for a mistrial on this basis. Tr.p. 781- 785, l. 15. The trial court denied the motion. Tr.p. 785, l. 5-21. He has failed to show that counsel was deficient. This specification must be denied.

h. Failure to request a curative instruction when counsel’s motion for a mistrial was denied. (Tr. 785).

The Applicant contended that counsel was ineffective in failing to request the curative instruction. He speculated that the jury needed to be told what consider and that certain matters should be disregarded by them.

On cross-examination, Lowman confirmed counsel immediately objected to the “prison” statement. Further he acknowledged that following argument about that statement with the solicitor, Judge stated he would have allowed curative instruction, if requested. Lowman also confirmed that counsel, with this knowledge, knowing Applicant likely would not testify, chose

not to ask for the curative instruction. Lowman stated that he had already made the decision that was not going to testify at the time when the prison statement occurred. Lowman confirmed that his lawyer would not have wanted to emphasize that he was previously in prison, where the judge would have talked more about Applicant's imprisonment and to not consider it. In hindsight, Applicant now says he would have wanted that instruction because it would have been able to be explained and the jury would understand. Lowman confirmed that at that time they had been in trial for four days. Lowman also acknowledged that the Judge denied mistrial motion.

Counsel Williams testified that he did not want the curative instruction because it would bring the prison comment back up again. This was what he wanted to avoid as a matter of strategy. He wanted the jury to forget about prison.

The record before this court shows that the trial court raised the issue about a curative instruction:

THE COURT: Right. The proper testimony has been presented . I don't want to comment on the facts in front of the jury but enough has been presented that the jury is going to have questions about that, know his character has not been placed in issue by Mr. Lowman but I think either we move on or I will entertain a curative instruction that they strike that comment and disregard it. I'll do either one.

MR. WILLIAMS: I think I would be silly to ask you to give a curative instruction.

THE COURT: So respectfully considering the totality of the testimony presented thus far I don't find that the comment made by Mr. Wilson was unduly prejudicial. Certainly it contains some prejudice but its not unduly prejudicial considering the whole picture that has been painted in the three days of trial so respectfully your request for mistrial is noted. ...

Tr.p. 784, l. 20 – p. 785, l. 11.

This Court finds that counsel was not deficient in making the strategic decision to not request the cautionary or curative instruction. The defense counsel was trying to limit its impact

about not focusing the jury on the prior prison experience of Lowman. The Court finds persuasive the following that this choice is a matter of strategy:

As Judge Easterbrook has explained: "You can't instruct 'Do not draw inference X' without informing the jurors that X is one possible conclusion from the evidence. To tell jurors not to do something is to ensure they will do it, at least for a while.... [R]easonable persons may differ about whether the good such an instruction does with a thoughtful juror will outweigh the harm it can do by fastening attention on a link that may have been overlooked or forgotten." United States v. Myers, 917 F.2d 1008, 1010-11 (7th Cir.1990).

see also United States v. Gregory, 74 F.3d 819, 823 (7th Cir. 1996)("Indeed, the decision not to request a limiting instruction is solidly within the accepted range of strategic tactics employed by trial lawyers in the mitigation of damning evidence. If the lawyer cannot stop the evidence from being admitted, it is perfectly rational to decide not to draw further attention to it by requesting a motion for limiting instruction."); Williams v. Armontrout, 912 F.2d 924, 934 (8th Cir. 1990)("the decision not to request [a limiting instruction on the other crimes evidence] was a reasonable, strategic choice designed to avoid highlighting [defendant's] other undesirable activities").

This Court further finds Sixth Amendment prejudice has not been shown by counsel failure to request the curative instruction. As noted previously, the comment was limited and brief. The jury would hear in the stipulation about the prior record. This Court finds that since the brief comment was not unduly prejudicial the Applicant has failed to show a reasonable probability that the result of the proceeding would have been different. Confidence in the outcome has not been undermined by counsel Williams strategic decision.

i. **Failure to investigate potential plea resolutions Applicant's co-defendants had.**

a. **Joshua Darien**

Counsel Williams testified that he knew of the proffer to Wilson, but he did not know of specific amounts of time or any reductions in an agreement to Wilson and he was not

aware of any agreement with Darien. He knew that the state time Wilson and Darien faced was more than federal time they faced. Williams stated the only thing known by him was the federally issued proffer agreement to Wilson, but not an agreement on time. Williams had received from the federal public defender information on the two proffers about a week or two before the trial.⁹ At this trial, the existence of an agreement related to downward departure with Darien was entered right before the redirect with Mr. Darien. Williams already knew that Wilson had a proffer but was not aware of anything more related to an agreement. Williams stated that he did not want to go back into it with Darien.

Solicitor Hubbard stated at the PCR hearing that he was not aware of any proffer agreement or proffers by Darien with the federal government prior to the trial.

How the Darien matter was presented at trial

During the trial, Solicitor Hubbard inquired of Joshua Darien about being interviewed by both the State and Federal Government. Darien acknowledged that he was cooperating on those charges. Tr. 945, l. 12-13. The following then occurred in the direct examination:

Q. Are there any promises by the Federal Government on what we're doing here today?

A. No Sir.

Q. And you know I'm the one in charge of your charges here?

⁹ The Court notes that the federal plea agreement with Wilson was dated April 26, 2018. There is no evidence of the date of the proffer agreement or the actual proffer agreement with Darien was presented to this Court or the trial court. It is unclear if Williams is referring to the same matters that were presented to him two weeks prior was about the proffered statements made pursuant to the agreement or the proffered agreement. This Court notes that in the PACER online Federal Court Public Index in Mr. Darien's case the signed plea agreement was dated July 19, 2018, subsequent to the testimony in Mr. Lowman's trial in June 2018. The federal record shows that Daren entered a guilty plea in federal court on the same date. It is not clear whether there was an earlier plea agreement or if Solicitor Hubbard was misstating that it was actually a proffer agreement as Darien corrected him in the later questioning as to it being a proffer.

A. Yes Sir.

Q. What deals do you have with me?

A. None

Tr. 945, l. 7-21.

On cross-examination by counsel Williams, Darien stated that the federal charges pending against him were possession of a firearm and brandishing a firearm during a robbery under 18 U.S.C. §924(c), and impersonating law enforcement. Tr. 976, l. 21-25. Darien stated on the state side, he was charged with burglary first degree, armed robbery, two counts of kidnapping, grand larceny, possession of a firearm during a violent crime and impersonating a law enforcement officer. Tr. 977, l. 1-3. Darien also asserted that had not had any discussion with "them" about "downward departure" on the federal cases and asserted he had not heard that before. Tr. 977, l. 4-8.

After a brief redirect by Solicitor Hubbard there was a brief break. An issue related to federal charges was presented to the trial court. Solicitor Hubbard reported that he had just learned that Darien had entered into a "plea agreement" with the federal government with a downward departure and wanted the information known to the jury. Tr. 978.¹⁰ The solicitor declared he had not been aware of it, although he knew they were entering discussion to talk about pleading. Solicitor Hubbard indicated that with the federal dispositions he wanted to stay out of it, indicating he had no involvement in the discussions or agreement by the federal government because he does not have any business (in the federal charges). Judge Griffith with this information decided to recall Darien to the stand since his lawyer was present. Tr. p.979, l.11-13.

¹⁰ This may have been a misstatement as to it being a "plea agreement" rather than a "proffer agreement" with an expectation of a downward departure. As noted above, Darien referred to it was a proffer. See footnote 12 and 13 below.

In front of the jury, Solicitor Hubbard stated that the lawyer who represents Darien on the state and federal charges was present in the courtroom. Darien confirmed that he had a “proffer” with the federal government which indicated the possibility of a downward departure.¹¹ Darien further confirmed that with the state charges, the federal proffer has no effect on what the Solicitor does with the state charges. Tr. 980, 1.5-17.¹²

On cross-examination by Williams, Darien stated he understood that the downward departure was based upon his testimony and will decrease the amount of time he will serve on the federal charges in the federal system. Tr. 981.

This Court finds that with respect to Joshua Darien, the Applicant has failed in his burden of proof to show Sixth Amendment prejudice – whether had Williams investigated the federal resolution of Darien federal matter, there was a reasonable probability the result of the proceeding would have been different. It is clear that the status of Darien plea negotiations with the federal government were presented to the jury.¹³ It is also clear that there were no plea offers or

¹¹ “A ‘proffer agreement’ is generally understood to be an agreement between a defendant and the government in a criminal case that sets forth the terms under which the defendant will provide information to the government during an interview, commonly referred to as a ‘proffer session.’” State v. Wills, 409 S.C. 183, 186 n.4, 762 S.E.2d 3, 4 n.4 (2014) (Beatty, J., dissenting) (quoting United States v. Lopez, 219 F.3d 343, 345 n.1 (4th Cir. 2000)). Wills v. State, 437 S.C. 385, 389, 878 S.E.2d 330, 332 (Ct. App. 2022), reh’g denied (Oct. 20, 2022), cert. denied (May 24, 2023). It can also be referred to as a “cooperation agreement.”

¹² The actual agreement with Darien was not made part of the record in the trial court or in this proceeding. The only agreement in the federal court public index PACER is the July 19, 2018 plea agreement between Darien and the U.S. Attorney’s Office, signed and entered subsequent to Lowman’s trial.

¹³ This Court can take judicial notice of information in online government public court indexes. SCRE Rule 1005. see also Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (courts “may properly take judicial notice of matters of public record”); Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) (“We note that ‘the most frequent use of judicial notice is in noticing the content of court records.’”). A review of the PACER Public index for the Federal Courts related to U.S. v. Darien, 8:18-00030 reveals that Darien entered a plea agreement dated and on July 19, 2018 after his testimony in the Lowman state court case. He pled guilty on

negotiations with the State or Eleventh Circuit at the time of Darien's testimony based upon the credible testimony of Solicitors Hubbard and Fuller. Since the jury became aware the status of the federal negotiations prior to its decision, the Court must conclude that Applicant has failed to show prejudice under the Sixth Amendment.¹⁴

b. James Wilson

This Court finds that counsel did not further investigate the negotiations between the federal government and state witness and codefendant Wilson beyond what he learned about the proffer and existence of the knowledge that Wilson was speaking with the federal government. This Court also finds that had he investigated further by seeking out the witness's federal counsel or Lowman's defense counsel he would have learned of the existence of the April 26, 2018 plea agreement which would allow the Federal Government to move for a downward departure if he complies with the terms which includes testifying truthfully in any court proceeding. From a review of the federal court's online court system PACER related to Darien's federal case, U.S. v. Wilson, 8:18-00030 – TMC, defense counsel could have learned the existence of the federal plea agreement as docket no. 80 on April 26, 2018, before the Lowman trial. The agreement would also require the federal government to request that any state charges not be prosecuted or that any state

the day he signed the plea agreement on July 19, 2018 before U.S. District Court Judge Timothy Cain, with sentencing deferred. On January 17, 2019, the defendant is sentenced on both charges he pled to a total term of 135 months imprisonment and 5 years supervised release. \$200.00 special assessment; \$108,320.00 restitution. Defendant remanded to the custody of the United States Marshal.

¹⁴ This Court does not address whether counsel was deficient in failing to investigate the federal court index or further inquire the federal defense team about the status of his federal case. This contact was implicitly with Lowman, not Darien's defense team who advised Williams about the proffers that Darien or Wilson had made to federal authorities, including the information about the Wilson proffered statement that the State had also provided in discovery to Williams. What is clear is the actual agreements for either Darien or Wilson were not provided to either the State or the defense by the federal prosecutor or federal defense counsel for any party.

sentence run concurrent with the federal sentence. However, the agreement made with the federal government was not binding on the State or 11th Circuit Solicitor's office.

As to Wilson, as set more fully below in ineffective assistance allegations (j) and prosecutorial misconduct allegation (b), the Applicant's counsel, as well as the State, were aware of the fact that the witness Wilson had made a statement to the federal government pursuant to a proffer agreement with the federal government. However, neither Williams or Hubbard were aware that there had been a plea agreement between federal government and Wilson prior to or during the trial. The record shows that counsel with the knowledge of the Wilson proffer statement did not inquire about the Wilson's proffer agreement when that he had knowledge of the statement's existence at the trial with Wilson.¹⁵

This Court must find that Sixth Amendment prejudice has not been shown. In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U.S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The

¹⁵ A review of the PACER Public index for the Federal Courts related to U.S. v. Wilson, 8:18-00030 reveals that Wilson entered a guilty on the day he signed the plea agreement on April 26, 2018 before U.S. District Court Judge Timothy Cain. On January 17, 2019, the defendant is sentenced on both charges he pled to a total term of 135 months imprisonment and 5 years supervised release. \$200.00 special assessment; \$108,320.00 restitution. Defendant remanded to the custody of the United States Marshal.

likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; Harrington, 562 U.S. 86. Importantly, Strickland stated the following:

Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one. In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. *If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.*

Strickland v. Washington, 466 U.S. 668, 697, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674 (1984)

(emphasis added).

Although the information about the federal plea agreement could have been used to impeach the witness had the Applicant's counsel discovered it from the federal sources, this Court must find the failure to do did not undermine confidence in the outcome. Importantly, the federal plea agreement was not with the State and Solicitor's office related to the State charges on Wilson. This would have been clarified by Wilson as it was with Darien in his later testimony. The same potential situation that Wilson had was the same situation Darien had for a downward departure if he testified truthfully in any court proceeding, including state court proceedings.

This Court has determined that the only difference to the information was that Wilson had already pled guilty already according the federal court public index whereas Darien had not and that neither had been sentenced. Nevertheless, even the federal offer related to the requirement of truthful testimony in state court could result in a downward departure in the pending federal charges and sentence, this Court finds that after the jury received similar information in Darien's testimony, the jury still convicted Lowman. The evidence from Darien and Wilson at trial was

similar as to their roles and the roles of Lowman and Goodwin. As noted in the earlier factual summary there was additional corroborating evidence tying Lowman to the crime including the GPS tracking of Lowman in the area of the crime, the evidence showing the conspirators being together in the area at stores when matters were being purchased, and the connection between the phone used by Applicant and Wilson during the crime for communication. Simply put, there was independent corroborating evidence which made further credibility issues with Wilson mitigated. Wilson was already impeached during his testimony by the defense counsel related to his inconsistent statements that he had given to law enforcement earlier as compared with his trial testimony. This Court finds that the Applicant has failed to prove ineffective assistance of counsel because he has failed to prove Sixth Amendment prejudice.

j. **Failure to cross-examine Wilson concerning the federal plea resolution he had entered several months before the trial.**

The Applicant complained that counsel cross-examination of Wilson was error. Lowman asserted that Wilson testified freely that there was no deal. However, Lowman stated he learned after his conviction that there was a deal with Wilson months before his testimony. Lowman claimed that there was a deal by Wilson with the federal government and the 11th Circuit. Lowman claimed that trial counsel did not investigate this and he felt that it was key to his case. Lowman stated that if counsel had proper evidence he would have cross-examined him and impeached Wilson's testimony on the existence of a deal which he denied. Lowman stated the prosecution had denied knowledge of any deal at trial.

On cross-examination in this hearing, Lowman confirmed that before trial he did not know of any plea deal between South Carolina and the codefendants. However, Lowman stated that counsel informed him that there was a statement given to federal authorities by Wilson. Lowman

learned of the proffer statement given to him by the government before the trial. He and counsel had that information of the proffer by at least Wilson prior to the trial. Lowman knew there was contact between co-defendants and federal government. Lowman knew that they were not prosecuting Wilson for the burglaries.

Counsel Williams stated that his strategy was to cross up the witnesses and get the codefendant witnesses to say inconsistent things. Williams claimed that he was essentially trying to dispute what the law enforcement officer said. His strategy was to show the lack of footprints, DNA and casings in the car. Counsel stated that he was aware of the proffer agreement but was not aware of any plea agreement with the federal government.

Solicitor Hubbard as set more fully below on the prosecutorial misconduct claim was unaware of the federal plea agreement at the time of trial. More importantly, Hubbard had made no deals with anyone related to the case concerning charges or sentences. Simply put, the agreement was only with the federal government.

This Court finds that at the time of the June 2018 trial, Solicitor Hubbard had made no agreement with James Wilson or any of the codefendants related to charging decisions or sentencing consideration. Solicitor Hubbard as well as counsel Williams and Applicant were aware of the existence of a proffer agreement between the federal government and Wilson by the fact that they were aware that he had given a proffer statement to the federal government. This Court also finds that neither the 11th Circuit Solicitor's Office nor defense counsel Williams were aware of the existence of the April 26, 2018 federal government plea agreement (or guilty plea) related to the federal charges.

In viewing counsel's conduct at the time of the trial as required under Strickland, counsel had no knowledge about the existence of federal plea agreement.¹⁶ As noted above, without the knowledge of the existence of the plea agreement, counsel did not err in inquiring about the plea agreement in speculation about its existence. Counsel was not deficient in failing to do so. See Moss v. Hofbauer, 286 F.3d 851, 864–65 (6th Cir.2002) (holding that speculation as to possible lines of cross-examination is insufficient for ineffective assistance of counsel where no evidence was presented on how witness would have testified had the cross-examination been pursued). Matylinsky v. Budge, 577 F.3d 1083, 1093 (9th Cir. 2009) (counsel cross-examined jail inmate sufficiently to put inmate's credibility thoroughly at issue and extra impeaching would not have changed result of trial). See also Woods v. Sinclair, 655 F.3d 886, 910 (9th Cir. 2011) (ample impeachment existed which overcame alleged deficiencies in an overwhelming evidence case); Hayes v. Ayers, 632 F.3d 500, 519 (9th Cir. 2011)(actual cross-examination conducted gave ample opportunity for the jury to evaluate the witness); Little v. Johnson, 162 F.3d 835, 861 (5th Cir. 1998) (record showed vigorous cross). The Ninth Circuit also said that the defendant had failed to show that the result would be different with further cross-examination (U.S. v. Claiborne, 870 F.2d 1463, 1469 (9th Cir. 1989)); Richie v. Mullin, 417 F.3d 1117 (10th Cir. 2005)

If the Court assumes, despite counsel's lack of knowledge about the April 26, 2018 plea agreement, that witness Wilson would have revealed it, for the reasons set forth above in the earlier

¹⁶ See also Matthews v. Workman, 577 F.3d 1175, 1191 (10th Cir. 2009) recognizing a strategic reason not to open up unfavorable evidence, a strategy also recognized by the Supreme Court in Wong v. Belmontes, 558 U.S. 15, ___, 130 S.Ct. 383, 388-89, 175 L.Ed.2d 338 (2009), reh. den. ___, 130 S.Ct. 1122, 175 L.Ed.2d 931 (2010). The classic cross-examination error – if you don't know the answer don't ask – did not lead to ineffectiveness in Campbell v. U.S., 364 F.3d 727, 734-35 (6th Cir. 2004) where the question was isolated and part of an overall challenge to credibility. Ineffective cross-examination allegedly eliciting damaging information was rejected in Janosky v. St. Amand, 594 F.3d 39, 46 (1st Cir. 2010) where the court found a plausible strategy to elicit the information.

section, the Applicant had failed to show prejudice under Strickland. Independent of Wilson's testimony, there was corroboration of many of the information he revealed, as well as Darien's testimony that the jury had accepted. Wilson was also impeached based upon his inconsistent statements. The failure to question Wilson about the potential existence of the plea agreement does not undermine confidence in the verdict. Further for the additional reasons set forth in the preceding allegation, prejudice has not been shown. The allegation must be dismissed.

k. Failure to argue pre-trial that there was no reasonable suspicion backing the traffic stop.

This Court finds that the trial court found that reasonable suspicion to stop the vehicle existed because the officer had knowledge that the vehicle was uninsured as required by South Carolina law (S. C. Code § 56-10-220,225)¹⁷ and had tinted windows that precluded his viewing

¹⁷ § 56-10-225. Proof of insurance and financial responsibility in vehicle; penalties.

(A) A person whose application for registration and licensing of a motor vehicle has been approved by the Department of Motor Vehicles must maintain in the motor vehicle at all times proof that the motor vehicle is an insured vehicle in conformity with the laws of this State and Section 56-10-510.

(B) The owner of a motor vehicle must maintain proof of financial responsibility in the motor vehicle at all times, and it must be displayed upon demand of a police officer or any other person duly authorized by law. Evidence of financial responsibility may be provided by use of a mobile electronic device in a format issued by an automobile insurer. This section does not require that an automobile insurer issue verification concerning the existence of coverage it provides an insured in an electronic format. Information contained or stored in a mobile electronic device presented pursuant to this subsection is not subject to a search by a law enforcement officer except pursuant to the provisions of Section 17-13-140 providing for the issuance, execution, and return of a search warrant or pursuant to the express written consent of the lawful owner of the device.

(C) A person who fails to maintain the proof of insurance in his motor vehicle as required by subsection (A) is guilty of a misdemeanor and, upon conviction, is subject to the same punishment as provided by law for failure of the person driving or in control of a motor vehicle to carry the vehicle registration card and to display the registration card upon demand. However, a charge of failing to maintain proof that a motor vehicle is insured must be dismissed if the person provides proof to the court that the motor vehicle was insured on the date of the violation. Upon notice of conviction, the department shall suspend the owner's driver's license until

in the vehicle in violation of state law (56-5-5015). The record supports that counsel did not act deficiently in making his unsuccessful objection at trial in the pretrial hearing.

In pretrial proceedings, the trial judge addressed the stop of the Applicant's Mercury Marquis prior to his arrest. Tr. 141-142.

The State asserted that the stop was a valid stop. The solicitor urged that the law enforcement had sufficient information to determine that there was reasonable suspicion to stop the vehicle and once the vehicle is stopped it determined that he was driving upon suspension (DUS) which lead to the arrest of and ultimately the inventory search. The State asserted reasonable suspicion developed from a series of facts. Tr. p.130-132, 136-138.

The evidence at the pretrial hearing before Judge Griffith on the Terry stop was that James Rutland of Hook and Book, a repossession company, had a GPS tracker on the Mercury Grand Marquis that Lowman was driving that night. The reason to repossess was because there was no insurance on the vehicle. Tr. 100. Rucker located the vehicle that he was tracking that night between 10:30 and 11:00 p.m. between a golf course and the airport in Saluda. Tr. 96. Rucker stated he went up to the parked vehicle around midnight and knocked on vehicle without a response and attempted to see into the vehicle with a flashlight but was unable to see anything because the tint on the window was so dark. Tr. 99. He could not see that there was anyone in the vehicle. Tr. 99. He did not attempt to move the vehicle from that location because he feared he would tear up the golf course or get stuck. Tr. 100. As Rucker was talking in his wife, the vehicle left the area toward Johnston. Tr. 100-101. After it appeared to Rucker that Lowman was on to him, he saw a

satisfactory proof of insurance is provided. If at any time the department determines that the vehicle was without insurance coverage, the owner's registration and driving privileges will be suspended pursuant to Section 56-10-520.

law enforcement officer parked and went and talked to her. Tr. 102. The officer called others to the scene. Rucker told the officer that the car had no insurance, and it became a law enforcement issue. Tr. 103. He noted on his GPS tracker that the car was headed toward Ward. Tr. 103. While he continued tracking the route of the vehicle Rucker let the officers know its location. Tr. 105. He saw the vehicle stopped by blue lights, but did not go up to the vehicle. After a while, law enforcement came up to him and told him he was able to pick up the vehicle and haul it to his property. Tr. 106. He did and locked it up.

Deputy Austin Harding testified at the Terry stop hearing that he had a conversation that evening with a repo man about a car with a lack of insurance. Tr. p. 114-114. After being advised of its travel route by the repo man, he saw the vehicle as it passed by. Tr. 115. When the deputy passed the vehicle, he noticed when he turned his bright lights on, he could not see inside the vehicle. Tr. p.116, l. 6-9. At that point, Deputy Harding activated his blue lights. Tr. 116, l.8-25. After traveling a short way, the vehicle finally came to a complete stop across from some railroad tracks. Tr. 117.

Deputy Harding indicated before he could say anything on his radio, the driver had exited his vehicle and the deputy exited his and asked Lowman to show his hands. He approved Lowman to get a driver's license, personal information, vehicle registration, and an insurance card. At that point, Lowman produced a State ID and indicated he did not have a driver's license. Tr. 119, l. 1-12. The deputy returned to his vehicle and learned his license had been suspended from failing to pay traffic tickets. Tr. 119. At that point, Lowman was arrested for driving under suspension. Tr. 119, l. 16-23. Dispatch also advised the deputy that Lowman was a violent offender for his own safety and the others. Tr. 120.

Deputy Harding stated after Lowman was placed in custody, pursuant to Johnston written policy they inventoried the vehicle. Tr. 120-121. In the vehicle, he found marijuana, an open liquor bottle, and a black box with 13 rounds of nine-millimeter ammo. Tr. 121, l. 8-17. The deputy also issued a warrant for the window tint to show the reason for attempting to stop the vehicle. Tr. 121, l. 19-25. Deputy Harding confirmed he saw the windows were extremely dark and he could not see in them. Deputy Harding indicated that he would have still made the stop due to the tint even if he had not talked to the repo man about the tint. Tr. 122. Deputy Harding also took into account for the stop that driving without insurance is illegal which was a reason why he acted in making the stop. Tr. 122-123.

The Applicant argues that counsel was ineffective in failing to argue that the evidence of the traffic stop was inadmissible due to a lack of reasonable suspicion. He contends that the officer's assertion that there was reasonable suspicion to stop based upon the tinted windows. See S.C. Code Ann. §56-5-5015.¹⁸ He asserts that counsel did not follow-up to preserve the issue.

¹⁸ In its pertinent part, Section 56-5-5015 states:

§ 56-5-5015. Sunscreen devices.

(A) No person may operate a motor vehicle that is **required to be registered in this State on any public highway**, road, or street that has a sunscreen device on the windshield, the front side wings, and side windows adjacent to the right and left of the driver and windows to the rear of the driver that do not meet the requirements of this section. If no after-factory installed sunscreen device has been added to the window surface, the provisions of this section regarding light transmittance do not apply.

(B) A **sunscreening device must be nonreflective** and may not be red, yellow, or amber in color. A sunscreening device may be used only along the top of the windshield and may not extend downward beyond the AS1 line. If the AS1 line is not visible, no sunscreening device may be applied to the windshield.

(C) A single sunscreening device may be installed on the side wings or side windows, or both, located at the immediate right and left of the driver and the side windows behind the driver. The sunscreening device must be nonreflective and the combined light transmission of the sunscreening device with the factory or manufacturer installed sunscreening material must **not be less than twenty-seven percent**.

Applicant claimed it was a good presentation but he did not preserve it for appeal. Lowman learned in a letter he received from appellate counsel Dudek that it was not appealable because counsel failed to object when the fruits of the search were introduced.

On cross-examination, the Applicant admitted that Counsel did object to traffic stop. The record showed that there was a Terry hearing occurred with two witnesses. Lowman admitted that that after the hearing, Solicitor Hubbard argued that traffic stop was consistent with the law, and the tinted window was a factor in asserting reasonable suspicion. It was not disputed that his vehicle had tinted windows and that his license was suspended at the time. Lowman acknowledged that they were authorized to arrest him at the time for those offenses. Further, Lowman admitted he was not the owner of the vehicle at the time. However, Lowman asserted that law enforcement was not permitted to take the vehicle because it was on private property and his mother could not have driven it. Lowman further acknowledged that it was an authorized inventory search. During the search, they found the bullets in trunk in Wilson's bag. Further, Lowman admitted that shell casings were inside the car. At trial, the judge found that there was reasonable suspicion under state law. Lowman noted that the officer testified at the hearing that he was going to pull the vehicle over regardless, so his testimony would speak for itself.

Lowman also acknowledged that counsel Williams objected to chain of custody. Tr.p. 517. Counsel Williams testified that his strategy was that there was no real basis for the Terry stop. However, his motion was unsuccessful. The reporting officer could not see who was in the vehicle

(D)(1) A sunscreening device to be applied to the rear-most window must be nonreflective and have a light transmission of not less than twenty percent. If a suncreening device is used on the rear-most window, one right and one left outside rearview mirror is required. . . .

S.C. Code Ann. § 56-5-5015.

and had information that someone was attempting to tow the vehicle because of an insurance issue. In addition, the Applicant did not have a driver's license so he could not be driving the vehicle, therefore the vehicle had to be towed away which resulted in the inventory issue. Williams stated he did not know if issue was adequately preserved for appeal. He stated he did not work on appeal.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The stopping of a vehicle and the detention of its occupants constitute a seizure and implicate the Fourth Amendment's prohibition against unreasonable searches and seizures. State v. Butler, 353 S.C. 383, 389, 577 S.E.2d 498, 501 (Ct. App. 2003) (citing Delaware v. Prouse, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)).

Our courts have held that in South Carolina, an officer may stop and briefly detain the occupants of a car without treading on Fourth Amendment rights, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity. Id.¹⁹ (citing State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001)). "[A] policeman who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke that suspicion." State v. Nelson, 336 S.C. 186, 192, 519 S.E.2d 786, 789 (1999) (citing Berkemer v. McCarty, 468 U.S.

¹⁹ See § 23-6-145. (Traffic stop by commissioned officer or uniformed officer; requirement of reasonable belief of violation of law: A commissioned officer or a uniformed officer of the department may, upon reasonable belief that any vehicle is being operated in violation of any provision of statutory law, require the driver thereof to stop and exhibit the registration card issued for the vehicle, the individual's driver's license, and submit to an inspection of such vehicle and license.)

420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984)). “The term ‘reasonable suspicion’ requires a particularized and objective basis that would lead one to suspect another of criminal activity.” Woodruff, 344 S.C. at 546, 544 S.E.2d at 295 (citations omitted). In analyzing reasonable suspicion, “it is entirely appropriate for courts to credit the practical experience of officers who observe on a daily basis what transpires on the street.” State v. Wallace, 392 S.C. 47, 52, 707 S.E.2d 451, 453 (Ct. App. 2011) (citing United States v. Branch, 537 F.3d 328, 336-37 (4th Cir. 2008)).

“In determining whether reasonable suspicion exists, the whole picture must be considered.” Woodruff, 344 S.C. at 546, 544 S.E.2d at 295 (citations omitted). “Factors that are alone consistent with ‘innocent travel’ can, when ‘taken together’ produce a reasonable suspicion of criminal activity.” Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Sokolow, 490 U.S. 1, 9, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)). “In applying the concept of reasonable suspicion to the various facts of a case, ‘[i]t is the entire mosaic that counts, not single tiles.’ ” *Id.* (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)). See State v. Rowland, No. 2021-000822, 2024 WL 3882109, at *3–4 (S.C. Ct. App. Aug. 21, 2024).

This Court must find that defense counsel performed within the standards of competence for defense counsel in the manner he handled the objections to the stop. Evidence was presented to the Court that there existed reasonable suspicion based upon the knowledge that the vehicle did not have insurance and there were tinted windows that restricted viewing. Neither deficient performance nor prejudice under Strickland was shown. Evidence from the stop and its fruits was admissible into evidence. The allegation must be dismissed.²⁰

²⁰ The Court also finds that counsel was not deficient related to the inventory search. “For an inventory search to be valid, the vehicle searched should first be in the valid custody of the law enforcement officers conducting the inventory.” United States v. Brown, 787 F.2d 929, 931-32

l. Failure to argue pre-trial that there was no probable cause to believe an offense was committed because of the tinted windows.

The Applicant claims that counsel failed to argue that there was no probable cause to believe a crime had occurred because of the tinted windows. As stated above, the lawful stop was made based upon “reasonable suspicion” based upon the information the officer had received about the vehicle being uninsured – violation of state law and his viewing of the presence of heavily tinted windows that did not allow his viewing. The test for a Terry stop as noted above is not “probable cause,” but “reasonable suspicion. Counsel was not deficient in making an improper argument.

m. Failure to challenge Applicant’s arrest based upon a lack of exigent circumstance.

The Applicant’s arrest was based upon the knowledge that Applicant was driving without a license due to a suspension pursuant to S.C. Code §56-1-460. The presence or absence of exigent circumstances is not the legal standard for the arrest. The Applicant failed to show how counsel was deficient or prejudicial under Strickland.

n. Failure to challenge the chain of custody regarding the bullets. (Tr. 517).

Applicant asserted that counsel should have objected to the chain of custody of the bullets and from the stop. The Applicant has failed in his burden of proof to show ineffective assistance of counsel on this specification.

(4th Cir. 1986) (citing Opperman, 428 U.S. at 374, 96 S.Ct. at 3099, 49 L.Ed.2d at 1008). “The question ... is ... whether the police officer’s decision to impound was reasonable under the circumstances.” Brown, 787 F.2d at 932; see also United States v. Bullette, 854 F.3d 261, 265 (4th Cir. 2017) (“An inventory search of an automobile is lawful (1) where the circumstances reasonably justified seizure or impoundment, and (2) law enforcement conducts the inventory search according to routine and standard procedures designed to secure the vehicle or its contents.”) (citing Bertine, 479 U.S. at 371-76, 107 S.Ct. at 741-43, 93 L.Ed.2d at 745-48). State v. Miller, 423 S.C. 95, 814 S.E.2d 166 (2018) (inventory procedures approved).

On cross-examination, Lowman admitted that Williams objected to chain of custody. Although he admits an objection had been made at the time which was denied by judge, he thinks that appellate counsel Dudek told him it was not preserved on appeal in addition to the lack of merit. Counsel testified that he did challenge the chain of custody but was unsuccessful.

The record shows that objections were made by the defense counsel to the chain of custody at Tr.p. 517 and Tr.p. 565-571. The box of 9 millimeter ammo was introduced at Tr.p. 517. The items recovered from the Mercury Grand Marquis were introduced as state Exhibit 76 (Lowman's S.C. identification card); Robert Goodwin's ID (State's Exhibit 75; Abin Lee Lowman's ID (State's Exhibit 76); James Christopher Wilson's ID (State's Exhibit 78; the walkie-talkie (State's Exhibit 77); the nine millimeter shell casing (State's Exhibit 79); the cell phone (State's Exhibit 80); the white box recovered (State's Exhibit 81); several sets of gloves (State's Exhibit 82); another pair of gloves (State's Exhibit 83); and the jacket and the black T-shirt (State's Exhibit 84). At the time of the ultimate introduction, these items were admitted without objection. Tr.p. 575, l. 15-17; Tr.p. 576, l. 2-18.

The record reveals that the bag of bullets, State Exhibit 72 were recovered in an inventory search of the 2003 Mercury Marquis that the Applicant had been driving when he was arrested with driving under suspension. The record reveals that that under policy a search was done under the liability policy. The search was done by then Corporal James Mosley and Patrolman Dublin of Johnston Police Department. Tr.p. 513. Mosley testified at trial that when he searched the truck, they found a box of bullets with 13 bullets in the box that held 50 bullets in the truck that he took possession. Tr.p. 515. Mosley testified that he put the box in the bag that it is the box is current in. Mosley testified that his writing was on the bag which also mention Dublin because he was the one who found the box. Tr.p. 516. Mosley stated that since she found the box, the chain of custody

shows it goes from subject to Dublin to evidence, even though Mosley stated he was the one who put it in the bag.

At that point, the State offered to introduce the box of bullets as State Exhibit 72. Defense counsel Williams objected asserting that the chain had not been established, implicitly because Patrolman Dublin who found the bullets had not testified. Tr.p. 517. The Court overruled the objection citing State v. Valentine, 386 S.C. 499, 502, 689 S.E.2d 608, 609 (2010). The Court found that the small gaps in the chain can be filled in, noting the short step between Dublin and Mosley. Id.

This Court finds that the Applicant has failed to show deficient performance because he did object to the chain of custody. Alternately, even if the Applicant asserts there was some deficiency in the objection, Sixth Amendment prejudice cannot be shown because there is no reasonable probability that the result of the proceeding would be different. The box was admissible as the chain was properly presented. The reliance on Valentine addressing the correctness of the decision was proper. In Valentine, the Supreme Court addressed this similar issue as follows: “As we explained in Sweet, [374 S.C.1, 647 S.E.2d. 202 (2007)] “Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.” 374 S.C. at 7, 647 S.E.2d at 206 (internal citation omitted). State v. Valentine, 386 S.C. 499, 502, 689 S.E.2d 608, 609 (2010). The allegation is denied.

o. Failure to object to jury instructions being given before closing arguments.

The applicant contends that counsel should have objected to the jury instructions being given before closing arguments. The Applicant contends that the jury should have received proper instructions after the argument. Lowman felt that the jury may have taken things out of context.

Lowman felt that the trial judge should have given instructions a different way. Lowman did not understand why instructions were given when they were (before closing arguments) and felt the jury did not either. Lowman contended to a normal person, it seemed he was doing what counsel was supposed to do as counsel.

On cross-examination, Lowman confirmed that the Judge decided that he was going to charge the jury in advance of closing arguments. Lowman also admitted that there was no objection to this. Lowman also confirmed that there were no requests by defense or prosecution to supplement the instructions. He confirmed that his counsel could have objected based on need, but that apparently his lawyer felt there was no need to object to the instructions.

Counsel Williams stated that he did not elect to do this. He testified several judges have a practice of doing this. He felt it cuts into closing arguments, but counsel can tailor arguments around the instructions. Personally, Williams stated he does not like it and it was a new practice at the time. However, he opined that it was not legally wrong.

This Court finds that counsel was not deficient in failing to object to the trial court's decision to make its jury instructions prior to the parties' closing arguments. The trial judge advised that parties the he was doing it differently than his usual practice. Tr.p. 1001. The trial judge indicated that he had advised both lawyers concerning this. Tr.p. 1001-1002. The trial court proceeded to make his instructions. Tr.p. 1002-1023. At that point, the court had side bar communications with the lawyers. The trial court then indicated that the lawyers thought the instructions as given were sufficient. The trial court further confirmed that they had discussed the instruction earlier in a pre-instruction conference, printed them out, had the lawyers read them over. The trial court further indicated that it was providing a written copy of the instructions to the jurors as well. Tr.p. 1024, l. 13-24. This Court finds that the timing of the jury instructions and

closing arguments did not violate state law or procedure. The Applicant has failed in his burden of proof to show deficient performance. Alternately, the Applicant failed to prove prejudice under Strickland. The jury was fully instructed on the law after a pre-instruction conference and counsel were given the opportunity to request appropriate instructions prior and subsequent to the instructions. He has failed to show that there is a reasonable probability the result would have been an acquittal had the timing of the instructions been different. It must be dismissed.

p. **Failure to object to Applicant's statements to the police on hearsay grounds. (Tr. 991-93).**

Lowman also contends that counsel should have objected to the statement he made to the police on hearsay grounds. He complained that the statements made him appear that he did it.

On cross-examination, it was clarified that the reference is to the Applicant's statement on Tr.p. 991-993.²¹ Lowman confirmed that he mentioned having gone fishing, that he left car running, repo man appeared, Applicant left and was arrested. Importantly, after SLED Agent Padgett mentioned there was a GPS tracker of his car, Lowman dropped his head and said he would get "1000 years for this." Tr.p. 991, l. 19-20. Lowman asserted that he wanted to have these statements objected to as hearsay. However, the Applicant then recanted at the hearing and stated

²¹ SLED Agent Padgett testified as follows about Lowman's response to a question about the night or early morning hours of March 8, 2017 after being given his Miranda warnings after his arrest:

- A. He admitted to being at Persimmon Hill Golf Course or near Persimmon Hill Golf Course shortly after midnight. He advised us he was fishing in a pond. He advised that a repo man showed up at the golf course. He had left his car running because he was having issues with it. While he was fishing he had left his car running. The repo man showed up and left. He then ran back to his car and left. He was followed to Johnston by the repo man. Then he went to Ridge Spring and then back to Johnston where he was stopped and arrested on an unrelated charge to this.

Tr.p. 991, 6-15.

that he never made the statements and that it was only the police saying he said it. It was pointed out to Lowman that his statement was not hearsay as a matter of law, it was pointed out he could have testified to say he did not give the statement. However, he waived his right to testify after the statement had come in. Lowman stated that he trusted his lawyer and that he would do what he was supposed to do. Lowman stated he would have testified to prove these issues but was never told by counsel to do so. Lowman stated he did not know that he could only disprove the statements were his was by testifying at trial. He stated as a matter of fact, he was the only one who could dispute it, but it was also possible that jury could not trust the officer, but they believed the officer in the end.

Counsel Williams testified that there was no reason to object. The statement by Lowman was admissible as an admission. See SCRE, Rule 801 (d)(2) (admission by a party opponent). Counsel Williams stated that the Applicant acknowledged to him that he was at the pond fishing. If he had the Applicant testify, the jury would know he is at the pond fishing. Counsel Williams stated he would not have to put Applicant on the stand while also establishing he was in the area of the pond. Counsel stated that there were different ponds, and it was up to jury as to which one they thought he was at, proximity to scene differs. Counsel Williams testified that he used to play golf on that course every Saturday but has not in a while. Counsel noted that Applicant only said he was "at the pond", which could have been one of three. Counsel Williams noted he was ethically bound as to how to deal with the admission to him by his client and did not know exactly which pond.

This Court finds that counsel was not deficient in failing to object to the Applicant's inculpatory statement after Miranda warnings were give that he would get "1000 years for this" and acknowledged being in the area near the victims home that night fishing. This evidence was

admissible as a non-hearsay admission of a party-opponent under SCORE Rule 801(d)(2)(A). The rule related to statements which are not hearsay states in pertinent part that a statement is not hearsay if - : “2) Admission by Party-Opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity.” Lowman statement to Padgett, which he now claims never occurred, was admissible against the Applicant. Counsel had no basis to object and was not deficient. He failed in his burden of proof to show deficient performance because the statement were not hearsay and prejudice under Strickland has not been shown.²²

2. Prosecutorial Misconduct:

a. Applicant believes prosecutorial misconduct occurred because of alleged falsehoods the investigators and Applicant's co-defendants stated at trial.

Codefendant's knowledge of the area.

The Applicant complained that the prosecution committed misconduct based upon various alleged falsehoods the State presented at trial. In his testimony at the hearing, he suggested that evidence that he was the only person in the alleged conspiracy to commit burglary from “here” was error when there was also evidence presented though the State had evidence from a taxi driver that the others came into the area to buy drugs regularly.²³ He claims this contradicted the State's theory. However, it was presented through the testimony of Wilson and Darien at trial that a taxi

²² Although the statements were admissible as not hearsay, counsel Williams acted zealously in cross-examination by questioning why there was no written statement by the Applicant, nor an audio or video record of the statement made at the Edgefield County Sheriff's Department. Tr.p. 994-995.

²³ The Applicant presented at the hearing Applicant's Exhibit 5, a statement by an Aiken taxi driver Travis Legonz (sp) who claimed he had picked up two individuals on March 9, 2017 and took them to a Columbia bus station and said that they bring drugs to down to South Carolina every month. However, this did not specifically relate to the Edgefield or Saluda areas.

driver in Aiken got them a room at the Econo-Lodge during the cross-examination by Williams. Tr.p. 820-822(Wilson), Tr.p. 942- 943 (Darien)(direct by Hubbard), Tr.p. 962 (cross by Williams) (testimony concerning the fact that they were pick up by the taxi driver who bought the room at the motel). The State presented the testimony, as noted herein that Wilson and Darien had limited prior contact in Edgefield and Saluda areas. Wilson testified that he had never lived in South Carolina and before March 2017 had never been to South Carolina or Saluda. Tr.p. 691-692. Evidence was also presented that Darien had lived in a different part of South Carolina in Jasper County, but not been in the Edgefield or Saluda area. Tr.p. 691-692, 893-894. Evidence was also that Robert Goodwin was a family member of Lowman, but from Maryland. Tr.p. 692.

To the extent that the State's theory was that Lowman was from the area and knew the Tidwells, whereas the others were not from the area, this assertion by the Applicant does not show evidence of prosecutorial misconduct. A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. U.S. v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The knowing use of perjured testimony is subject to the materiality standard of review: "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. at 682, 105 S.Ct. 3375. Simpson v. Moore, 367 S.C. 587, 601, 627 S.E.2d 701, 708 (2006).

This Court must find that the Applicant has failed to show that the testimony related to the codefendant's limited or lack of knowledge of the Edgefield and Saluda areas was "knowingly false" by the State. The Applicant has presented no credible and admissible evidence to support this assertion. The allegation must be denied as to this specification.

Who armed the perpetrators.

The Applicant also contended that his counsel should have used information that had been provided in Applicant's Exhibit 6 concerning text messages, that he contends would have contradicted the State's theory that Applicant armed the codefendants. This Court has reviewed the texts set forth in the exhibit which shows a text "tomorrow is the big day" on March 2, 2017 and another March 2, 2017 text concerning a sense that they gonna fight back I seen what they got today they got some bigger and better sh*t.." suggesting a shootout on March 3, 2017. However, it is unclear what that is referring to because the home invasion was on March 8, 2017. Further, the record supports evidence of the purchase of ammo on March 6th and an earlier purchase of the Zastava pistol by Lowman earlier that week.

As above, the Applicant has failed to show knowing use of perjured testimony related to this assertion. In addition, to the extent he is claiming ineffective assistance concerning the use of the texts, the Applicant has failed to show how counsel was deficient and how, if the jury was aware of this information, the result of the trial would have been different to a reasonable probability.

Interviews with witnesses near crime scene.

The Applicant also introduced a statement by 11th Circuit investigator Jesse Quattlebaum concerning interviews he had on May 21, 2018 with Fred Wideman and May 23, 2018 with Colby Strickland. These interview notes suggest that the evening before the incident Wideman's brother while in the golf course parking lot saw a vehicle similar to a Mercury or Crown Victoria pass by the golf course at a low rate of speed multiple times which caused suspicion on incident and caused concern among the three brothers. Wideman indicated that he could not see who was driving or how many passengers. Colby Strickland indicated that the evening before the incident

between 5 and 5:30 PM, she saw a vehicle silver or cream colored Grand Marquis or Crown Victoria with a blue rag top at the intersection of Persimmon Drive and Highway 121. She advised the window was down and she could see a black male in the driver's seat and a black male in the passenger seat. She did not see the driver's face. The vehicle turned right toward Saluda. When she later left to go back toward Saluda she observed the same vehicle off the side of the road pointed in the direction of Persimmon Hill.

The Applicant contends that this statement is inconsistent with the State's theory. However, this was generally consistent with the State's theory as to when the conspirators arrive at the scene. Testimony was that during the daylight hours, on March 7, Lowman dropped off Wilson and Darien at the Tidwell's house between 4:30 and 5:00 pm or in the daylight while people were still playing golf. Tr.p. 735, 918-925. This information does not show that there was knowing use of false testimony or misconduct by the State. Although the statements may be viewed as not entirely consistent with the testimony, it does not suggest the evidence from Wilson or Darien was known to be false. The allegation must be denied.

The Applicant also claimed the statement suggested that Ms. Strickland identified the driver. The Applicant claims that he had 18 inch hair at the time and asserted she could not have seen his face if the head was turned. The statement suggests that she could not identify the driver except by his race. The suggestion of an assertion that there was knowing use of false testimony at trial is without factual support as it relates to the potential testimony of Ms. Strickland.

Informant information and Detective Bleggi report and phone identity.

The Applicant also contends that misconduct is shown by Applicant's Exhibit 4 a report from Detective Chad Bleggi of the Montgomery County Department of Police who indicated that he had received information that Robert Goodwin was an organizer of the home invasion from

and informant and had a telephone with a contact number 240-474-6655.²⁴ The Applicant has failed to show how he proves the existence of prosecutorial misconduct or knowing use of perjured testimony by the fact that the phone was identified with Goodwin. Evidence was presented that Goodwin was involved in the incident and connected with Lowman. The phone was also referred to as Goodwin's cellphone used by Lowman. (See above below conclusions related to State Exhibit 80 incorporated herein by reference). The Applicant has failed to show prosecutorial misconduct concerning its use and presentation of evidence and argument at trial based upon that evidence. His assertion to the contrary is without merit.

b. For not disclosing that Wilson had entered a plea agreement months before Applicant's trial.

The Applicant alleges that the State committed prosecutorial misconduct in failing to disclose James Wilson's agreement with the federal government on charges arising from the same incident. At the PCR hearing the Applicant presented an April 26, 2018 styled plea agreement between the United States government through Assistant U.S Attorney Justin Hollway and James Wilson. In the agreement, it states that Wilson has agreed to plead guilty to counts 1 and 2 which charge a Hobbs Act robbery and brandishing a firearm in furtherance of a crime of violence. One of the requirements in the agreement at Section 6, p. 5 was to "be fully truthful and forthright with federal, state, and local law enforcement agencies by providing full, complete, and truthful information about all criminal activities about which he has knowledge." The agreement also addressed that the federal government agreed "to recommend that the defendant not be prosecuted or alternately be sentence to concurrent time for any similar or related state crimes stemming from the incidents on or about March 8, 2017 as long as the defendant complied with the plea

²⁴ This is the number associated with the Coolpad phone introduced as State Exhibit 80.

agreement Further the agreement set out it was only a recommendation and is not binding upon the 11th Circuit Solicitor's Office..." Agreement, Section 12, Merger, p. 12. The agreement was signed by Wilson's counsel Richard Vieth²⁵ as well as Wilson and the Special Assistant U.S. Attorney Holloway. The agreement does not include any signature of the solicitor's office. The Applicant contends that either State erred in failing to disclose because it was inconsistent with the testimony and had impeachment value under Brady v. Maryland.

During the trial, James Wilson, the Applicant's co-defendant, testified about his role in the burglary and robbery scheme. In the beginning of his testimony, he acknowledged that he was charged with burglary in the first degree, two counts of kidnapping, and criminal conspiracy. When asked by Assistant Solicitor Fuller about promises he answered as follows:

Q. Are you being promised anything to be here today?

A. No Ma'am.

Q. Any promises of leniency?

A. No Ma'am.

Q. Any threats?

A. No Ma'am.

Tr. p. 689-690.

The Applicant contends that these answers were incorrect due to the existing agreement between Wilson and the federal government. Solicitor Hubbard and Assistant Solicitor Fuller testified that they were only aware of the existence of a proffer agreement between the federal government with Wilson but were not aware of a plea agreement with either Wilson or the proffer agreement nor any plea agreement by with the U.S. Attorney's Office with Derian prior to the

²⁵ The record is silent whether counsel Vieth was present during Wilson's testimony.

trial. Solicitor Hubbard was clear that he felt this was an important case in Saluda and felt it should be handled by the State and not the federal government. He thought the federal government was only looking at gun charges whereas the State had the heavy charges in his opinion. He did not want to hand it to the federal government to handle. Solicitor Hubbard stated that the State was going first in the case. Solicitor Hubbard was firm that he had no deals with anyone and no offers were extended by the State to anyone involved in the incident. Particularly there was deal by the State with James Wilson. Solicitor Hubbard stated that they do not negotiate until after the testimony and trial once the victims can have input. Solicitor Hubbard indicated he was not aware of the plea agreement with Wilson until after the trial and had not ever seen the particular plea agreement entered with the federal government. Solicitor Hubbard further indicated that he was not present at any federal court proceedings involving the codefendants. He did state, as the record reflects that Darien's federal lawyer was present during Darien's testimony.

Assistant Solicitor Fuller was of the same opinion that they were not aware of any plea agreement with Wilson at the time of trial but were aware of the proffer agreement. [Counsel Williams indicated that he was also aware of the proffer agreement with Wilson prior to the trial].

This Court initially finds that the responses made by Wilson to the questions by the Assistant Solicitor were not false based upon the Solicitor's understanding of the case, since he was unaware of any promise of leniency in this case – the actual question that was asked. The state was unaware, like they were unaware that there was an expectation of a downward departure on the pending federal sentence if he cooperated and testified truthfully in any case as set out in the federal plea agreement. This Court finds that there were no deals, no promises of leniency, and no agreements with the State on the state charges or sentencing prior to or during Wilson's testimony. Wilson truthfully said he was not promised anything to be that day to testify, no promises of

leniency and no threats. Wilson's plea agreement with the federal government was unknown to the 11th Circuit Solicitor's office. Further, there was nothing in the plea agreement with Wilson by the federal government that was binding upon the State as to how the State was to treat Wilson on his pending state charges. All that the federal agreement declared was that if Wilson was convicted of the state charges that the U.S. Attorney's Office would appear and request concurrent sentences or would recommend prior to any disposition that Wilson not be prosecuted by the State. As noted by Solicitor Hubbard wanted to have the State charges go first. What the State was aware and had provided the defense in discovery was the existence of a proffer agreement with Wilson prior to trial.²⁶

First, as to prosecutorial misconduct, this Court finds as a fact that no member of the prosecution team was aware of the existence of the April 26, 2018 plea agreement (or guilty plea) or had any knowledge of its terms. Second, the State had no part in the federal plea agreement. Third, the State had not negotiated with Wilson and had made no promises with Wilson about charging decisions, pleas or sentencing consideration. Fourth, Wilson testified truthfully in response to the direct questions asked by Solicitor Fuller about the state case. Fifth, this Court finds that the existence of the federal guilty plea and plea agreement were available to both parties on the Federal Court Public Index, PACER as noted previously.

²⁶ On judicial notice of the online record of the Saluda County Clerk of Court, James Wilson pled guilty to burglary in the first degree, armed robbery, conspiracy, kidnapping (2), on January 17, 2019 and was sentenced by Judge Leticia Verdin to an aggregate fifteen years concurrent with any federal sentence with credit for time served. State v Wilson, 2017-GS-41- 1058, 1059, 1060. 1068, 1069).

In his argument, he initially urges that the failure to disclose the federal plea agreement was a Brady v. Maryland discovery violation. The recent decision in State v. Brown, 441 S.C. 464, 470–72, 894 S.E.2d 525, 528–29 (2023), reh'g denied (Dec. 12, 2023), is useful in setting the stage for viewing some of the issues presented here:

In Brady v. Maryland, the United States Supreme Court held, “[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.” 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The Court rationalized its holding to ensure the accused has a fair trial. Id.

Almost a decade later, the United States Supreme Court included witness testimony under the reach of Brady’s holding: “When the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting credibility falls within [Brady’s] general rule.” Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (quoting Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)). The Court reaffirmed the need to have a finding of materiality under Brady. Id. (“We do not, however, automatically require a new trial whenever a combing of the prosecutors’ files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict.” (internal quotation omitted)). The Giglio Court restated the standard of materiality as any reasonable likelihood the testimony could have affected the jury’s judgment. Id. Moreover, the Court has defined “reasonable probability” as “a probability sufficient to undermine confidence in the outcome.” United States v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

In Giglio, the defense discovered that the prosecution did not disclose a promise made to a key witness in exchange for testimony. 405 U.S. at 150–51, 92 S.Ct. 763. There, the testifying witness was a co-conspirator and the only witness linking the defendant to the crime. Id. at 151, 92 S.Ct. 763. An affidavit filed by the prosecution as part of its opposition to a motion for a new trial confirmed a promise that, if he testified before a grand jury and at trial, he would not be prosecuted. Id. at 152, 92 S.Ct. 763. The United States Supreme Court reasoned, “[T]he Government’s case depended almost entirely on [the witness’s] testimony; without it there could have been no indictment and no evidence to carry the case to the jury.” Id. at 154, 92 S.Ct. 763. Ultimately, the Court reversed Giglio’s conviction on these grounds. Id. at 155, 92 S.Ct. 763.

The United States Supreme Court then made certain: “Impeachment evidence ... as well as exculpatory evidence, falls within the Brady rule.” Bagley, 473 U.S. at 676, 105 S.Ct. 3375. There, the Court reversed the judgment of the United States Court of Appeals for the Ninth Circuit and remanded the case for a determination regarding materiality. Id. at 684, 105 S.Ct. 3375. The prosecution

promised its witnesses the “possibility of reward” if the information they gave helped convict the defendant. *Id.* at 683, 105 S.Ct. 3375. The Court found this gave the witnesses a personal stake in the defendant's conviction and further increased the incentive to testify falsely. *Id.* Importantly, the witnesses were not given firm promises or deals; rather, a mere possibility of favorable treatment was sufficient.

Turning to the elements of the Brady test, a claim succeeds when “the evidence at issue is: 1) favorable to the accused; 2) in the possession of or known to the prosecution; 3) suppressed by the prosecution; and 4) material to the defendant's guilt or punishment.” State v. Durant, 430 S.C. 98, 107, 844 S.E.2d 49, 54 (2020).

State v. Brown (Correy), 441 S.C. 464, 470–72, 894 S.E.2d 525, 528–29 (2023), reh'g denied (Dec. 12, 2023). In regard to Brady and impeachment evidence, “there is never a real Brady violation unless the non-disclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.” Strickler v. Greene, 527 U.S. 263, 281, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).

The duty to disclose is limited to information in the possession of the government bringing the prosecution, and the duty does extend to exculpatory evidence in the files of police agencies of the government bringing the prosecution as the prosecution team. Commonwealth v. Puksar, 597 Pa. 240, 951 A.2d 267, 283 (2008); Commonwealth v. Lesko, 609 Pa. 128, 15 A.3d 345, 370 (2011) (applying Kyles v. Whitley, supra at 438, 115 S.Ct. 1555). “Brady requires information to be revealed only when it is ‘possessed by the prosecutor or anyone over whom the prosecutor has authority.’” Zant v. Moon, 264 Ga. 93, 100, 440 S.E.2d 657 (1994).

Brady is not violated when the defendant knew or, with reasonable diligence, could have uncovered the evidence in question, or when the evidence was available to the defense from other sources. Commonwealth v. Smith, 609 Pa. 605, 17 A.3d 873, 902–03 (2011). See also Moon v. Head, 285 F.3d 1301, 1310 (11th Cir.2002) (adopting case-by-case analysis and holding that a Georgia prosecutor did not have constructive knowledge of evidence known to Tennessee

agencies, notwithstanding the fact that a Tennessee investigator was a witness in the Georgia trial, because the two states shared neither resources nor labor, Tennessee investigators did not act as agents for Georgia investigators, and the Tennessee investigators were not under the supervision of Georgia officials); United States v. Beers, 189 F.3d 1297, 1304 (10th Cir. 1999) (where there is no indication of a joint effort between state and federal governments, state's knowledge of impeachment evidence may not be imputed to federal prosecutor); People v. Leo, 249 A.D.2d 251, 252, 673 N.Y.S.2d 70 [no evidence of joint investigation and the People were not in control of Federal file ; United States v. Bernudez, 526 F.2d 89, 100, n. 9 [Jencks Act], cert. denied 425 U.S. 970, 96 S.Ct. 2166, 48 L.Ed.2d 793; contrast, People v. Rutter, 202 A.D.2d 123, 131, 616 N.Y.S.2d 598 (prosecutor was "afforded unfettered access" to documents generated by out-of-State police investigation). See also Lovitt v. True, 403 F.3d 171, 185–86 (4th Cir. 2005) (noting that although the prosecutor has a duty to learn of favorable evidence known to others acting on its behalf, a county prosecutor did not have duty to learn of cases in surrounding jurisdictions where its witness, allegedly a "professional snitch," testified on behalf of or cooperated with the government).

Although in Kyles v. Whitley, 514 U.S. 419, 436, 115 S.Ct. 1555, 1567, 131 L.Ed.2d 490, 508 (1995), the Supreme Court stated that "the individual prosecutor has a duty [under Brady] to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police," it is reasonable to surmise that persons "acting on the government's behalf in the case" refers to those over whom the prosecutor has authority. Whether a person is on the prosecution team and subject to the authority of the prosecutor depends in each case on the extent of interaction, cooperation, and dependence of the agents working on the case. Zant v. Moon, 440 S.E.2d 657 (Ga. 1994) (material in hands of foreign state official); Ferguson v. State, 226 Ga. App. 681, 684, 487 S.E.2d 467, 469 (1997) (Even though there was some degree of initial interaction

and cooperation between the FBI and the DeKalb County police, there was no evidence that the FBI or any of its agents worked for or was subject to the control or authority of the State prosecutor. Even assuming the FBI or any of its agents possessed information about Johnson's federal deal not possessed by the State, we decline to impute such knowledge to the State prosecutor in the absence of any evidence that the prosecutor had authority over the persons possessing such information. Moreover, Ferguson made no effort to obtain information about the federal deal from the FBI or other federal authorities, so he has not demonstrated that he was unable to obtain the information in the exercise of reasonable diligence). See United States v. Kern, 12 F.3d 122, 126 (8th Cir.1993) ("We do not accept the defendants' proposal that we impute the knowledge of the State of Nebraska to a federal prosecutor."); United States v. Aichele, 941 F.2d 761, 764 (9th Cir.1991) (finding no Brady violation because material sought was under control of state officials, not federal prosecutor); United States v. Walker, 720 F.2d 1527, 1535 (11th Cir.1983) (declining to impute knowledge of deal between witness and state officials to the federal prosecutor); cf. United States v. Avellino, 136 F.3d 249 (2d Cir.1998) ("[K]nowledge on the part of persons employed by a different office of the government does not in all instances warrant the imputation of knowledge to the prosecutor, for the imposition of an unlimited duty on a prosecutor to inquire of other offices not working with the prosecutor's office on the case in question would inappropriately require us to adopt a monolithic view of government that would condemn the prosecution of criminal cases to a state of paralysis." (internal quotation marks and citation omitted)).

As for the federal plea agreement with Wilson, this Court must find that there was no Brady violation because it did not custody or control of the information as a state prosecuting agency. The state prosecutors did not have the material in their possession, and defendant provides no evidence that the Solicitor's Office knew of its existence. Information possessed by other branches

of the state government, including investigating officers, is typically imputed to the state prosecutors of the case. However, this Court declines to extend this principle for state prosecutors to exculpatory materials in the possession of the federal government, a separate sovereign. It is unrealistic to expect state prosecutors to know all information possessed by federal officials affecting a state case, particularly when they may not have access to the information as Special Assistant U.S. Attorney in the federal prosecution. This Court holds that the federal government's knowledge and possession of potential impeachment evidence cannot be imputed to a state prosecutor for purposes of establishing a Brady violation. Therefore, the prosecution did not suppress the alleged Brady material. See United States v. Beers, 189 F.3d 1297, 1304 (10th Cir. 1999).

Alternately, this Court must find that the information was available on the Federal Court Pacer website as set forth under judicial notice in the earlier part of the Order. In Anderson v. Leeke, 271 S.C. 435, 248 S.E.2d 120 (1978), we held where exculpatory evidence is equally available to the accused, the State has no obligation to furnish such evidence. State v. Cox, S.C., 266 S.E.2d 784 (1980); State v. Penland, 275 S.C. 537, 540, 273 S.E.2d 765, 766–67 (1981); accord United States v. Meregildo, 920 F.Supp.2d 434, 445 (S.D.N.Y. 2013) (explaining that in the context of evidence the government failed to disclose during the criminal discovery process, “there is no remedy for a defendant who possesses or has access to the information he claims was withheld”). Cf. Earley v. State, 418 S.C. 255, 269, 792 S.E.2d 226, 233 (2016) (recognizing the Anderson precedent). But see Anderson v. State, 709 F.2d 887 (4th Cir. 1983) (no general public records exception to Brady). “[W]hen the information is readily available to the defense from another source, there simply is nothing for the government to ‘disclose.’” Matthews v. Ishee, 486 F.3d 883, 891 (6th Cir.2007). People v. Snow, 2012 IL App (4th) 110415, ¶ 39, 964 N.E.2d 1139,

1152, as supplemented on denial of reh'g (Mar. 5, 2012) (unrelated to federal plea agreement). Brady is not violated when the defendant knew or, with reasonable diligence, could have uncovered the evidence in question, or when the evidence was available to the defense from other sources. Commonwealth v. Smith, 609 Pa. 605, 17 A.3d 873, 902–03 (2011). Since it was available to both, there was no Brady violation by the Solicitor not seeking out information beyond the state prosecuting authorities through the federal court system and providing it to the defense which had a similar ability to do so, particularly where Lowman had federal charges pending against him at the same time.

Finally, the Applicant asserts prosecutorial misconduct in failing to correct the testimony of Wilson related to his questions about promises and leniency. The failure to correct knowingly false evidence is as reprehensible as its presentation. Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996); Riddle v. Ozmint, 369 S.C. 39, 47–48, 631 S.E.2d 70, 75 (2006). That was not the case here. The Applicant is correct when he asserts that it is equally well established that the aforementioned principles apply even where the witness' false testimony goes only to that witness' credibility. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217, 1221 (1959). This is because “[the] jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.” Napue, 360 U.S. at 269, 79 S.Ct. at 1177, 3 L.Ed.2d at 1221.

However, this Court has found as a fact that the Solicitor's Office, including Assistant Solicitor Fuller and Solicitor Hubbard were not aware of the existence of the federal plea agreement. In fact, they declared that if they were aware of it, as a matter of their practice, they would have disclosed it. This Court finds with the Solicitor's lack of knowledge of the federal

agreement and their well-founded belief the responses by Wilson were truthful because of his belief, there was no duty to correct or clarify at the time Wilson's responses in the same manner that Darien's were corrected. See, People v. Wright, 2013 IL App (1st) 103232, ¶ 47, 986 N.E.2d 719, 729-30 (Ill. 2013) ("However, even under those circumstances, 'the State only has an obligation to correct the testimony of a witness when it has knowledge that the witness is mistaken in his testimony.' "). Because Applicant has failed to show that the State knowingly used perjured testimony, he cannot establish the prejudice element i.e. that the claim so infected the trial that the resulting conviction violated due process. The assertion must be denied.

Alternately, even assuming that the state improperly failed to disclose Wilson's plea agreement to Lowman, the Court must find, based upon the totality of the circumstances, that there is no "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Bagley, 473 U.S. at 682, 105 S.Ct. at 3383. First, Wilson's testimony about the plans for the burglary were corroborated by Darien. Other parts of Wilson's testimony concerning the use of the phones, the vehicle with the implements, the photos at the Walmart, and other factors related to his testimony were confirmed by other witnesses.

Moreover, Wilson's credibility had been seriously questioned on cross-examination after he admitted his involvement in the violent crimes and his admission that he was charged with the crimes in state court, including at least the eight warrants. Tr.p. 807-808. Wilson also declared that he was "guilty of everything I'm charged with." Tr.p. 833. As noted earlier, he was questioned about his inconsistent statement between what he told police and his trial testimony. "[W]here the undisclosed evidence merely furnishes an additional basis on which to challenge a witness whose credibility has already been shown to be questionable or who is subject to extensive attack by reason of other evidence, the undisclosed evidence may be cumulative, and hence not material."

Byrd v. Collins, 209 F.3d 486, 518 (6th Cir. 2000). This Court cannot conclude that the evidence of Wilson's plea agreement "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles, 514 U.S. at 435, 115 S.Ct. 1555. The Court must deny this claim for relief.

c. For obtaining the wrong gas station surveillance footage when, had the right footage been obtained, Applicant believes he would have been exonerated.

In the Applicant's testimony, he contends that the wrong surveillance video was used in the investigation and the trial. He claimed that the State (and defense) got the wrong video. He claimed that there was a video feed of the Applicant at a store which would have shown Darion there with Applicant. In the State's investigation, Lowman claimed got video of a wrong time. Counsel Williams did not recall this as being an issue at trial and was not sure what the Applicant was talking about. The prosecutors testified that they had no idea what the Applicant was discussing.

The Applicant failed to present the surveillance video that he is contending suggests the State committed misconduct. This failure of proof by credible evidence requires that this allegation be dismissed.

d. For arguing that the tinted windows was the basis for the stop.

As stated more thoroughly within this Order, the evidence from Deputy Austin Harding, the reason for the stop was based upon the lack of insurance and the tinted window violation. Tr.p. 114-115, 121-123. Although the Applicant may disagree with the assertion, there was evidence in the record authorizing the Solicitor to argue it was the basis of the stop. He has failed in his burden of proof. The portion of the Order addressing the "reasonable suspicion" allegation is incorporated herein by reference. (Allegation (k)).

- e. **For stating that Applicant made statements to the police when Applicant's position is that the statements were never made.**

The Applicant contends that the State offered false testimony and committed prosecutorial misconduct in admitting evidence of his post-arrest statement to law enforcement because he claims it never occurred. The substantive issue related to this issue was addressed in allegation (p) related to whether counsel erred in failing to object to the statement as hearsay. Further, there was a Jackson v. Denno hearing at the outset of the trial. Tr.p. 67-91. At the conclusion of the hearing, Judge Griffith found that his oral statement was admissible. Tr.p. 91. The trial court did note that cross-examination on why there were no written statements obviously would be allowed.

This Court finds that there was evidence to support the state's argument that the statement was made by the Applicant. The Applicant has failed to show credible evidence of knowing use of perjured testimony or misconduct by the prosecutors. The allegation is denied.

- f. **For threatening Steven Brown with jail time if he did not testify.**

Steven Brown testified at trial that he initially saw some keys by the road on McQueen Street while stopped by the railroad on the weekend of March 11, 2017. He stated his daughter got out of the vehicle and got the keys at that time. Tr.p. 530. The keys were left in the vehicle until March 15th when they were back in the cousin's car and saw the keys and they went to the Johnston Police station to turn in the keys. Tr.p. 531. State Exhibit 40.

During cross-examination, Brown expressed how he was uncomfortable with the whole process. There was an extensive in camera discussion with him about his reluctance and not wanting to be involved in the case. Tr.p. 533-539.

The Applicant claimed that Brown was threatened by the State with jail time. The key in an area where Applicant was near when stopped by Deputy Harding. The key was to the jewelry store that was owned by the people being burglarized.

Counsel Williams testified that Brown was an unwilling witness and did not want to testify. Solicitor Hubbard testified that he was testifying under a subpoena. Hubbard stated that Brown was not threatened with jail time, subpoenas are significant though. Hubbard talked to Brown ahead of time, did not tell him what to say. Assistant Solicitor Sutania Fuller testified also that Brown was not threatened with jail and was not told what to say. He was called for a very limited purpose.

This Court finds credible the testimony that Brown was not threatened with jail at the time of his testimony. A review of the record reveals that he was a reluctant witness who did not want to participate. It further reveals that he was under subpoena and therefore required to appear. The Court finds that the Applicant failed in his burden of proof. Brown was a material witness in the case. There was a reason he was under a subpoena. There is no evidence of prosecutorial misconduct.

g. For fabricating a fourth person being on location after Applicant's charges had been pending for some time.

i. Warrant says Applicant and two others were involved in the incident. At trial he was tried as a fourth person.

The State's theory of the case at trial was that there were four individuals involved in the home invasion: the Applicant, Robert Goodwin, James Wilson and Joshua Darien. This claim by the Applicant is wholly frivolous.

Counsel Williams is unaware what this issue because three people were identified as being in the house. The defense was aware that Applicant was necessarily a fourth member given the state theory, which was that it could not have been done with three. Williams noted one person tied a woman up, another tied a man up (Mr. And Mrs. Tidwell). The third was looking around the house. The person outside could not be identified by the Tidwells.

Solicitor Hubbard was of the opinion that there was always four people involved. After the crime, the other three went back to Maryland where they were arrested.

There was probable cause to arrest all four individuals for the crimes involving the invasion of the Tidwells. The State theory of the case was the product of the evidence as it developed from the investigation, not the imagination of the prosecutor. The Applicant failed to proof prosecutorial misconduct. The allegation is dismissed.

h. **For submitting that calls were made involving a phone that was broken and could not be extracted from.**

In his PCR testimony, the Applicant contended that it was misconduct for the Solicitor to allow Captain Horne to state that the Coolpad cell phone, (State Exhibit 80) was a working device. The Applicant contended that the State knew on record that the HTC device (not State Exhibit 80), would not power on, even using the backup system. Applicant claimed that the phone number provided was not in any call center records. Applicant asserts that paperwork exists that suggests the phone did not work. However the expert witness, Toby Horne, said it worked and stated that only Applicant had access to it. Special Agent Hines' questioning identifies that the prosecution knew of this paperwork, but he was not asked about it. The Applicant questioned why if he wrote the number on the phone, why is the number not in the chain. He stated that counsel should have cross examined on this. He also referred to Montgomery County Detective Bleggi statement

indicated the number was used by co-defendant Goodwin, not by Applicant and the defense should have examined him on it.

Solicitor Hubbard stated that the testimony from Captain Toby Horne of the Saluda County Sheriff's Department was not about the HTC telephone, but the Coolpad telephone. Horn's testimony was about the Coolpad phone which was introduced as State Exhibit 80. The Coolpad phone was a code locked phone was code locked. However, it could call 911 to bypass safety feature and obtained the phone number alone. Hubbard state that Wilson's phone did not have the data but confirmed what telephone Wilson was talking and subject to extraction. Hubbard stated another disabled phone is the HTC. Hubbard did not presently know the significance of the HTC phone.

Assistant Solicitor Fuller testified that there were phones recovered from the vehicle and the pond. She stated that Maryland assisted to run a search on the phone. She stated that State Exhibit 80 , the Coolpad phone has 240 phone number and the 240 sticker was placed on that phone. Her understanding was that the HTC phone that Applicant refers was not accessible.

This Court must find that there was no prosecutorial misconduct in the presentation of the evidence of State Exhibit 80 and its relationship with the James Wilson phone. Initially, Joshua Pierce testified that State Exhibit 80, the Coolpad phone, was recovered in the search of the Applicant's vehicle. Tr.p. 576. Saluda Captain Horne was able to secure the telephone number from that device by dialing 911 which revealed number 240-474-6655 on the CAD. He then turned the telephone over to SLED. Tr.p. 667-669. James Wilson testified the that he received text messages on his phone from 240-474-6655 during the event. He stated that these messages were coming from Goodwin's phone, but that Lowman was using Goodwin's phone because Lowman's phone was off. Tr.p. 764-765. Wilson stated that Lowman had Goodwin's phone which was their

only way of communication. Tr.p. 766. SLED Agent George Hines testified that analyzed James Wilson's cellphone and was able to extract matters with Cellebrite extraction. Tr.p. 851-853. In particular Hines testified that it extracted call logs which indicated that there was a connected between Wilson's phone and State Exhibit 80 with multiple calls on March 8. Tr.p. 853-855. On cross-examination, he clarified that Wilson's phone could receive texts properly, but the extraction did not show the content between the two phones. Tr.p. 857. Further, consistent with the testimony, the recovered Apple IPAD mini, the iPhone 6, and the Coolpad all had passwords that Hines was not able to bypass and were code locked. However, he was able to extract from two phones, including Wilson's. Tr .p. 859-860.

The evidence presented by the State did not refer to the HTC which Applicant contends was broken. The evidence supports this presentation by the State. There is no evidence of prosecutorial misconduct related to this claim. The allegation must be dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application and vacate his conviction. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

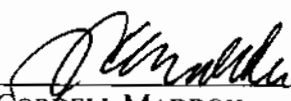
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's

attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

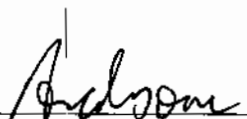
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant is returned to the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29th day of Sept, 2021.



J. CORDELL MADDOX
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina