

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

NOV 13 2013

Appeal from Richland County
J. Ernest Kinard, Jr., Circuit Court Judge

S.C. Supreme Court

THOMAS BROOKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000571

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED SEPTEMBER 22, 2010.....	1
APPLICATION FOR POST-CONVICTION RELIEF 2011-CP-40-7395	21
APPLICATION FOR POST-CONVICTION RELIEF 2011-CP-40-7856	37
RETURN 2011-CP-40-7395	45
ORDER OF MERGER 2011-CP-40-7395 AND 7856	52
APPLICANT'S MOTION FOR LEAVE TO CONDUCT DISCOVERY	55
RETURN TO APPLICANT'S MOTION FOR LEAVE TO CONDUCT DISCOVERY.....	59
ORDER GRANTING APPLICANT'S MOTION FOR LEAVE TO CONDUCT DISCOVERY ..	63
AMENDED/SUPPLEMENTAL APPLICATION FOR POST-CONVICTION RELIEF	66
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 14, 2012	73
ORDER OF DISMISSAL	228
RULE 59(E) MOTION.....	247
ORDER DENYING RULE 59(E) MOTION	255
INDICTMENT	257

State of South Carolina) In the Court of General Sessions
County of Richland) Fifth Judicial Circuit
2009-GS-40-1154

The State of South Carolina,)
Plaintiff,)
vs.)
Thomas R. Brooks,)
Defendant.)

Transcript of Record

September 22, 2010
Columbia, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

Dolly Justice Garfield, Esquire, Assistant Solicitor
Attorney for the State

Rhodes Bailey, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Thomas Brooks	
Examination by the Court	4
Statement of Facts by Solicitor	10
Statement by Defense	13
Sentence of the Court	19
Certificate Page	20

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
------------	--------------------	-------------	------------

No Exhibits Introduced.

1 (PRIOR TO GUILTY PLEA, THE DEFENDANT IS SWORN.)

2 MS. GARFIELD: May it please the court, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. GARFIELD: Before you is Thomas Brooks with his
5 attorney, Mr. Rhodes Bailey from the public defender's
6 office. Mr. Brooks has been charged with armed robbery.
7 He is pleading guilty today under *North Carolina vs. Alford*
8 to a reduced charge of strong-arm robbery. There are no
9 negotiations.

10 THE COURT: No negotiations. Counselor, let me tell
11 you. Depending on what I hear on the facts as to whether
12 or not I'll let it go under *Alford*.

13 MR. BAILEY: Yes, sir.

14 THE COURT: Okay?

15 MR. BAILEY: Yes, sir.

16 THE COURT: I might make him allocute as to what he
17 did.

18 MR. BAILEY: Sir? I apologize.

19 THE COURT: I may make Mr. Brooks allocute and not
20 accept, and not accept the *Alford* plea.

21 MR. BAILEY: Yes, sir.

22 THE COURT: Okay, and if I -- if that's not
23 acceptable, you can stand him down.

24 MR. BAILEY: Thank you, Your Honor.

25 THE COURT: Give me the facts, please, ma'am.

THOMAS R. BROOKS - EXAMINATION BY THE COURT

4

1 MS. GARFIELD: Thank you, Your Honor. This incident
2 occurred ---

3 THE COURT: Hold on. Excuse me. I'm sorry. What's
4 the range on this charge, on the strong-arm?

5 MS. GARFIELD: Zero to fifteen.

6 THE COURT: Zero to fifteen.

7 EXAMINATION BY THE COURT:

8 Q. All right, you're Thomas R. Brooks?

9 A. Yes, sir.

10 Q. How old are you, Mr. Brooks?

11 A. Thirty.

12 Q. Thirty?

13 A. Yes, sir.

14 Q. How far did you go in school?

15 A. I graduated from high school.

16 Q. Have you worked since that time?

17 A. Yes, sir.

18 Q. What have you done?

19 A. Laundry service.

20 Q. Sir?

21 A. For Hospital Services.

22 Q. Hospital Services?

23 A. Yes, sir.

24 Q. For whom?

25 A. Sir?

THOMAS R. BROOKS - EXAMINATION BY THE COURT

5

1 Q. Where did you work? I know Hospital Services. Is
2 that the name of the company?

3 A. Yes, sir.

4 Q. Okay. How long did you work there?

5 A. I worked there for five months.

6 Q. Okay. So, what did you -- where did you work before
7 that?

8 A. Tyson. Prepared foods. Tyson. Prepared foods.

9 Q. Okay. How long did you work at Tyson?

10 A. Three months.

11 Q. Have you ever worked at any job where they paid you a
12 check and withheld taxes for more than a year?

13 A. No, sir.

14 Q. Are you married?

15 A. No, sir.

16 Q. Do you have any children?

17 A. No, sir.

18 Q. Mr. Brooks, are you under the influence of
19 medications, drugs, or alcohol today?

20 A. No, sir.

21 THE COURT: Counselor, are you satisfied that Mr.
22 Brooks is competent to plead guilty?

23 MR. BAILEY: I am, Your Honor.

24 BY THE COURT:

25 Q. And you're pleading to common-law robbery?

THOMAS R. BROOKS - EXAMINATION BY THE COURT

6

1 A. Yes, sir.

2 Q. Now, you understand that I could sentence you to
3 fifteen years today?

4 A. Yes, sir.

5 THE COURT: Now, let me ask, and whether or not I
6 accept the *Alford* is just depending on what I hear. But my
7 understanding under *Alford* is that Mr. Brooks is saying I
8 didn't do it, but if I went to trial, the likelihood is the
9 state would be -- I'd be found guilty by the state's case.
10 Do you agree with that?

11 MR. BAILEY: I do, Your Honor.

12 MS. GARFIELD: Yes, sir.

13 BY THE COURT:

14 Q. But, Mr. Brooks, you understand if I do accept your
15 plea under *Alford*, that you will be sentenced as if you
16 were found guilty or pled guilty. There's no distinction
17 there.

18 A. Yes, sir.

19 Q. You understand that?

20 A. Yes, sir.

21 Q. Okay. Knowing that, you want to go forward?

22 A. Yes, sir.

23 Q. Knowing that I could sentence you to fifteen years
24 today?

25 A. Yes, sir.

1 Q. Has anybody forced, threatened, or promised you
2 anything to get you to plead?

3 A. No, sir.

4 Q. Are you doing it freely and voluntarily?

5 A. Yes, sir.

6 Q. Do you understand that you have a right to a jury
7 trial on this charge?

8 A. Yes, sir.

9 Q. In that trial, you would be presumed innocent, and the
10 state would have to prove each and every element of the
11 charge that you've been -- or the charge you've been
12 indicted for beyond a reasonable doubt. You understand?

13 A. Yes, sir.

14 Q. When you plead guilty, you give up your right to a
15 jury trial. Has that been explained to you?

16 A. Yes, sir.

17 Q. Is that what you want to do?

18 A. Yes, sir.

19 Q. Do you wish to waive your right to a jury trial and
20 instead plead here today?

21 A. Yes, sir.

22 Q. Do you understand that you have certain constitutional
23 rights which would include the right to confront and
24 cross-examine any witnesses that the state puts up to
25 testify against you?

1 A. Yes, sir.

2 Q. The right to present competent evidence in your
3 defense, and the right to remain silent. Do you understand
4 those rights?

5 A. Yes, sir.

6 Q. If you went to trial and you did not testify, the
7 court would instruct the jury they couldn't hold the fact
8 that you didn't testify against you in any form or fashion.
9 Do you understand that?

10 A. Yes, sir.

11 Q. When you plead either under *Alford* or guilty, you are
12 telling the court I do not wish to avail myself of these
13 constitutional protections. Do you understand that?

14 A. Yes, sir.

15 Q. In other words, you're saying I don't want to remain
16 silent. I'm going to go forward.

17 A. Yes, sir.

18 Q. I don't want to have -- I don't want to confront
19 witnesses, and I don't want to present any evidence. Is
20 that what you're saying?

21 A. Yes, sir.

22 Q. Is it your desire to waive your constitutional rights
23 and instead plead here today?

24 A. Yes, sir.

25 Q. Do you understand that if you contend that you have a

THOMAS R. BROOKS - EXAMINATION BY THE COURT

9

1 defense to this charge, you lose your right to assert that
2 defense once you plead here today either under *Alford* or
3 plead guilty?

4 A. Yes, sir.

5 Q. Also if you contend that your constitutional rights
6 have been violated up to this point, you lose the right to
7 complain about the alleged constitutional violations by
8 either pleading under *Alford* or pleading guilty. Do you
9 understand?

10 A. Yes, sir.

11 Q. Knowing all that, do you want to go forward with your
12 plea?

13 A. Yes, sir.

14 Q. Are you satisfied with the services of your attorney?

15 A. Yes, sir.

16 Q. Has he reasonably done all that you asked him to do?

17 A. Yes, sir.

18 Q. As we stand here in court today, is there anything
19 that you contend your attorney has not done to either
20 investigate your case or to prepare your case that he
21 should have done prior to coming to court today?

22 A. No, sir.

23 Q. You're totally satisfied with his services?

24 A. Yes, sir.

25 THE COURT: All right, tell me a little bit about the

1 facts, please.

2 MS. GARFIELD: Thank you, Your Honor. May it please
3 the court? This incident did occur February 5, 2009. The
4 victim in this case is a James Franklin League,
5 L-e-a-g-u-e. Goes by Frank. At that period of time, he
6 was living in Columbia. He's from the state of Maryland.
7 He had some friends that came down here to go to school,
8 and he basically just joined them.

9 He was living on Green Street, and he got a job at
10 Pops Pizza, which is pizza location in our Five Points
11 area. He was working there as a delivery driver, and on
12 that particular evening, they got a call in for a delivery
13 for a pizza and some mozzarella sticks to a [REDACTED]
14 [REDACTED], which is approximately two miles from the Five
15 Points area, I'd estimate.

16 Pops Pizza does not have any kind of caller ID system.
17 They simply go by the information given to them over the
18 phone. They were given a name of a Terry Paul and phone
19 number.

20 Mr. League goes to that location to deliver a pizza,
21 gets out, and when he's in the driveway with the food, he
22 is approached by a black male wearing a black hoodie. And
23 comes up to him and presents a pistol and points it to his
24 chest area and says give me what you've got.

25 He had approximately \$37 on him. He gave him that

1 money. The individual said is that all you have, and he
2 offered him a sub that he had in his car. He then goes
3 into his trunk and tries to give him an old radio, at which
4 time the perpetrator fled.

5 Very shaken, Frank, Mr. League, goes back to Pops
6 Pizza, tells his manage what happened, at which time she
7 called the police. At that time, the police are on their
8 way, take a statement from Mr. League, and a BOLO goes out
9 to all Columbia Police Department units with the
10 description of a tall black male, approximately 6 foot 2, 6
11 foot 3 wearing a black hoodie in this area.

12 At approximately -- about ten minutes elapsed. They
13 go by [REDACTED], which at the time was sort of
14 an all-night laundromat students frequented. The duty
15 officer sees an individual matching that description go
16 into the laundromat. He then immediately comes back out,
17 and it turns out to be the defendant, and he is
18 apprehended. They take Mr. League on scene, and Mr. League
19 sees the defendant and says he's a hundred percent sure
20 that is the person that robbed him.

21 They obviously search Mr. Brooks, as well as do a
22 search warrant of the laundromat where he ran into. No gun
23 was ever found. The cash was not found. Nothing else to
24 link him to a robbery was located.

25 Law enforcement called the number they had been given

1 on the delivery receipt, asked to speak with Terry Paul.
2 They said there was no one there by that name, and the
3 phone number belonged to a Cedric Campbell. Cedric
4 Campbell was informed of what had happened, and he said he
5 didn't live anywhere near there. He had no knowledge of
6 this. So, it was obviously just a completely bogus number
7 and name given when the order was made.

8 I believe that's all the facts. This happened at
9 11:00 night.

10 THE COURT: What kind of prior record does Mr. Brooks
11 have?

12 MS. GARFIELD: Your Honor, starting in 1998, he has
13 convictions for -- a cocaine conviction, CDV, and simple
14 possession of marijuana. In 2003, he has convictions for
15 pointing and presenting and ABHAN. 2006 trespass. In
16 2007, threatening the life of public official. He has been
17 incarcerated on this charge since February 5, 2009.

18 Oh and, Your Honor, Mr. League now is back in the
19 state of Maryland. I've spoken with him on several
20 occasions. He was prepared to come back to South Carolina
21 if we did proceed with a trial. He did not agree with my
22 reduction, and I explained to him that it was ultimately
23 the state's decision, and I felt this was in the best
24 interest based on the evidence. In the long run, we agreed
25 to disagree.

1 He is aware of today's proceedings, and I will just
2 present the victim impact statement which I have provided
3 the defense for review.

4 THE COURT: Counselor, have you seen this statement?

5 MR. BAILEY: Yes, Your Honor.

6 (A PAUSE.)

7 THE COURT: All right, counselor.

8 MR. BAILEY: Thank you very much, Your Honor. I'd
9 like to, you know, go a little bit into, you know, why
10 we're pleading under Alford. Please stop me if you, if you
11 -- if it's getting too detailed or whatever. I don't want
12 to -- but I, there are certain things I wanted to highlight
13 here.

14 THE COURT: I am inclined to accept it, but I would
15 like to hear from you.

16 MR. BAILEY: Sure. Yes, sir.

17 You know, first I'd like to point out this, you know,
18 this area, especially on Millwood, is known as a pretty, as
19 a pretty bad, you know, as a pretty bad area.

20 Mr. Brooks, I don't -- he -- the evening in question,
21 and we -- my investigator has taken statements from a lot
22 of different witnesses. Mr. Brooks was out and he was
23 drinking and socializing with some people. He got into an
24 altercation with some folks over in front of Suds in, in,
25 in this particular area. We, we interviewed a victim who'd

1 kind of who had kind of -- you know, they came to a fist
2 fight. His -- that two other women that were with him at
3 the time. We also interviewed his neighbor. We
4 interviewed his, his landlord. So, they can say that
5 about, that about this time roughly -- it would have been a
6 little before, it would have been before 11. Their stories
7 vary, but that he was actually, he was actually in an
8 altercation and/or at this, at this bar trying to, trying
9 to get drinks over at Suds because I believe that they
10 serve alcohol on top of -- they're like a bar and
11 laundromat.

12 MS. GARFIELD: A bar/laundromat.

13 MR. BAILEY: Yeah.

14 MS. GARFIELD: It's now out of business.

15 THE COURT: A bar and laundromat?

16 MS. GARFIELD: Yes, sir.

17 MR. BAILEY: Yes, sir. Yes, sir.

18 THE COURT: Are you kidding me?

19 MS. GARFIELD: No.

20 MR. BAILEY: No, no.

21 THE COURT: Man, I'm from Anderson County, that's for
22 sure.

23 MR. BAILEY: Well, and so Mr. Brooks was in the area,
24 and he was socializing, he was drinking, and he was even
25 fighting now a little bit. He got into a fight.

1 Now, his landlord has said to us, and his landlord
2 knew him pretty well. He said Mr. Brooks, he had seen him
3 get rowdy before, but he was never the kind of guy to hold
4 a weapon or to have a weapon, but he was definitely in the
5 area.

6 Another thing that we thought was particularly
7 difficult to overcome in this case is the show-up ID. I
8 know there's a lot of doubt out there about IDs and false
9 IDs. But one of the worst kinds, you know, sort of the
10 show up when you show up and there's a guy in the police
11 car. And, you know, that -- it would be very hard to, to
12 overcome that with the jury.

13 Mr. Brooks, as Ms. Garfield said, has been
14 incarcerated since February 5th.

15 THE COURT: Of last year. Is that right?

16 MR. BAILEY: '09. Yes, sir. Yes, sir, 2009. He had,
17 he had, had said he was innocent from the beginning. I --
18 we talked long and hard about this case, about the
19 positives and about, and about, you know, about the
20 negatives and what would be difficult to overcome, such as
21 this ID, such as the fact that he was in the area, but ---

22 THE COURT: Did he live in the area?

23 MR. BAILEY: Yes, sir. He lived ---

24 DEFENDANT: [REDACTED]

25 THE COURT: How far is that?

1 MR. BAILEY: I'd have to...

2 MS. GARFIELD: It's very close.

3 MR. BAILEY: Yeah. It's pretty close.

4 THE COURT: Let me ask you about the ID from this, and
5 I didn't mean to interrupt you, counselor.

6 MR. BAILEY: Sure. That's fine.

7 THE COURT: But was the ID -- was the description of
8 the clothing worn by the defendant the same as what he had
9 on the night in question?

10 MS. GARFIELD: Yes, sir. Yes, sir.

11 THE COURT: So, there's a lot of other aspects besides
12 the height?

13 MS. GARFIELD: Yes, sir.

14 THE COURT: Okay.

15 MS. GARFIELD: And that clothing was taken into
16 evidence.

17 THE COURT: Did he, did the victim testify about any
18 odor of alcohol about the person or no?

19 MS. GARFIELD: He did not give any information
20 regarding alcohol in his description that.

21 THE COURT: But there were sufficient similarities
22 there?

23 MS. GARFIELD: Yes, sir.

24 THE COURT: Okay. All right, go ahead.

25 MR. BAILEY: Thank you, Your Honor. I, I would, I

1 mean, I would disagree a little bit. I don't, I don't
2 think it's super material to -- about the nature of gray,
3 you know, pants versus, you know, jeans versus black pants.
4 There might have been some discrepancies there, but -- in
5 the clothing, but I can...

6 But, you know, ultimately, Your Honor, I, you know --
7 we, we -- our investigator from our office did talk to a
8 lot of witnesses. And I think that a convincing case could
9 have been made that Mr. Brooks was -- you know, albeit it's
10 not the -- it's not always the most positive defense in the
11 world that, you know, you were in the middle of a fight.
12 But I think there's a big difference between -- a lot of
13 his friends and his landlord who knew him said that he was
14 not the kind of guy to go around, you know, waiving around
15 a gun. He was just getting in kind of a brawl. Or, you
16 know, he was getting into a drunken altercation with this,
17 with this other gentleman around Suds.

18 I, I think it is possible that a mistake could have
19 been definitely been made in a situation like this,
20 especially meeting Mr. Brooks's description.

21 He was working, as he told you, with laundry for
22 Hospital Services, and actually this was the exact day he
23 had gone to try and get a second job at Burger King. And
24 we interviewed the manager at Burger King who saw him come
25 in.

1 You know, I've had a lot of clients, and Mr. Brooks is
2 -- you know, from knowing him for the last year and a half,
3 he's always been very cooperative. He's always been very
4 respectful. He's been very, you know, engaged in his case.
5 I find him, you know, in my experience -- I've gotten to
6 know him in a year and a half, and we've seen a lot of each
7 other at the jail.

8 You know, I, I think that this is probably the right
9 decision for him because I think rolling the dice in this
10 situation, especially with this ID which it's going to be
11 hard to overcome, I think this is the right thing. And
12 this is what Mr. Brooks has told me that he wants to do.

13 I would ask Your Honor for a -- and we've talked about
14 it, and I've told Ms. Garfield that we're asking for a
15 sentence somewhere around four to five years. That's what
16 we're, you know, we're asking for. Obviously this is a,
17 this is a straight-up plea, Your Honor, and I can answer
18 any other questions you might like me to if you need me to.

19 THE COURT: No. I'm satisfied that the Alford plea is
20 appropriate under the circumstances. I'll let him proceed
21 under Alford. But you have anything else you want to say
22 other than the facts behind why you're going under Alford?

23 MR. BAILEY: No, sir. I think that pretty much sums
24 it up.

25 THE COURT: Mr. Brooks, you have anything else you

1 want to add?

2 DEFENDANT: No, sir.

3 THE COURT: Solicitor, are you finished?

4 MS. GARFIELD: Yes, sir.

5 SENTENCE OF THE COURT

6 THE COURT: All right, I will accept Mr. Brooks's
7 Alford plea as knowingly, intelligently, and voluntarily
8 made with the advice of competent counsel with whom he's
9 well satisfied, and find that there is a substantial
10 factual basis for the plea.

11 I'm going to sentence you to twelve years. I'm going
12 to suspend that on the service of seven years and put you
13 on probation for three years. Good luck to you. I'll give
14 you credit from February 5, 2009.

15 DEFENDANT: Thank you, sir.

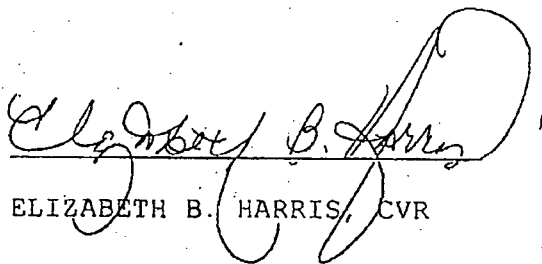
16 MR. BAILEY: Thank you very much, Your Honor.

17 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 22ND DAY OF SEPTEMBER, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

NOVEMBER 22ND, 2011

2011 CP4007395

STATE OF SOUTH CAROLINA

County of Richland

IN THE COURT OF Common Pleas

Thomas Reynold Brooks #
295842

V.

State of South Carolina

Application For
Post-Conviction ReliefJEANETTE A. BRIDE
C.C.P. CLERK

2011 SEP 23 AM 10:45

FILED

1. Place of detention: LEE CORRECTIONAL INST,
990 WISACKY HIGHWAY, BISHOPVILLE, SOUTH CARO-
LINA
2. Name and location of Court which imposed
Sentence: Richland County Court of General
Sessions, Richland, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any): NONE
4. The indictment number or numbers (if known) upon
which are the offenses for which sentence was
imposed: (A) indictment number unknown, Armed
Robbery. (B) N/A
5. The date upon which sentence was imposed and
the terms of the sentence:

(A) SEPTEMBER 22nd, 2010 7 YEARS non-violent 3 YEARS

(B)

(C)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b)

(c)

7. Did you appeal from the judgement of conviction or the imposition of sentence? NO, I did not

8. N/A (a), (b), (c), (d)

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

(a) FIRST Collateral Attack

(b)

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

(a) 1st amendment

(b) 14th amendment

(c) Involuntary guilty plea

11. STATE Concisely and in the same order the facts which support each grounds set out in (10):

(a) failure to investigate adequately

(b) unduly suggestive identification

(c) resulting from Ineffectiveness of Counsel

12. Prior to this application have you filed with respect to this conviction: NO (a), (b), (c), (d)

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) The specific nature thereof:

i. N/A

ii

iii

iv

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

i. N/A

ii

iii

iv

(c) the disposition thereof:

i. N/A

ii

iii

iv

(d) the date of each such disposition:

i. N/A

ii

iii

iv

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

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

(a) which grounds have been presented: N/A

~~i~~
~~ii~~
~~iii~~

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

~~i~~
~~ii~~
~~iii~~

16. If any ground set forth in (10) has not previously been presented to any court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: N/A

~~(a)~~
~~(b)~~
~~(c)~~

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

- (a) your arraignment and plea? Yes, I were.
- (b) your trial, if any? N/A
- (c) your sentencing? Yes, I were
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Bethes Bailey Public Defender Office, Richmond County Judicial Center, 1701 MAIN S.T. Columbus, G.C. 29201

ii
iii

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

i. Plea and Sentencing

ii
iii

19. State clearly the relief you seek in this
Application? Vacation of Conviction or New
Trial

20. Are you now under sentence from any other
Court that you have not challenged? I am not.

State of South Carolina
County of Richland

VERIFICATION

I, Thomas Brooks, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes grounds known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sworn to and subscribed before
Thomas Brooks

This 6 day of Sept, 2011
Debra S. L.S.

FILED
SEP 23 AM 10:46
KEDIE W. HEBRIDE
Clerk P. & G.S.

Notary Public of South Carolina
My Commission Expires 11-4-2015

Application to proceed without prepayment of cost
and Affidavit in support thereof

I, Thomas Brooks, hereby apply for leave to proceed in this action without prepayment of fees or cost 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 proceeding or give security therefor.

Thomas Brooks Applicant

State of South Carolina In the Court of General Sessions
 County of Richland
 City of Columbia
 vs.

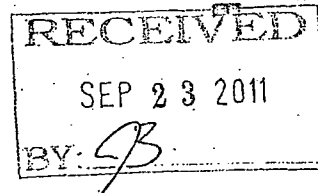
Thomas Brooks
 295842

Motion of
 notification of
 Complaint

JEANETTE W. McBRIDE
 C.C.P. & G.S.

2011 SEP 23 AM 10:45

09/21/11
 FILED



Dear Clerk of Court for the County of
 Richland. I Thomas Brooks, # 295842
 duly file this Complaint in captioned Cause
 of present parties involved this is also
 filed as a motion based on the following
 particulars. in no particular
 order other to notify and seek explanation
 preliminary to its "area of concern" for
 what it's worth, pertaining to the "status
 quo" of my present "first collateral
 attack" under due process pertaining to
 its particulars listed in narrative of
 facts presented in the narrative body of
 this "Motion of notification of Complaint".

23 followed, "I filed a p.c.r. that was
 handwritten out in legible form but
 it was returned back to me for no stated
 reason or reasons with two p.c.r.
 applications to refuse with a statute
 of limitations issue for concern bearing
 why I have submitted this complaint. I
 wish to file my original application
 by rearing it to be filed as the original
 I also have filed one of the ones that
 you sent with mine that was hand-
 written. I ~~went~~ in writing just in case
 a statute of limitations issue arises
 I can have some rights to my original
 P.C.R. Application and if you still
 want accept it it would like to NO for
 what reason or reasons why this
 Application does not allow me "access
 to the courts" to what extent of the
 12w is this permitted and I wish
 to receive copies of all documents
 mailed concerning this current Challenging
 of my First collateral Attack, of the
 Allegation on what I'm held on.

I seek relief thru a explanation
 responded in a return legal format to
 be mailed back to me with all documents
 that pertain to this P.L.R. to have
 some redress if the statute of limitations
 expire or not and/or if statute of
 limitations does expire before it's proper
 filing."

I, Thomas Brooks #2958472, duly
 sworn upon my oath under the penalty
 of perjury that the enclosed is true
 And I wish to receive any and or all
 requests that I have enclosed in clear
 writing to be processed with respects
 of my rights to the courts.

Thomas Brooks

Sworn to and subscribed before me
 this _____ day of _____, 2011

 L.S.

Notary public of South Carolina
 my commission expires _____

V(s) DOW - CPD

ARREST WARRANT NUMBER

K373469

ACTION OF GRAND JURY

THE END

Foreperson of Grand Jury
Date: MAY 14 2009

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

87

THE STATE
vs.

THOMAS BROOKS

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to the rights and consequences of the foregoing, I hereby waive the legal rights, I hereby waive presentment to the Grand Jury.

Defendant Shenard, Robert

hereby appear in my own proper person and plead guilty to the within indictment of 10-1-10.

Stroy in no 5667

[illegible]

Witness:

C.C.C. PLS AND G.S

RECEIVED
OCT 28 1964
HIGHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

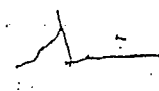
INDICTMENT

At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Thomas Brooks did in Richland County on or about February 5, 2009, commit a robbery by feloniously taking from the person or presence of James League, by means of force or intimidation goods or monies belonging to Pops New York Pizza, being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

W. Bay 

WARREN B. GIESE, SOLICITOR

ARREST WARRANT

K-373469 K-373469 033642

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
COLUMBIA
THE STATE
against

THOMAS R BROOKS

Address:

Phone: SSN: 240

Sex: M Race: E Height: 5'3" Weight: 240

DL State: N #:

DOB: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: DOM N/LI

Offense: ARMED ROBBERY

Offense Code: ARI

Code/Ordinance Sec: 16-11-330

This Warrant is CERTIFIED FOR SERVICE in the
County/ ☒ Municipality of
COLUMBIA The accusedis to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Thomas R Brooks
on 7/23/03
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
COLUMBIA

AFFIDAVIT

INV N DOM

Personally appeared before me the affiant THOMAS R BROOKS who
being duly sworn deposes and says that defendant THOMAS R BROOKS
did within this county and state on 02/05/03 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)
in the following particulars:
DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330

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

ON 02/05/03, AT APPROX. 2212 HRS., AT [REDACTED], CITY OF COLA,
COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, THE VICTIM, JAMES F.
LEAGUE, WHO WORKS FOR POPS NEW YORK PIZZA AS A DELIVERY DRIVER, WAS
ENROUTE TO INCIDENT LOCATION TO DELIVER A PIZZA AND MOZARELLA STIC
FORTERRY PAUL. WHEN THE VICTIM ARRIVED AT INCIDENT LOCATION AND
EXITED HIS VEHICLE THE DEF APPROACHED HIM ON FOOT, PULLED OUT A HAN
-GUN, POINTED IT AT THE VICTIMS STOMACH AND TOLD HIM "YO MAN, GIVE
ME WHAT YOU GOT". THE DEF THEN TOOK APPROXIMATELY \$37.00 IN US C

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

Affiant's Address: SC 29201

Affiant's Telephone: 34535700

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 02/05/2003 defendant THOMAS R BROOKS did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY

16-11-330

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

Sworn to and subscribed before me
on 02/05/2003
Signature of Judge

Judge's Address: CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone: Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Signature of Affiant
THOMAS R BROOKS

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

THOMAS R BROOKS

AKA:

Race: Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip: COLUMBIA, SC 29205

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Common law robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS401154

A/W#: K373469

Date of Offense: 2/5/2009

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST GARFIELD, DOLLY 13433 SC Bar# Thomas Brooks Defendant Attorney for Defendant 76145 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 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 7 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 34.5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (Fen February 5, 2009)☐ 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐
☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. _____

Recipient: May serve W/E beginning _____

*Fine: Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

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

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

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

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

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter

Jeanette McBride, C. Presiding Judge
C. Holmes Harris, Judge
SOUTH CAROLINA☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel
\$4742 requires \$500 be paid to Clerk during probation

9/22/10

OCTOBER 31, 2011

CLERK OF COURT
RICHLAND COUNTY COURTHOUSE
1701 MAIN STREET
COLUMBIA, S.C. 29201

RE: FILING OF APPRECIATION

DEAR CLERK:

PLEASE FIND ENCLOSED (2) COPIES OF MY APPLICATION FOR POST CONVICTION RELIEF. WOULD YOU PLEASE FILE SAME AND RETURN ME A STAMPED CLOCKED-COPY FOR MY FILES. I THANK YOU FOR ALL YOUR EFFORTS IN THIS RESPECT AND LOOK TO YOUR REPLY.

RESPECTFULLY YOURS,
Dennis J. Jackson
DENNIS J. JACKSON, #272043
BRCI-CONGAREE #237
4460 BROAD RIVER ROAD
COLUMBIA, S.C. 29210

ENCLOSURE

cc: FILE

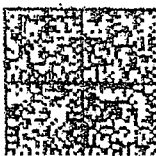
RICHLAND COUNTY
FILED
2011 NOV -2 PM 12:29
JEANETTE W. MCBRIDE
C.C.P. & G.S.

THE AS HEEDMAN BROOKS #220842

L.C.I.

990 WISACKY HUR
BIRMGHAM, ST. 29010
"JUNTER / NBRTH / #2248"

(11)



UNITED STATES POSTAGE
02 1M
0004261422
MAILED FROM ZIP CODE 29010
\$00.640
SEP 20 2011

"IMPORTANT"

SODC

HEAL

SEP 25 2011

ADVICE AND
OR DOCUMENT
SUBSIST

MAIL ROOM

23252/2768

ATTN: Josephine W. McBrick

GLENN COURT

Richland County

P.O. BOX 2706

Colombia, SC 29910

5th 8p 37

RICHLAND COUNTY
FILED

2011 CP400 7856

STATE OF SOUTH CAROLINA NOV 17 AM 10:36
County of Richland JEANNETTE W. MCBRIDE
C.C.P. & G.S.

In the Court of Common Pleas

Thomas Benjamin Brooks 295842
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

JEANNETTE W. MCBRIDE
C.C.P. & G.S.
2011 SEP 27 AM 10:36

RICHLAND COUNTY
FILED

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention LEE CORRECTIONAL INST, 990 WINDY HILL, BISHOPVILLE
SOUTH CAROLINA
2. Name and location of Court which imposed sentence Richland County Court of General
Sessions, Richland, SOUTH CAROLINA
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) N/A indictment number # 2009CS401154 Common Law robbery
(b) N/A
(c) N/A
4. The date upon which sentence was imposed and the terms of the sentence: 1745 34RS
(a) SEPTEMBER 22nd, 2010 / 24RS SUBV - violent 107RS, Probation
(b) _____
(c) _____
(d) _____

5. Check whether a finding of guilty was made

- 507-5401102*
- (a) after a plea of guilty
 - (b) after a plea of not guilty
 - (c) after a plea of nolo contendere

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

NO, I did NOT

7. If you answered "yes" to (6), list

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

- i. *N/A*
- ii. *N/A*
- iii. *N/A*

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

- i. *N/A*
- ii. *N/A*
- iii. *N/A*

(c) the date of each such result:

- i. *N/A*
- ii. *N/A*
- iii. *N/A*

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

- i. *N/A*
- ii. *N/A*
- iii. *N/A*

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) *First Collateral Attack*
- (b)
- (c)

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

- (a) *1st Amendment*
- (b) *14th Amendment*
- (c) *Involuntary Guilty Plea*

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) *Failure to investigate adequately*
- (b) *unduly suggestive identification*
- (c) *resulting from ineffectiveness of counsel*

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii.
iii.
iv.

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

i. N/A

ii.
iii.
iv.

(c) the disposition thereof:

i. N/A

ii.
iii.
iv.

(d) the date of each such disposition:

i. N/A

ii.
iii.
iv.

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

i. N/A

ii.
iii.
iv.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~N/A~~ NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. /

iii. /

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

i. N/A

ii. /

iii. /

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) ~~N/A~~ First collateral Attack

(b) /

(c) /

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

(a) your arraignment and plea? yes, I were

(b) your trial, if any? N/A

(c) your sentencing? yes, I were

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

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

i. Rodhes Bailey, Public Defender Office, Richmond County
Judiciary Center, 1701 West S.T. Columbia, S.C. 29201

ii. /

iii. /

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

i. PTA and Sentencing

ii. /

iii. /

18. State clearly the relief you seek in filing this application.

Vacation of conviction or New Trial

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

I am not

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Thomas Reginald Brooks #275842, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Thomas R. Brooks

FILED
2011 SEP 27 AM 10:37
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

SWORN to and subscribed before me this 19

day of Sept. 2011

Debra Surges (I.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

FILED
2011 NOV 17 AM 10:36
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

I, Thomas Reginald Brooks #275842, 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 therefor.

Thomas R. Brooks
Applicant

SWORN or affirmed to and subscribed before me this

19 day of Sept. 2011

Debra Surges
Notary Public

My Commission Expires 11-4-2015

RECEIVED
CLERK OF COURT
RICHLAND COUNTY
2011 NOV 17 AM 10:36
JEANETTE W. McBRIDE
C.C.P. & G.S.

42

20114331

Prior
PCR

Case# 20114145
=open
11/3/11

ATTORNEY GENERAL'S OFFICE

RECEIVED

11/18/11

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

HAVE COPIES MADE

ROUTE TO

ORDER: TRANSCRIPT

PEN RECORDS CLERK RECORDS

OTHER:

This appears to be the same
one that was hand written
but, it has a different CP #
(10)

10-0114-15-9321105

State of South Carolina
 County of Richland
 Thomas R. Brooks
 #295842

IN THE COURT OF Common Pleas

MOTION FOR
 DISCOVERY

v.

State of South Carolina

RICHLAND COUNTY
 FILED
 2011 NOV 17 AM 10:37
 JEANNETTE W. McBRIDE
 C.C.P. & G.S.

Dear Clerk of Court, Ms. Jeannette W. McBride,
 I'm filing this motion to request discovery pertaining
 to a P.C.R. that was processed and/or time stamped
 by your office on Sep. 27, 2011, at 10:37am, pertaining
 to indictment number 2009G3401154, Arrest Warrant
 Number K373469, I am a "pro se" petitioner and
 I need my motion because I need to evaluate infor-
 mation contained in to support my P.C.R. I also
 request that my entire case file with public defender
 office, Court appointed Counsel Roxanne Bailey, be turned
 over to an independent party such as my self to be
 protected from tamperments etc. the Certificate
 of service and/or notarized verification is
 attached on a separate piece of paper that
 is enclosed in this correspondence and/or envelope.

(13)

State of South Carolina
County of Richland

I, Thomas Brooks #295842, being duly sworn upon my oath, depose and say that I have motioned to the Gregory motion for discovery; that I know the contacts thereof; that motion includes grounds to me that can vacate, get aside, and correct sentence that will be attacked in P.C.B. of the Court of Common Pleas and I need motion as a pro se, petitioner to prepare defense and public defender's entire file that pertains to arrest warrant, K-373-469, such as requests that I wrote pertaining to things that I required of him while at the Alvin S. Glenn detention center, pertaining to A/W, K-373469, and any letters that I mailed from my current location at L.C.I. here in Bishopville, S.C.

Thomas Brooks 10/05/2011

Sworn to and subscribed before me

This ___ day of ___, 20__
L.S.

Notary public of South Carolina

My Commission Expires _____

☒ Notary Refused to Notarize

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

BROOKS Thomas R -
00295842,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011CP4007395

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 23, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Rhodes Bailey, Esquire. On September 22, 2010, following a guilty plea, the Applicant was sentenced by The Honorable R. Lawton McIntosh to 12 Years; Provided that upon the services of 7 years. The balance is suspended with probation for 3 years. Credit for time served since Feb 5,

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4007395&CourtType=G&CaseType=Civil&CourtAgency=40002>

BROOKS Thomas R - State's Return - (2011CP4007395)

Page 1 of 6

2009. The Applicant had been indicted and/or convicted of the following: Armed Robbery -- (2009-GS-40-1154). According to SCDC he is serving the following sentence:

Offender Type Adult-straight Sentence Offense Common Law Robbery Sentence Start Date 02/05/2009 Sentence Length 7 YRS, 0 MOS, 0 DYS Admission Date 09/23/2010 Committing County Richland Location Lee Projected Release Date 02/22/2013 Projected Parole Eligibility 10/05/2011 Supervised Furlough Eligibility Not Eligible Sex Offender Registry No

2

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant did not appeal his conviction and/or sentence.

The application for post conviction relief (PCR) was filed September 23, 2011.

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00295842>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985)

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁴

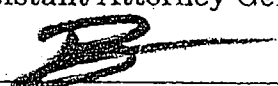
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

November 8, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

BROOKS Thomas R -
00295842,

Applicant,

v.

State of South Carolina,

Respondent.

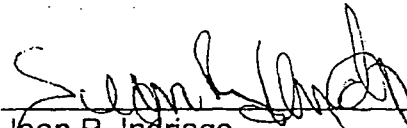
IN THE COURT OF COMMON PLEAS

2011CP4007395

CERTIFICATE OF SERVICE

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

**BROOKS Thomas R, 295842 – Lee Correctional Institution, 990 Wisacky
Highway, Bishopville, SC 29010**

DATED November 8, 2011.

 Jean R. Indriago
 Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Brooks, Thomas Reginald, 295842

2011CP4007395

2011CP4007856

Applicant,

vs.

ORDER OF MERGER

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2011 DEC -1 AM 11:54
JEANETTE W. McBRIDE
C.C.P. & G.S.

The applicant in the above-captioned matters has filed two applications for post-conviction relief, one which was filed September 23, 2011 (2011CP4007395) and another filed November 17, 2011 (2011CP4007856). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (*See, Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. §17-27-90), this Court hereby orders that the two proceedings be merged. The application for post-conviction relief filed November 17, 2011 (2011CP4007856) be considered an amendment to the initial application for post conviction relief filed September 23, 2011 (2011CP4007395).

The Clerk of Court is therefore ordered to merge the two cases, with docket number 2011CP4007395 being the surviving case. Hereafter, the word "Application" will refer to docket number 2011CP4007395; the word "Amendment" will refer to docket number 2011CP4007856, which will be considered as an amendment to the application for post conviction relief.

IT IS THEREFORE ORDERED that the Richland County Clerk of Court merge docket number 2011CP4007856 into docket number 2011CP4007395, with file 2011CP4007395 being the surviving file and all future pleadings bearing docket number 2011CP4007395. Docket number 2011CP4007856 will be dismissed upon the merger.

AND IT IS SO ORDERED this 30 day of November, 2011.


The Honorable Alison Renee Lee
Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Thomas R. Brooks)

☒ Plaintiff)

CASE NO.)

2011-CP-400-7395)

2011-CP-400-7856)

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

State Of South Carolina)

☒ Defendant.)

Plaintiff's Attorney:
Thomas R. Brooks, Bar No.
Address:
LCI
990 Wisacky Highway
Bishopville, South Carolina 29010
phone: fax:
e-mail: other:

Defendant's Attorney:
Brian T. Petrano, Bar No.
Address:
Post Office Box 11549
Columbia, South Carolina 29211
phone: 803-734-3737 fax: 803-734-4747
e-mail: bpetrano@scag.gov other:

RICHLAND COUNTY
FILED
2011 DEC - 1 AM 11:51
JEANETTE W. HIGBRIE
C.C.P. & J.S.

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 28, 2011

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☐ EXEMPT:

- (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Thomas Reginald Brooks
(Inmate No. 295842),

Applicant,

vs.

State of South Carolina,

Respondent.

Civil Action No.: 2011-CP-40-7395

**MOTION FOR LEAVE
TO CONDUCT DISCOVERY**JEANETTE W. McBRIDE
CLERK OF COURT

2012 JUN 22 PM 2:01

RICHLAND COUNTY
FILED**TO: THE RESPONDENT AND ITS ATTORNEY, ROBERT D. CORNEY, ESQUIRE:**

YOU WILL PLEASE TAKE NOTICE that the Petitioner in this Application for Post-Conviction Relief, by and through his undersigned counsel, will move before the Presiding Judge of the Richland County Court of Common Pleas, at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, to be heard on the tenth (10th) day after service or as soon thereafter as counsel may be heard, for an Order granting the Petitioner leave to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure. The Petitioner requests leave to conduct the following specific discovery for the reasons indicated:

1. Richland County EMS records from February 5-6, 2009 for T. Thompson. Mr. Thompson was involved in an altercation with the Petitioner at the approximate time of the robbery that is the subject of this PCR Petition, thus establishing an alibi for the Petitioner. The EMS records will verify the altercation and the time it occurred.
2. Providence Hospital records from February 5-6, 2009 for T. Thompson. Mr. Thompson was involved in an altercation with the Petitioner at the approximate time of the robbery that is the subject of this PCR Petition, thus establishing an alibi for the Petitioner. The hospital records will further verify the altercation and the time it occurred.

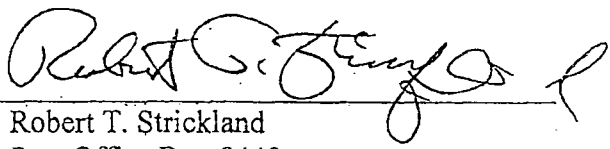
3. Any photographs and booking records for the Petitioner with the City of Columbia Police Department / County Jail from February 5-6, 2009 (the dates of the robbery in question and the Petitioner's arrest and booking). These photographs will document the injuries the Petitioner sustained in the altercation with Mr. Thompson and provide further proof of an alibi.
4. Any records at the Alvin S. Glenn Detention Center concerning the Petitioner (i.e., photographs of the clothing he was wearing when arrested, inventory of his personal effects, etc.) from May 2009. These records will document that the clothing he was wearing did not match the description of the clothing worn by the suspect for the robbery in question and that he was not carrying the money or weapon related to the robbery at the time of his arrest.
5. Police records dealing with the call and dispatch to the altercation on February 5-6, 2009 involving the Petitioner and Mr. Thompson at an establishment known as "Suds", located at or near [REDACTED], Columbia, South Carolina. This request will include BOLA bulletins, description of suspect, etc. These records may further establish that the Petitioner was involved in that altercation and further support an alibi for the robbery that is the subject of this PCR Petition.
6. Police records dealing with the robbery that is the subject of this PCR Petition, including BOLA bulletins, description of suspect, etc. These records are expected to establish that the Petitioner did not match the initial description of the suspect in that robbery.
7. A list of the call numbers for the police officers responding to the robbery that is the subject of this PCR Petition and the altercation described above at the establishment known as "Suds." This information is needed to identify the officers referenced in the police reports.

This Motion is made pursuant to S. C. Code Ann. § 17-27-150 (Thomson West 2003) and Rule 71.1 of the South Carolina Rules of Civil Procedure, and on the grounds that good cause exists to allow this discovery to proceed.

This Motion is supported by the pleadings in this action, the available witness statements, any affidavits served prior to the hearing, any submitted memoranda, all applicable statutes and case authority, the applicable Rules of Civil Procedure, and such other evidence and authority as the court may find it appropriate to consider.

The undersigned counsel certifies that prior to filing this motion, he communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion.

BARNES, ALFORD, STORK & JOHNSON, LLP

By: 

Robert T. Strickland
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111

Attorneys for the Petitioner

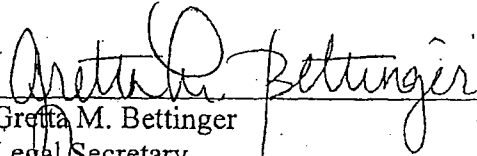
June 22, 2012

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Gretta M. Bettinger, an employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that on June 22, 2012, I served a copy of the within and foregoing *MOTION FOR LEAVE TO CONDUCT DISCOVERY*, upon the Respondent in this action, through its attorney of record, by depositing a copy in the United States Mail, first class, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

Robert D. Corney, Esquire
 Assistant Attorney General
 Post Conviction Relief Section
 S.C. Attorney General's Office
 Post Office Box 11549
 Columbia, SC 29211-1549


 Gretta M. Bettinger
 Legal Secretary
 Barnes, Alford, Stork & Johnson, L.L.P.
 Post Office Box 8448
 Columbia, SC 29202-8448

RICHLAND COUNTY
 FILED
 2012 JUN 22 PM 2:01
 JENNIFER L. WOODRIDGE
 C.L.P. & G.S.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Thomas R. Brooks, #295842,)

2011-CP-40-07395

Applicant,)

**RETURN TO APPLICANT'S MOTION
 FOR LEAVE TO CONDUCT DISCOVERY**

v.)

State of South Carolina,)

Respondent.)

This matter is before this Court by way of an Application for Post-Conviction Relief (PCR) filed September 23, 2011, and amended November 17, 2011. Applicant, through current PCR counsel Tom Strickland, Esquire, has filed a "Motion for Leave to Conduct Discovery" with this Court requesting court approval to initiate the discovery process. In particular, Applicant has set forth seven (7) items he wishes to obtain:

- 1) Richland County EMS records for T. Thompson to prove potential alibi;
- 2) Providence Hospital records for T. Thompson to support an alleged alibi;
- 3) Applicant's county jail booking photographs to further prove alibi;
- 4) Alvin S. Glenn Detention Center records to show Applicant's clothing did not match witness identifications of perpetrator and that Applicant was not carrying money or weapon at time of the arrest;
- 5) Records from the 911 phone call and subsequent police dispatch to support an alibi defense;
- 6) Police records (BOLA bulletins, suspect identifications, etc.) that show Applicant did not match suspect description; and

7) A list of police officer call numbers to identify the officers involved in the police reports who were called to the area where T. Thompson and Applicant were involved in an altercation.

Respondent submits the items set forth are unnecessary in the particular action and Applicant has failed to set forth sufficient good cause why these allegations cannot be proven without the use of the discovery process.

Regarding items 1, 2, 3, 5, and 6, Applicant has not set forth any reason that the alleged victim of his physical altercation, "T. Thompson", cannot appear at the PCR hearing where he can provide the testimony Applicant now claims Thompson could have given at trial to establish alibi. Invocation of the discovery process in this regard is unnecessary and a drain on the state's resources where several state agencies will be called upon to produce the requested records. Applicant has failed to establish any reason he cannot have T. Thompson provide live testimony at the evidentiary hearing to establish the same information sought to be proven through the documents listed above.

Regarding item 4, in the transcript of Applicant's October 22, 2010, plea, the prosecuting solicitor explicitly states that no gun or money were ever recovered from Applicant upon his arrest. (*See* Plea Tr. p. 11, ll. 11 – 24: "No gun was ever found. The cash was not found.") Therefore, leave to discover such photos and records from the Alvin S. Glenn detention center is superfluous and unnecessary.

Finally, item number 7 would only be necessary in the event that number 5 were granted, which Respondent contends should not be done. Therefore, item number 7 need not be addressed specifically.

For the reasons set forth above, Respondent respectfully requests that this Court deny Applicant's request for discovery as good cause does not exist to do so.

Alternatively, should this Court see fit in its discretion to grant Applicant's request to invoke the discovery process, Respondent respectfully requests this Court enter a formal order outlining and limiting the scope of the investigation to the specific, detailed items which Applicant seeks to obtain.

Respectfully submitted,

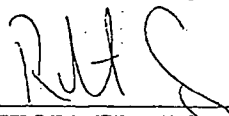
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
June 25, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2011-CP-400-7395

Thomas R. Brooks, 295842

Applicant,

vs

State of South Carolina,

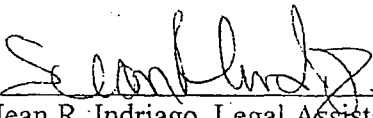
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)

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 Motion in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Robert T. Strickland, Esquire
Barnes Alford Stork & Johnson, LLP
Post Office Box 8448
Columbia, South Carolina 29202

DATED this 28th day of June, 2012.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Thomas Reginald Brooks
(Inmate No. 295842),

Civil Action No.: 2011-CP-40-7395

Applicant,

ORDER GRANTING APPLICANT'S
MOTION FOR LEAVE
TO CONDUCT DISCOVERY

vs.

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2012 JUL 25 AM 11:43
JEANETTE W. McBRIDE
& G.S.

This post conviction relief matter came before me on July 11, 2012 for a hearing on Applicant's Motion for Leave to Conduct Discovery. Applicant was represented by Robert T. Strickland of Barnes, Alford, Stork & Johnson, LLP, and the Respondent, by Robert D. Corney, Assistant Attorney General for the State of South Carolina.

Pursuant to S. C. Code Ann. § 17-27-150 (Thomson West 2003) and Rule 71.1 of the South Carolina Rules of Civil Procedure, Applicant seeks leave of court to subpoena or otherwise seek the following records he maintains are relevant to his PCR petition:

1. Richland County EMS records from February 5-6, 2009 for T. Thompson. Applicant maintains Mr. Thompson was involved in an altercation with him at the approximate time of the robbery that is the subject of this PCR Petition, thus establishing an alibi for Applicant. Applicant maintains the EMS records will verify that altercation and the time it occurred.
2. Providence Hospital records from February 5-6, 2009 for T. Thompson. Applicant maintains these hospital records will further verify the altercation and the time it occurred.
3. Any photographs and booking records for Applicant from February 5-6, 2009 (the dates of the robbery in question and Applicant's arrest and booking). Applicant maintains these photographs will document the injuries he sustained in the altercation with Mr. Thompson and provide further proof of an alibi.

4. Any records at the Alvin S. Glenn Detention Center concerning Applicant (i.e., photographs of the clothing he was wearing when arrested, inventory of his personal effects, etc.). Applicant maintains these records will document that the clothing he was wearing did not match the description of the clothing worn by the suspect for the robbery in question and that he was not carrying the money or weapon related to the robbery at the time of his arrest.
5. Police records dealing with the call and dispatch to the altercation on February 5-6, 2009 involving Applicant and Mr. Thompson at an establishment known as "Suds", located at or near [REDACTED], Columbia, South Carolina. This request will include BOLA bulletins, description of suspect, etc. Applicant maintains these records may further establish that he was involved in that altercation and further support an alibi for the robbery that is the subject of this PCR Petition.
6. Police records dealing with the robbery that is the subject of this PCR Petition, including BOLA bulletins, description of suspect, etc. Applicant maintains these records may establish that Applicant did not match the initial description of the suspect in that robbery.
7. A list of the call numbers for the police officers responding to the robbery that is the subject of this PCR Petition and the altercation described above at the establishment known as "Suds." Applicant maintains this information is needed to identify the officers referenced in the police reports.

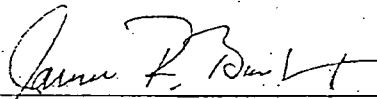
During the hearing, Applicant's counsel advised that the EMS record for T. Thompson had been obtained without the need for a subpoena. The parties resolved items 1 and 2 of Applicant's motion by stipulating that this EMS record will be admissible at the hearing on Applicant's PCR hearing under Rule 803 of the South Carolina Rules of Evidence.

After carefully reviewing and considering the pleadings, the arguments of counsel, and the applicable law, I find that good cause exists and therefore grant Applicant's Motion as to items 3-7 listed above.

IT IS THEREFORE ORDERED that per the parties' stipulation, the EMS record of T. Thompson shall be admissible at the hearing on Applicant's PCR petition under Rule 803 of the South Carolina Rules of Evidence.

IT IS FURTHER ORDERED that Applicant is granted leave of court to engage in the discovery sought in items 3-7 of his Motion for Leave to Conduct Discovery.

IT IS SO ORDERED.



James R. Barber III
Presiding Judge, Fifth Judicial Circuit

July 19, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Thomas Reginald Brooks
(Inmate No. 295842),

Civil Action No.: 2011-CP-40-7395

Applicant,

**AMENDED / SUPPLEMENTAL
APPLICATION FOR
POST-CONVICTION RELIEF**

vs.

State of South Carolina,

Respondent.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina.
2. Name and location of Court which imposed sentence: Court of General Sessions for Richland County, Columbia, South Carolina.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed: Indictment No. 2009-GS-40-1154. Sentence was imposed for common law robbery.

4. The date upon which sentence was imposed and the terms of the sentence: Sentence imposed on September 22, 2010. The terms of the sentence were twelve (12) years, provided that upon the service of seven (7) years, the balance is suspended with probation for three (3) years. Credit given for time served from February 5, 2009.

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

Petitioner entered a plea under North Carolina v. Alford.

6. Did you appeal from the judgment of conviction or the imposition of sentence? No.

7. If you answered "yes" to (6), list

- (a) the name of each Court to which you appealed: _____
 (b) the result in each such Court to which you appealed: _____
 (c) the date of each such result: _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results: _____

8. If you answered "no" to (6), state your reasons for not so appealing: First collateral attack.

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

- (a) 1st Amendment
 (b) 14th Amendment
 (c) Involuntary guilty plea
 (d) Ineffective assistance of counsel
 (e) Prosecutorial misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Counsel failed to investigate adequately
 (b) Counsel failed to properly challenge unduly suggestive identification

- (c) Counsel failed to properly investigate and establish Petitioner's alibi
- (d) Counsel failed to properly advise Petitioner as to the weaknesses of the case against him. Had Petitioner been properly advised, he would not have agreed to the plea.
- (e) In her Order dated April 15, 2009, Judge Michelle Childs ordered that the 911 tapes regarding the arrest of the Petitioner by the Richland County Sheriff's Department and all 911 calls made in reference to the case on February 6, 2009 be preserved and placed into evidence. The Petitioner maintains the State violated this Order by only preserving the 911 call for the robbery for which he was charged and not the 911 calls for the altercation that is the basis for his alibi.
- (f) The file of the Richland County Solicitor's Office included a medical record of a T. Thompson, the individual involved in the altercation with the Petitioner that is the basis for Petitioner's alibi. This medical record establishes the time of the altercation between the Petitioner and T. Thompson and supports the Petitioner's alibi. On information and belief, this exculpatory evidence was not made available to the Public Defender after the Defendant's request that the Solicitor produce all evidence potentially favorable to the Defendant under Brady v. Maryland, 373 U.S. 83 (1963).
- (g) At the plea hearing, the Assistant Solicitor responded to a question posed by the court as follows:

Question: But was the ID – was the description of the clothing worn by the defendant the same as what he had on the night in question?

Answer: Yes, sir. Yes, sir.

According to the victim's statement, the suspect was reportedly wearing a black hoodie and dark pants. At the time of his arrest, the Petitioner was wearing a grey t-shirt and blue jeans.

11. 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 petitions in State or Federal Court for habeas corpus or post-conviction relief? No.
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.
 - (d) any other petitions, motions, or applications in this or any other Court? No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion, or application:
- (a) the specific nature thereof: _____
 - (b) the name and location of the Court in which each was filed: _____
 - (c) the disposition thereof: _____
 - (d) the date of each such disposition: _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____
13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion, or application which you have filed? No.
14. If you answered "yes" to (13), identify:
- (a) which grounds have been presented: _____
 - (b) the proceedings in which each ground was raised: _____
15. If any ground set forth in (9) 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: First collateral attack.
16. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Not applicable.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Not applicable.
 - (e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? Not applicable.
17. If you answered "yes" to one or more parts of (16), list:
- (a) the name and address of each attorney who represented you
- Rhodes Bailey
Richland County Public Defender's Office
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201.

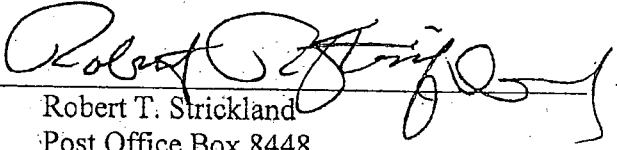
- (b) the proceedings at which each such attorney represented you
Plea and sentencing.

18. State clearly the relief you seek in filing this application.

Vacation of conviction and new trial.

19. Are you now under sentence from any other court that you have not challenged? No.

BARNES, ALFORD, STORK & JOHNSON, LLP

By: 

Robert T. Strickland
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111

Attorneys for the Petitioner

August 23, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

VERIFICATION

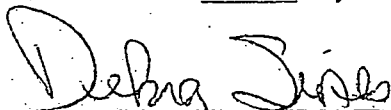
I, Thomas Reginald Brooks, the Petitioner in this action, being duly sworn upon by oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Thomas Reginald Brooks

RICHLAND COUNTY
 FILED
 2012 AUG 23 PM 2:56
 JEANETTE W. BRIDGEMAN
 C.C.P. & S.

SWORN TO AND SUBSCRIBED

before me this 20 day of August, 2012.


Notary Public for the State of South Carolina

My Commission Expires:

11-4-2015

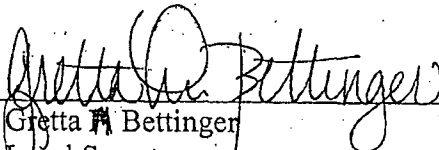
72

CERTIFICATE OF SERVICE

I, Gretta ~~A~~ Bettinger, an employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that on August 23, 2012, I served a copy of the within and foregoing *AMENDED / SUPPLEMENTAL APPLICATION FOR POST-CONVICTION RELIEF*, upon the Respondent in this action, through its attorney of record, by depositing a copy in the United States Mail, first class, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

Robert D. Corney, Esquire
Assistant Attorney General
Post Conviction Relief Section
S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

RICHLAND COUNTY
FILED
2012 AUG 23 PM 2:56
JENNIFER W. MCBRIDE
C.C.P. & G.S.


Gretta ~~A~~ Bettinger
Legal Secretary
Barnes, Alford, Stork & Johnson, L.L.P.
Post Office Box 8448
Columbia, SC 29202-8448

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2011CP4007395

3
4 Thomas Brooks,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 State of South Carolina,)

8 Defendant.)

9 September 14, 2012
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

15
16
17 A P P E A R A N C E S:

18 ROBERT T. STRICKLAND, ESQ.
Attorney for the Plaintiff

19 ROBERT D. CORNEY, ASSISTANT ATTORNEY GENERAL
20 Attorney for the Defendant

21
22
23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

INDEX OF WITNESSES

J. RHODES BAILEY

Direct By Mr. Strickland 11

Cross By Mr. Corney 86

THOMAS BROOKS

Direct By Mr. Strickland 95

Cross By Mr. Corney 111

DOLLY JUSTICE GARFIELD

Direct By Mr. Corney 115

Cross By Mr. Strickland 120

PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Pop's Pizza Receipt	33	33
2	Closed Incident Report of 9-1-1 call	33	33
3	9-1-1 Audio	38	38
3A	Transcript of 9-1-1 Audio	38	38
4	9-1-1 of Fight	46	46
5	Transcript of 9-1-1 of Fight	46	46
6	EMS Record	19	19
7	E-Mail	49	49
8	Incident Report	49	49
9	Search Warrant Package	51	51
10			94
11-16	Statements	57	57

1	17		94	
2	18		94	
3	19		94	
4	20	Discovery Motion	79	79
5	21	Court Order	80	80
6	22	Subpoena	79	79
7				
8		COURT EXHIBITS		
9	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
10	1	Discovery Checklist	118	118
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

SEPTEMBER 14, 2012

MR. CORNEY: May it please the Court, Your Honor? This is a PCR application of Thomas Brooks, Docket Number 2011-CP-40-7395.

Mr. Brooks was true-bill indicted at the May of 2009 term of the Richland County Grand Jury for armed robbery.

He was represented by Rhodes Bailey of the Richland County Public Defender's Office on the charge.

On September 22nd, 2010, Mr. Brooks pled guilty pursuant to North Carolina v. Alford before the Honorable R. Lawton McIntosh to the lesser included strong armed robbery without recommendations or negotiations.

He was sentenced to 12 years' imprisonment, suspended to service of seven years, and three years probation.

He did not have a direct appeal, but filed a timely PCR application September 23rd, 2011.

He is represented today by Mr. Tom Strickland.

Just as a preliminary matter, Your Honor, to make sure that we get it on the record, my understanding is that Mr. Brooks is set to max out his sentence in March of next year, I believe,

1 March or April of next year. I will let
2 Mr. Strickland go into that more in depth, but if
3 the Court would just advise him as to what he is
4 facing on PCR if he was to be granted relief and
5 make sure that we have a voluntary and intelligent
6 decision.

7 THE COURT: Okay. Well, I was just starting
8 to read, I haven't gotten too far into it,
9 Mr. Brooks, but it looks like you were charged with
10 armed robbery.

11 Armed robbery carries ten to 30, minimum of
12 ten. It is an 85 percent situation. And it is
13 also a strike, you know, you hear that one strike
14 you're out, two strikes you're out, if you commit
15 another violent crime, if you get convicted of
16 that, which you didn't plead to.

17 The State can ask for life without parole.
18 And we have had several this week PCR's where
19 people have gotten life without parole and they
20 only committed one prior crime. So it just takes
21 it out of the judge's hands on that.

22 And if you pled -- and I haven't read the
23 whole transcript, but apparently you pled under
24 Alford versus North Carolina. I take it the judge
25 eventually accepted it. I'm not that far because

1 they just handed the packet to me, which basically
2 you can do that. You did that so that you wouldn't
3 be facing that terrible armed robbery situation.
4 And you got sentenced to strong armed robbery. It
5 just carries like up to 15. And the judge didn't
6 give you that much time. He gave you some time,
7 and then you are going to be out on probation for a
8 while. And it looks like you will be out -- I know
9 it is not nice to serve a day in jail, but it looks
10 like you'll be out in a short period of time and
11 then you will be on probation.

12 If you were successful in your appeal, you
13 don't necessarily get out, or anything like that,
14 you know. You are just probably held in there
15 while your appeal is going on. It takes about a
16 year to get your appeal perfected. You would be
17 out before that happened.

18 And if you won on appeal, say I said you are
19 entitled to it and they appeal it, which I can't
20 say they would appeal it, they being the State, but
21 they generally do, and you would be subjected to
22 being recharged with armed robbery, not just strong
23 armed robbery. And it doesn't sound like it would
24 be worth the risk, as close as you are to getting
25 out.

1 But that is -- I'm not trying to talk you into
2 not going forward, I'm just saying it doesn't look
3 like it is in your best interest from not knowing
4 anything about it, you know. But that is -- I take
5 it you have talked it over with your attorney and
6 everything?

7 MR. STRICKLAND: Yes, Your Honor. I
8 appreciate Your Honor explaining that to him. And
9 I have explained it to him many times. His
10 position up to this point has been to go forward,
11 but I certainly invite him to respond to Your
12 Honor.

13 THE COURT: He can go forward or not. I'm not
14 trying to talk you out of it. I'm just saying the
15 consequences of winning aren't going to accomplish
16 what you want. You don't get out of here today in
17 any event, and so forth.

18 MR. CORNEY: His SCDC sheet, Your Honor, just
19 to make sure I supplement about that report, it
20 shows his max-out date of March 24th, 2013. And of
21 course the armed robbery is 85 percent, while
22 strong armed robbery, which is what he pled to, is
23 only 65 percent, 65 percent of seven before he can
24 be released on that --

25 THE COURT: He couldn't get seven under the

1 armed robbery. He would get a minimum of ten.

2 MR. CORNEY: Minimum of ten at 85 percent. At
3 least another year and a half in the Department of
4 Corrections.

5 THE COURT: And that is if the judge just gave
6 him ten. If he got convicted. He may be found not
7 guilty.

8 MR. CORNEY: Absolutely, Your Honor.

9 THE COURT: By the time that happened he would
10 have already maxed out on this and gone on with
11 life. But, whatever. So talk to your attorney
12 again. I'm not trying to talk you out of it. I'm
13 here.

14 (Pause.)

15 MR. STRICKLAND: Your Honor, I just conferred
16 with Mr. Brooks, and he does wish to go forward.

17 THE COURT: All right. Call him up.

18 MR. STRICKLAND: Your Honor, if I may have a
19 very brief opening, just to respond to what
20 Mr. Corney has just stated.

21 This case is based primarily on an involuntary
22 guilty plea, ineffective assistance of counsel. It
23 is also based on a few examples of what we allege
24 to be prosecutorial misconduct in handling the
25 case.

1 The basics facts are, Your Honor, that Mr.
2 Brooks has an alibi at the time of the crime that
3 he is charged with.

4 We have gone through the records. We have a
5 number of exhibits, Your Honor. If I may, I
6 thought it would help expedite matters if I
7 prepared a notebook for everyone to utilize,
8 including Your Honor. If I may approach and pass
9 this up.

10 THE COURT: All right.

11 MR. STRICKLAND: Your Honor, I also met with
12 Mr. Corney and shared these exhibits with him. We
13 have reached a number of stipulations regarding
14 admissibility, and such. There may be a few
15 exhibits that we will have some arguments about,
16 but we'll address those as they come up.

17 Your Honor, the alibi concerns a fight that
18 Mr. Brooks was involved in that, as you'll see from
19 the record, took place at almost the exact time
20 that the robbery for which he is charged took
21 place.

22 And the Public Defender's file contains a
23 number of witness statements taken by the
24 private -- or taken by the Public Defender's
25 investigator establishing that Mr. Brooks was the

1 individual involved in those fights.

2 You will hear testimony today, Your Honor,
3 that the fight took place approximately 10:50 p.m.
4 on the night in question.

5 And you will also hear, Your Honor, the audio
6 of the 9-1-1 call of the pizza robbery for which he
7 was charged indicating that that robbery took place
8 around 10:45 p.m. And the robbery and the fight
9 took place at least about a mile apart. So, Your
10 Honor, obviously he could not be in two places at
11 once.

12 Your Honor, we do not know the reasons why his
13 alibi was not fully explored. Mr. Bailey has an
14 exceptional reputation, I have found that out, a
15 great Public Defender. But, simply, as we have
16 done the investigation and gotten the 9-1-1 calls
17 for the fight and also gotten other evidence, such
18 as the emergency medical services' transportation
19 record for the victim or the other party involved
20 in the fight confirming that that fight did take
21 place roughly at the same time as the armed
22 robbery, Your Honor, with that being said, I wanted
23 to give you a basic outline of where we are headed
24 with what we are presenting today.

25 THE COURT: All right.

1 MR. STRICKLAND: Your Honor, we would like to
2 call as our first witness, Mr. Bailey.

3 THE COURT: Okay.

4 (Witness approaches.)

5 THE COURT: Okay. Do you swear or affirm you
6 are going to testify truthfully?

7 THE WITNESS: Yes, Your Honor, I do.

8 THE COURT: Take the stand.

9 (Witness complies.)

10 MR. STRICKLAND: Your Honor, we have a stack
11 of exhibits here, and we'll refer to 1 through 22,
12 which I will put here next to the witness and the
13 court reporter. They have not been premarked, Your
14 Honor, but the numbers that we intend to refer to
15 them and introduce them will match the numbers we
16 have on the index.

17 J. RHODES BAILEY,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. STRICKLAND:

21 Q Mr. Bailey, back in February of 2009, where were
22 you employed?

23 A At the Public Defender's Office here in Richland
24 County.

25 Q Were you appointed to represent Thomas Brooks on a

1 charged of armed robbery?

2 A I was.

3 Q Do you recall how soon after the robbery you were
4 appointed?

5 A I mean, it probably would have been within a few
6 days or within a week. Our boss, Doug Strickler,
7 goes through the cases, jail cases and bond cases,
8 and appoints. It looks like we sent a letter of
9 representation from our office on February 11th.

10 Q How soon after the appointment did you first meet
11 Mr. Brooks?

12 A I don't have that marked here, but we had a pretty
13 strict policy that it has got to be within three or
14 five days. It has got to be within a week of them
15 being assigned to us. So it probably would have
16 been pretty soon.

17 Q During the time that you represented Mr. Brooks,
18 did he always maintain his innocence to the charge
19 for which -- or the crime for which he was charged?

20 A I would -- I mean, it is not really as simple as
21 that. Frequently it is discussions about what you
22 can prove or what you cannot prove.

23 At first he -- he was -- I mean, he said he
24 didn't do it. He never -- he never told me he was
25 guilty. But later on, the concern, you know,

1 drifted to other issues as to what was proveable
2 versus what was not.

3 Q From the time that you first met him, did he always
4 maintain that at the time of this -- when this
5 robbery occurred, that he had been involved in an
6 altercation at a business known as Suds on Millwood
7 Avenue in Columbia?

8 A Right. He told me about the fight he had with the
9 gentleman at Suds.

10 Q And did he give you information with which you
11 could set out to prove that alibi that he was
12 involved in a fight at the time of the robbery?

13 A He did give us information. We had our
14 investigator go out and find these people that were
15 involved in the altercation and interview them.

16 Q This investigator that you referred to, what is his
17 name?

18 A McNeeley. I forgot his -- we always call him Mack,
19 and I forgot his --

20 Q Well, there are a number of statements in your file
21 that has got Investigator L. E. McNeeley.

22 A That's him. That's him.

23 Q So these statements that are in your file, these
24 were statements that he would have taken at your
25 request?

1 A That's right.

2 Q And this is an investigation that you undertake as
3 part of your normal investigation of the defense of
4 a person to whom you have been appointed to
5 represent?

6 A That's correct.

7 Q What did you do to check out his alibi of the
8 fight?

9 A Well, I had McNeeley go out and talk to these
10 witnesses. We notified the Solicitor's Office of a
11 potential alibi that he was getting into a fight
12 down the street.

13 And then -- and I asked the Solicitor to get
14 the EMS records. I could have gotten them
15 eventually, but they are usually quicker to comply
16 with requests to the State rather than going
17 through our subpoenas and things, to try and see
18 how that checked out.

19 I can keep talking or I can wait for your
20 questions.

21 Q All right. Did you make a request under the Brady
22 line of cases --

23 A Oh, sure.

24 Q -- that the Solicitor produce all the evidence they
25 have that would prove the guilt or innocence of

1 Mr. Brooks?

2 A Right. We always file a Rule 5, and then we file a
3 Brady motion too.

4 Q Now, as part of that request, would that have
5 included such things as his EMS record?

6 A Well, that is if they have control of it -- over
7 it. I mean, I don't really -- unless I tell the
8 Solicitor, I mean, you know, unless I tell the
9 Solicitor that something has happened here that I'm
10 looking for a document, I wouldn't think that the
11 Solicitor's Office would know that there would be a
12 relevant EMS report, unless the police turned it up
13 in their investigation.

14 They only have to turn over something they
15 have in their position. In this case I made the
16 judgment that I should communicate with the
17 Solicitor's Office to get this document because I
18 could get it more quickly.

19 So I don't think that they would have ever
20 consulted EMS records of this gentleman that was in
21 the fight with Mr. Brooks unless I had said
22 something to them.

23 So to answer your question, once they got it,
24 they have got to turn it over to me, yes.

25 Q That is where I was headed with this. If they did

1 have this EMS of this person that was in the fight
2 with Mr. Brooks, they would have had an obligation
3 under Brady to turn it over to you, correct?

4 A That's right, yes.

5 Q Now, I had an opportunity to review your file, and
6 I have gone through that file. I did not find an
7 EMS record for the gentleman that was in the fight
8 with Mr. Brooks. Does your file contain that EMS
9 record?

10 A I did receive it. You know, I just got a hold of
11 the physical file right here, and it is not in this
12 file, but frequently -- but I believe it was
13 e-mailed to me, and sometimes when we e-mail it we
14 save it on our hard drive, so we didn't always --
15 we're moving into more of a digital age. We don't
16 always print out everything that is sent to us and
17 it is saved in a client's file.

18 Q But you are aware coming here this morning of the
19 significance of Mr. Brooks' claim that that EMS
20 record was possessed by the Solicitor's Office, and
21 the Solicitor's Office, his position is, did not
22 provide you with a copy?

23 A Well, I -- not only did I get a copy, I know I
24 discussed it with the Solicitor's Office, because
25 we debated timelines or discussed timelines on it.

1 Q All right.

2 MR. STRICKLAND: Your Honor, since we are at
3 that point, if the witness could take a look at
4 Exhibit 6.

5 BY MR. STRICKLAND:

6 Q Do you have that, Mr. Bailey?

7 A Yes, I do.

8 Q Is that the EMS record that we have been
9 discussing?

10 A I believe so, uh-huh. Couple of years, two and a
11 half years ago, but, yes, I think so.

12 MR. STRICKLAND: Your Honor, we also have a
13 discovery order that was entered by Judge Barber
14 where we agreed that this exhibit would be
15 admissible to avoid having to bring the EMS people
16 in to authenticate it.

17 THE COURT: All right.

18 MR. STRICKLAND: And on that basis, I would
19 like to go ahead and have that marked as Exhibit 6
20 so we can maintain the continuity of the numbering
21 system that I have used in the index.

22 THE COURT: Okay.

23 MR. CORNEY: And, Your Honor, just for
24 purposes of the record, I am not -- we stipulated
25 or I guess as to discovery we stipulated and worked

1 out -- obviously we don't need the EMS people here
2 to authenticate it. Mr. Bailey can authenticate it
3 as something he had.

4 Our only objection to it was just, I guess on
5 some sort of potential hearsay or at least the fact
6 that without bringing this person in here, Terrence
7 Thompson -- I mean, the report alleges it is
8 Terrence Thompson. Without bringing him in here, I
9 mean, there is no way to know whether that is the
10 correct person. That is our only allegation with
11 that.

12 MR. STRICKLAND: Your Honor, just for
13 reference, the order says that we stipulate this is
14 admissible under I believe Federal Rule -- or South
15 Carolina Rule of Evidence 803, for whatever purpose
16 the rule allows.

17 MR. CORNEY: I was just going to add, I mean,
18 obviously it goes for the truth of the -- to what
19 is in there, and I don't dispute what is written in
20 the report, I just mean for purposes of proving
21 that Terrence Thompson, somebody, somebody that
22 rode in the EMS that night gave the name Terrence
23 Thompson. Who that Terrence Thompson is or whether
24 that is the person they allege it is, that is up
25 for debate. Without bringing him in here I don't

1 think there is any way to establish that, is my
2 only point, Your Honor.

3 THE COURT: All right. I got it.

4 (WHEREUPON, Plaintiff's Exhibit No. 6
5 was marked for identification and
6 received into evidence.)

7 BY MR. STRICKLAND:

8 Q Now, Mr. Bailey, let's talk a little bit about what
9 you did to investigate or check out this alibi.
10 You mentioned that Investigator McNeeley was sent
11 out to take statements from several individuals,
12 correct?

13 A That's right.

14 Q And we'll get to those in just a moment. We also
15 just discussed the EMS record that you say that you
16 obtained from the Solicitor's Office?

17 A I did obtain it.

18 Q But you acknowledge there is no hard copy of that
19 EMS record in your file?

20 A There isn't. And sometimes, you know, sometimes I
21 printed it out, sometimes I didn't. I could put my
22 fingers on it when I needed to. And Mr. Brooks
23 didn't request to look at it. If he would have, I
24 certainly would have printed it out to bring him a
25 hard copy.

1 Q But just so the record is clear, it is your
2 testimony here today that the Solicitor's Office
3 did provide you with a copy of that EMS record?

4 A Yes, they made it available.

5 Q And that was -- and you got a copy of that or saw a
6 copy of that before Mr. Brooks had his plea
7 hearing, correct?

8 A Yes.

9 Q Now, did you do anything else to check out his
10 alibi? We talked about the EMS record.

11 A Yes. We -- I guess if you look at the file, we
12 sent -- he -- we subpoenaed -- we tried to get
13 records of Burger King and a security camera of
14 where he said he had been applying for a job at
15 Burger King earlier that day. We tried to -- or he
16 had been working I believe it was doing laundry at
17 a hospital. You know, we tried to get work
18 records. Anything we could do to show that he
19 was -- you know, what -- see what he was up to that
20 day.

21 Q As part of --

22 A Around that time.

23 Q I'm sorry. As part of your investigation of the
24 alibi, did you prepare a timeline based on what the
25 record showed?

1 THE COURT: I'm going to take ten. I'm a
2 speed reader, which you don't know. But I'm down
3 to 16 of your exhibits, but I need -- I can
4 multi-task, but I need to read all this, and then I
5 can follow what he is saying.

6 MR. STRICKLAND: All right.

7 THE COURT: A little better. I mean, you
8 know, it won't take me but a minute, because I see
9 you have got a bunch of stuff in here to read. I
10 see a lot of statements from people saying he
11 didn't do it, he was somewhere else, and so forth,
12 and so forth. I mean, I have read all of them down
13 through 16, but I need to read the others. I'll be
14 back in five or six minutes.

15 (WHEREUPON, a break was taken.)

16 DIRECT EXAMINATION CONTINUES

17 BY MR. STRICKLAND:

18 Q Mr. Bailey, before we took a break, we were talking
19 about your efforts to check out Mr. Brooks' alibi.

20 A Uh-huh.

21 Q What did your -- what did you ultimately conclude
22 about the strength of his alibi?

23 A I didn't think it was that strong. I'm not saying
24 it was terrible, but I didn't think it was that
25 strong.

1 Q What particular weaknesses did you find in his
2 alibi?

3 A Well, it has been about a year, actually two and a
4 half years, so it might take me a second here.

5 Well, you know, the first obstacle he
6 certainly has to overcome is the fact that there
7 was a positive ID. I mean, that aside, you look at
8 the timeframe. Everything that was alleged to have
9 happened this evening happened all pretty close.
10 Thomas lived close to the area. Suds was close to
11 the incident of the robbery.

12 You know, you had different accounts. At one
13 time Terrence said that he thought that the fight
14 was around like 8:00 o'clock. The EMS report says
15 around 11:00, but that is assuming that they
16 called -- you know, that is assuming that they
17 called at a certain time. You know, we don't know
18 how much time passed. He got -- it sounds like the
19 guy got, you know, beat up pretty bad.

20 You know, I think that there was potentially
21 enough discrepancies, and there was enough -- I
22 think that the way I laid it out, I remember
23 looking at the timeline, it seemed that it was
24 conceivable that a jury could find that Mr. Brooks
25 could have both been at Suds and been in a fight

1 and also committed this robbery.

2 I'm not saying he did, I'm just saying it was
3 certainly conceivable or it seemed conceivable that
4 that case could be made to a jury.

5 Q Did you, as part of your investigation, did you
6 concede that he was in fact in a fight at Suds?

7 A Sure. Absolutely. I mean, I don't think it is the
8 best defense: I was beating this guy up so I
9 can't -- I wouldn't be over here, you know,
10 robbing.

11 But, I mean, clearly he was there at some
12 point.

13 Q But you felt the fact that -- or you felt that it
14 really was going to be easily proven that he was in
15 fact in a fight at Suds that night at some time?

16 A I mean -- well, I mean, I think, you know, I think
17 it could have been -- easily proven? I mean, that
18 is extremely speculative. I don't know how many --
19 you know, it is -- I think that a convincing case
20 could be made that he could have done both.

21 Oh, and I'm sorry, was your question -- your
22 question was, was it easily proven he was at Suds,
23 is that right?

24 Yes, he was at -- I mean, I think it could
25 have been established that he was at Suds. Had he

1 chosen to go to trial, we would certainly -- we
2 certainly would have established that.

3 Q But you just said something that I want to
4 follow-up on. You said a convincing case could be
5 made that he had done both. Both the robbery and
6 the fight?

7 A I think so, yes.

8 Q Now, based on that conclusion that you reached, did
9 you advise him to consider a guilty plea or a plea
10 bargain?

11 A Well, you know, I don't remember every one of our
12 meetings. I remember we met a fair amount. One
13 reason being that Thomas wrote a lot of letters.
14 He seemed -- he wrote -- he wrote, I'd say, more
15 than the average inmate, although a lot of them
16 write. So I saw him as somewhat of a high
17 maintenance client that I wanted to make sure, you
18 know, his concerns were answered and we followed
19 all -- we followed as many leads as we could,
20 whether it be job people or his landlord or people
21 that were on the street or people at Suds.

22 You know, he seemed -- at some point the
23 conversation shifted from an alibi thing. I think
24 I told him that there were potential holes or
25 questions in the alibi, you know, if it were.

1 attacked from certain angles or looked at a certain
2 way. And we talked about, you know, possible plea
3 options.

4 I never discouraged him from going to trial,
5 but I told him what I thought, you know, what I
6 thought the strengths and the weaknesses were.

7 By the time -- I'm sorry.

8 Q I didn't mean to interrupt. Go ahead.

9 A I mean, by the time he pled guilty he was pretty
10 adamant, and that is what my notes indicate, was he
11 was pretty adamant that he wanted to plead guilty.

12 The difference between an armed robbery, ten
13 and 30, is substantial when compared to a
14 65 percent strong armed robbery thing.

15 Plus, there is the ID thing. I knew that
16 there are problems with show-up ID's especially,
17 and I would have beat them over the head with a --
18 or would have attempted to at trial. I had already
19 looked into witnesses that would say that there are
20 misidentifications, and things like that.

21 But typically -- I mean, that doesn't -- when
22 you've got -- when you've got a witness who says, I
23 am a hundred percent positive, which is essentially
24 what the alleged victim said in his statement, that
25 is a pretty big hurdle to overcome.

1 You don't want to go in front of a jury and
2 say, you know, this guy can't tell one black guy
3 apart from another, which I believe certainly
4 happens, but that is -- you know, that is not --
5 that is not always a selling point with a jury.

6 Q So your testimony is, though, after you told
7 Mr. Brooks that there were holes in his alibi, his
8 focus and his approach to the case shifted from *I*
9 *didn't do it* to *let's talk about the deal*?

10 A I can't -- I can't tell you which one happened
11 first. I mean, it was a while ago. I know that
12 those -- I mean, there were discussions about that.
13 He seemed -- he seemed interested -- or he was
14 interested when I said there was a possibility that
15 we would get a substantial reduction for a guilty
16 plea. That seemed to interest him more than -- you
17 know, you have got all different clients, different
18 types of things. That seemed more appealing to him
19 in our conversations than asserting his innocence.

20 Q Now, when you told him he might get a lesser
21 sentence, he remained in jail from the time of his
22 arrest until the time of his plea, correct?

23 A That's right.

24 Q And did you not tell him that he may be sentenced
25 to time served if he agreed to this plea?

1 A I'm pretty sure I didn't say that. I said, you
2 have been in a long time. I am going to ask for --
3 I am going to ask for four or five years. I
4 believe that is what I asked for, if you look at
5 the transcript.

6 You know, he may give you more, but whatever
7 he gives you, you have already got a lot of time
8 under your belt. It is 65 percent time.

9 I told him I didn't think he would be in
10 jail -- I mean, I told him there was a potential
11 that if we would take this deal he would not be in
12 jail many more years. And I guess he is set for
13 release in March, so that sounds about right.

14 Q Now, you also mentioned -- we talked about his
15 alibi. Let's talk a little bit about the State's
16 case, which you already alluded to.

17 Is the only evidence the State had against him
18 the show-up ID?

19 A You know, again, it has been a while. I haven't
20 been looking at this case for months like you have.
21 You know, I know he fit the description. There
22 were some clothing discrepancies I'm sure you'll
23 bring up, but, you know, whether a shirt is dark or
24 it is gray or it is blue or it is black, especially
25 at nighttime, is not really the most reliable thing

1 you want to stand on.

2 I'd say the ID and the conceivability that he
3 could have been at both places were, you know, were
4 factors that would make the case potentially
5 strong.

6 I don't know how many cases you've had, but, I
7 mean, an ID, as much as I loathe that we do show-up
8 ID's, it still is pretty meaty evidence when it is
9 going in front of the jury. They take that -- they
10 don't take it lightly.

11 Q Well, you know the facts of this show-up ID. Do
12 you recall what happened, how he was identified?

13 A I mean, you know, if you read my transcript, I
14 remember this from that. This is one of the things
15 that always bothered me about, you know, some
16 police work. We don't do line-ups. We don't even
17 always do -- sometimes we will do -- they will have
18 a picture of like six guys. But I think whenever
19 you handcuff a guy and you put him in a car and you
20 say, hey, is that guy in the police car, is that
21 him, I think it is a suggestive ID. I don't like
22 it. And I certainly --

23 Q That is what happened in this case, correct?

24 A Oh, yeah. Yeah. But, again, you know, Mr. Brooks
25 didn't seem like he wanted to go down that road.

1 He seemed more interested in a reduction or in a
2 shorter sentence.

3 I mean, I would have loved to have tried a
4 case where we put the whole system of show-up ID's
5 on trial. That doesn't mean I think we would win
6 on that, but I would have been more than happy and
7 enthusiastic about pursuing that.

8 Q All right. But I'm just trying to get your
9 mindset, your approach on how you advised
10 Mr. Brooks. You said the State had a show-up ID,
11 which was suspect?

12 A Well, I mean, I think all show-up ID's are suspect.

13 Q Correct. And --

14 A I mean, this is -- I mean, it is up to 12 citizens
15 to decide whether they think, you know, an ID is
16 valid.

17 Q So you certainly had a chance to get that show-up
18 ID tossed?

19 A Well, I doubt -- I doubt that -- I doubt they would
20 have tossed it. I seriously doubt it. I mean,
21 that -- you know, as hard as we fought at pretrial,
22 you know, whether it came to ID's or whether it
23 came to Blair hearings, that stuff never gets
24 tossed. I mean, it just doesn't. Not at trial.

25 Q So you believe that at a criminal trial that a

1 victim identification under these facts where
2 basically he is handcuffed, placed in the back of a
3 squad car, and the victim of the crime is brought
4 to the squad car at night with limited lighting
5 obviously being a factor and says, yes, that is the
6 guy, you don't think you stood a chance of keeping
7 that identification out?

8 A I think -- I'm pretty sure. I don't know -- I
9 don't know how many of these types of hearings
10 you've done. I mean, have you done a hearing on an
11 ID before, sir?

12 Q Well, unfortunately, you don't get to ask me
13 questions.

14 A Oh, I'm sorry. Well, I didn't get -- okay, I'm
15 sorry. Well, I think anybody that tried cases in
16 this county for four years would know the chances
17 of getting that thrown out or not. And I haven't
18 seen -- I have never seen an identification, nor
19 had I ever seen a -- this is -- you know, I have
20 never seen confessions thrown out. I mean, it is
21 very rare in this county and this state. I don't
22 know about, you know, nationwide. I mean, you
23 know, you might have an excellent appellate issue.
24 We had a great jury argument. I mean, I am
25 certainly not a defeatist about it. That would

1 have been something we would have, you know,
2 hammered home had we gone to trial.

3 But, to answer your question, the likelihood
4 of that getting thrown out, no. I think that
5 show-up ID's are ridiculous, I don't like them, but
6 it would not have been thrown out, because under
7 the system right now, they allow them. And they
8 think it is perfectly legitimate.

9 Q Now, let's take a look at Exhibit 1. Have you got
10 the stack in front of you?

11 A Yes, I do.

12 Q And I'll represent to you, and you can disagree,
13 that this document came from your file. Do you
14 recall seeing it?

15 A Yes.

16 Q Can you identify it for the Court?

17 A It was a receipt. The pizza place's receipt.

18 Q Is this something you would have considered in your
19 investigation of Mr. Brooks' alibi?

20 A Yes.

21 Q All right. Look at the name here. It has got
22 Skyler N. And it has got -- it looks like a time
23 stamp, 2212, 20509. Now, 20509 is the date of the
24 robbery, correct?

25 A Yes.

1 Q Now, did you confirm that the 2212 was the time
2 that the phone call that set up the robbery -- and
3 by set up, I mean, someone called Pop's Pizza and
4 said, I want a pizza delivered to this address, and
5 that took the pizza delivery man to that address
6 where he was robbed. So this is what I mean by set
7 up. Did your investigation confirm that the 2212,
8 which I assume is military time for 10:12 p.m. that
9 evening, that was the time that call, that set-up
10 call, was placed at Pop's Pizza?

11 A I mean, you know, I think that that was my
12 understanding. I can't say absolutely because
13 there are two different times on it. There is a
14 2212 and then there is 2305 down at the bottom. I
15 don't remember the differences. Maybe one was --
16 I'm sure I asked about it and I looked into it at
17 the time. But I think what you are saying might be
18 correct, that that was when it was called in.

19 Q Okay. All right, I'm going to just -- because we
20 have to follow these times. I'm just going to jot
21 down the times here. So 2212 is the pizza call,
22 correct?

23 A Right.

24 MR. STRICKLAND: Your Honor, I would offer
25 that into evidence as Exhibit 1.

1 THE COURT: All right.

2 (WHEREUPON, Plaintiff's Exhibit No. 1
3 was marked for identification and
4 received into evidence.)

5 BY MR. STRICKLAND:

6 Q All right, take a look at Exhibit 2. Do you also
7 recognize this document as something from your file
8 that you obtained in investigating Mr. Brooks'
9 alibi?

10 A Yes.

11 Q Will you identify that document?

12 A It was the closed incident report of the 9-1-1
13 calls.

14 MR. STRICKLAND: Your Honor, we would offer
15 this into evidence as Exhibit 2.

16 THE COURT: All right.

17 (WHEREUPON, Plaintiff's Exhibit No. 2
18 was marked for identification and
19 received into evidence.)

20 BY MR. STRICKLAND:

21 Q All right. Now, it is my understanding these
22 closed incident reports, these are notes that the
23 9-1-1 operator types in as they are receiving the
24 call, correct?

25 A You are asking me?

1 Q Yes.

2 A That's my understanding.

3 Q All right. Now, I notice a couple of things here.
4 If you look at the time, 2256 -- do you see that?

5 A Uh-huh.

6 Q Now, would you agree that is the time that call
7 comes in?

8 A It looks like it is the time that they recorded it
9 as coming in.

10 Q All right. Skip down to where -- 2257, you see
11 these times, these are just the times that are date
12 stamped as she is typing in these entries, correct?

13 A That's my understanding, yes.

14 Q And you believe these times to be reliable?

15 A You know, I can't -- I can't authenticate it. I
16 think -- I question a lot of police documents as
17 they come in. But I assume it is reliable. I
18 mean, I can't -- I can't tell you it is reliable
19 any more than you can tell me it is reliable.

20 Q If you look at 2258, it says, Complainant states
21 about ten minutes' time lapsed?

22 A Okay.

23 Q Did you investigate what that meant?

24 A I would assume it means ten minutes has lapsed
25 since this phone call was made.

1 Q Ten minutes has lapsed since phone call was made?

2 A I mean, that is what I am assuming it means. Is
3 there something else you would like to show me?

4 Q All right. So if that is true, that meant the call
5 came in at 2248?

6 A I don't -- I mean, technically it would be -- I
7 guess it could be 2246 too. I don't know.

8 Q All right. Well, did you not check that out?

9 A I think it is pretty -- I think it is kind of
10 self-establishing.

11 Q Well --

12 MR. CORNEY: And, Your Honor, I'm fine with
13 him asking him what he did as a result of all the
14 stuff, but to have him interpret reports. He
15 doesn't work for the 9-1-1 recording system. He
16 can't interpret the reports. I don't think he can
17 say what that means.

18 THE COURT: As I read the exhibits, wasn't
19 there a nine minute walk from Point A to Point B?

20 MR. STRICKLAND: Yes, sir.

21 THE COURT: I have people testify in trials
22 all the time and they say, five minutes, ten
23 minutes, you know, you are talking small windows of
24 time.

25 MR. CORNEY: I just mean as far as asking what

1 that means, what that time, what does that
2 particular time refer to. I don't think he can
3 interpret that report.

4 THE COURT: The report is in evidence. It
5 says what it says.

6 MR. STRICKLAND: Your Honor, just a very short
7 reply. The point is that he is advising Mr. Brooks
8 what he should do in regards to these charges. And
9 I feel certainly it is incumbent upon the attorney
10 to investigate. If there is some question about
11 what these numbers mean, then they ought to be
12 investigated. And I'm simply asking him what did
13 he investigate. I'm not asking him what the
14 numbers mean, I am just asking him what did he
15 investigate to determine what the numbers mean.

16 THE COURT: He answers that he does what
17 everybody does, he reads the report and he takes
18 the numbers.

19 MR. STRICKLAND: Okay. All right. Your
20 Honor, at this point we have the actual recording
21 of the 9-1-1 audio. We want to play it. And also
22 if you look at it in your notebook --

23 THE COURT: I thought you had a typed copy of
24 it?

25 MR. STRICKLAND: I do.

1 THE COURT: Well, why do I have to listen to
2 it?

3 MR. STRICKLAND: Well, I don't feel you do,
4 but Mr. Corney --

5 MR. CORNEY: I never heard the tape before, so
6 I don't know if the transcript says what it says,
7 but I think they prepared the transcript in
8 Mr. Strickland's office.

9 THE COURT: Well, you can play it.

10 MR. CORNEY: I'm sure it -- I don't have any
11 doubt that Mr. Strickland, what he purports it says
12 in the transcript probably is what it says, I just
13 never heard the tape, so I have no way to confirm
14 it, Your Honor.

15 MR. STRICKLAND: We'll play it. It is fairly
16 short.

17 THE COURT: Well, it is not long because the
18 printout is not long.

19 MR. STRICKLAND: Right. Your Honor, in the
20 notebook I have highlighted a couple of points I
21 want to make regarding that call. If you look --

22 THE COURT: I have read your notebook and I
23 see where you have highlighted things in yellow.

24 MR. STRICKLAND: All right. While she's
25 setting that up, I believe we have a stipulation

1 that this is the proper recording, so I would like
2 to offer that in as Exhibit 3.

3 (WHEREUPON, Plaintiff's Exhibit No. 3
4 was marked for identification and
5 received into evidence.)

6 (9-1-1 call played in open court.)

7 MR. STRICKLAND: Your Honor, I believe we were
8 all following the transcript as the recording was
9 playing. And for ease of further cross-examination
10 on this point, I would ask that the transcript that
11 we provided as Tab 3 be introduced into evidence as
12 Exhibit 3A.

13 THE COURT: All right.

14 (WHEREUPON, Plaintiff's Exhibit No. 3A
15 was marked for identification and
16 received into evidence.)

17 BY MR. STRICKLAND:

18 Q Mr. Bailey, if you would take a look at Exhibit 3A.
19 I want to ask you a couple of things about this
20 transcript.

21 First of all, did you listen to the 9-1-1 call
22 before today?

23 A I believe so.

24 Q You believe you listened to it when you were
25 advising Mr. Brooks on what to do?

- 1 A When I was advising Mr. Brooks on what to do?
- 2 Q Yes, sir.
- 3 A Which. I -- I'm sorry, you mean had I listened to it
- 4 before I advised him on what --
- 5 Q Yes. Yes.
- 6 A Okay. I listened to it. And we had discussions
- 7 about his case.
- 8 Q But you listened to it before you discussed his
- 9 options, I would assume, correct?
- 10 A Yes.
- 11 Q All right. Now, see where it says up at the top
- 12 that the time is 2254?
- 13 A Yes.
- 14 Q And you have no reason to dispute that as the time
- 15 of the call?
- 16 A Well, I mean, this is -- I mean, well, I mean, I
- 17 think it says -- I mean, this is your transcript,
- 18 right?
- 19 Q Right.
- 20 A I don't want to sound like a lawyer, but, you know,
- 21 it is your transcript. I mean, if it said 2254 on
- 22 the tape, then I don't dispute it. I mean, the
- 23 thing on the call log says 56, but --
- 24 Q Okay. Well, let's say 2256, then, if you are more
- 25 comfortable with that number.

1 A It is not about what I'm comfortable with.

2 Q All right. Let's go with 2256. All right, so that
3 is the 9-1-1 call for the robbery, correct?

4 All right. Now, look on that transcript on
5 Page 3 about the middle of the page.

6 Operator: About how -- give me a timeframe.
7 Did this happen about five to ten minutes ago, ten
8 to 15?

9 Caller: Ten or 15 minutes ago. Probably ten
10 minutes ago. Then she turns to the victim. How
11 long?

12 Victim: Probably ten.

13 So ten minutes backing up from the time of the
14 call, 2256, would you not agree that would put the
15 time of the robbery at approximately 2246?

16 A I agree that 2256 minus ten is 2246.

17 Q All right. So 2246, time of robbery?

18 MR. CORNEY: I think that is a bit of a
19 mischaracterization. I know Your Honor is taking
20 all this into consideration. I mean, obviously
21 these are all approximations.

22 THE COURT: They are clearly approximations.
23 It could have been off ten minutes one way or
24 another easy, or even more than that.

25 MR. STRICKLAND: Well, Your Honor, I just

1 point to the transcript. That is what the witness
2 said.

3 THE COURT: Well, I understand. But you need
4 to understand -- I know you spent a lot of time
5 preparing your case.

6 MR. STRICKLAND: Yes, sir.

7 THE COURT: We don't have any clock with a
8 photo saying the fight took place at X. We don't
9 have a photo with a time stamp saying, the robbery
10 took place at Y. What we have are things that
11 occurred. And people testify in approximate times.
12 Now --

13 MR. STRICKLAND: Understood.

14 THE COURT: You can do the math and calculate
15 it to that, but it is subject to fluctuation ten or
16 15 minutes. It is a nine minute walk from Point A
17 to Point B.

18 BY MR. STRICKLAND:

19 Q Now, also you note the description of the suspect
20 wearing a black hoodie, correct?

21 A I see that.

22 Q And you also see at the bottom of Page 2 where he
23 is asked about what kind of pants he had on.

24 And the caller says, he had jeans on, but the
25 victim says, I think that, uh, they were black,

1 whatever, pants.

2 So he does not agree with the comment that
3 they are in fact jeans.

4 A I'm sorry, is there -- I mean, do you want me to
5 answer that or are you just testifying for me?

6 MR. CORNEY: And, Your Honor, it all speaks
7 for itself. I mean, it all speaks for itself. I
8 mean, for him to interpret what it says in there --

9 A I mean, you know, you said earlier it was dark
10 outside. I think that black jeans and blue jeans,
11 I mean, that is, you know, that is not too much of
12 a difference if you want my -- if you are asking me
13 for my opinion on it.

14 Q Also the -- of course the victim states that the
15 suspect had a gun, correct?

16 A Yes.

17 Q Now, also looking at Page 4, did you ever go to the
18 scene?

19 A No. I drove -- I mean, I know it. I drove by it
20 all the time.

21 Q So you are familiar with the lay of the streets?
22 Let me get my bearings here. This is just for
23 reference purposes, but you see they have Millwood
24 Avenue? Do you see that?

25 A Yes.

1 Q Do you see Maple Street?

2 A Yes, I do.

3 Q All right. Do you have any idea where on Maple
4 Street the robbery took place?

5 A Not by looking at that.

6 Q Look at what the victim says at the point I
7 referenced a moment ago. Did he say he turned left
8 onto Maple?

9 A I mean, do you want to cite where he said that?

10 Q Sure. Look at the bottom I believe of Page 4,
11 seven lines from the bottom.

12 A Seven quotation lines or seven lines lines?

13 Q Seven lines. Or seven printed lines. It says,
14 yes, on Maple at [REDACTED], like [REDACTED] is right on the
15 corner, and I turned off of Maple directly left.

16 A Okay. I see that.

17 Q All right. So if he turns left onto Maple, would
18 he not be facing Millwood?

19 MR. CORNEY: Your Honor, these are all
20 ambiguous questions.

21 THE COURT: They are. And the operator put
22 words in the guy's mouth, to start with. I have
23 read the transcript.

24 MR. STRICKLAND: Yes, Your Honor, but I
25 believe it is important that we get a point of

1 reference as to -- he's checking out my client's
2 alibi, and I believe this is an important point.

3 THE COURT: Well, I understand that you think
4 it is, but the record speaks for itself.

5 MR. STRICKLAND: Correct.

6 THE COURT: All right.

7 MR. STRICKLAND: But, Your Honor, with that
8 being said --

9 THE COURT: You aren't trying the case. If I
10 can, you know --

11 MR. STRICKLAND: Understood.

12 THE COURT: Not to reprimand you, but saying,
13 you are not trying the case. He listened to the
14 tape. All right.

15 MR. STRICKLAND: Very well, Your Honor.

16 THE COURT: You have points if you were
17 defending the case that you would have put more
18 emphasis on than obviously he did, and you can
19 argue those to me later, but no need to keep going
20 over and over what the transcript says when I have
21 read it now three times, and also listened to it.

22 MR. STRICKLAND: Very well, Your Honor. That
23 was my last point about the transcript. I simply
24 wanted to establish the point of reference to where
25 the scene is versus where the fight took place. I

1 believe that is important, and it is certainly
2 something he checked out.

3 THE COURT: I understand that. And he also
4 says he rides by there every day. I mean, Lord
5 knows.

6 BY MR. STRICKLAND:

7 Q Now, let's talk for a moment about the fight as
8 Mr. Brooks' alibi. Take a look at Exhibit 4. Did
9 you request the 9-1-1 records for the fight at
10 Suds?

11 A I can't remember. I mean, I never requested -- I
12 never requested -- I requested stuff all the time.
13 I had a paralegal put stuff in or send e-mails to
14 Solicitors. I honestly just don't remember.

15 Q Do you know if Exhibit 4 is in your file?

16 A I don't remember. I don't know.

17 MR. STRICKLAND: Your Honor, Mr. Bailey -- or
18 Mr. Corney and I, when we met before, he has agreed
19 that the 9-1-1 records for the fight that we have
20 provided --

21 THE COURT: Are correct?

22 MR. STRICKLAND: Are correct.

23 THE COURT: Okay.

24 MR. STRICKLAND: And are admissible.

25 THE COURT: It comes right in.

1 MR. CORNEY: Under the same stipulation.

2 THE COURT: I understand.

3 MR. CORNEY: Open to interpretation, but they
4 come in at least --

5 THE COURT: They come in to say what they say.

6 MR. STRICKLAND: That would be Exhibit 4, Your
7 Honor.

8 THE COURT: That's it.

9 (WHEREUPON, Plaintiff's Exhibit No. 4
10 was marked for identification and
11 received into evidence.)

12 BY MR. STRICKLAND:

13 Q Now, take a look at Exhibit 5.

14 A Yes.

15 MR. STRICKLAND: Your Honor, this is another
16 9-1-1 transcript of the fight. The same
17 stipulation. We offer it in as Exhibit 5.

18 THE COURT: All right.

19 (WHEREUPON, Plaintiff's Exhibit No. 5
20 was marked for identification and
21 received into evidence.)

22 BY MR. STRICKLAND:

23 Q Notice on the third line of that record, Mr.
24 Bailey, you see that Katrina Morgan's name was
25 mentioned?

1 A Yes.

2 THE COURT: I'm sorry, I didn't hear what you
3 said.

4 MR. STRICKLAND: Katrina Morgan, her name was
5 mentioned.

6 THE COURT: I've got it.

7 BY MR. STRICKLAND:

8 Q Do you see the time of that call, 2300?

9 A Yes.

10 Q All right. I am going to write that on the list
11 here, 2300 is fight, 9-1-1.

12 A I mean, I think 2300 is the call.

13 Q Fight, 9-1-1 call.

14 A Okay.

15 MR. CORNEY: Your Honor, I'm not going to
16 continue to stand up and make objections. I know
17 you are taking it all into consideration.

18 THE COURT: All right.

19 MR. STRICKLAND: Your Honor, of course we
20 offered that in as Exhibit 5.

21 BY MR. STRICKLAND:

22 Q Also look -- Exhibit 6 is the EMS record which we
23 have already introduced, but take a look at the
24 time there at the bottom of the page. Do you see
25 call received?

1 A Yes.

2 Q 2,300?

3 A I see that.

4 Q That is the time of the call, the ambulance, and
5 that mirrors the time of the 9-1-1 call, correct?
6 Is that correct?

7 A It says 2,300.

8 Q Take a look at Exhibit 7.

9 MR. STRICKLAND: I want to be sure I introduce
10 this, Your Honor. He has already addressed this.

11 BY MR. STRICKLAND:

12 Q But Exhibit 7 I assume you can identify as an
13 e-mail from you to Dolly Garfield?

14 A That's right.

15 Q Dolly Garfield is the Solicitor that handled this
16 case?

17 A That's correct.

18 Q And this is an e-mail that speaks for itself of
19 course, but you had asked her before regarding the
20 EMS record?

21 A That's right.

22 MR. STRICKLAND: Your Honor, we would offer
23 that in as Exhibit 7.

24 THE COURT: All right.

25 MR. CORNEY: And, Your Honor, it is hearsay,

1 but he has identified it as something that he sent.
2 I don't think I have an objection to it.

3 (WHEREUPON, Plaintiff's Exhibit No. 7
4 was marked for identification and
5 received into evidence.)

6 BY MR. STRICKLAND:

7 Q Take a look at Exhibit 8. This is the incident
8 report for the pizza robbery, correct?

9 A Yes.

10 Q This is something you would generally obtain as
11 part of your investigation into the case?

12 A It is one of the first things that usually comes
13 when the Solicitor's Office answers our Rule 5
14 motions.

15 MR. STRICKLAND: Your Honor, we would offer
16 this in as Exhibit 8.

17 THE COURT: Okay.

18 (WHEREUPON, Plaintiff's Exhibit No. 8
19 was marked for identification and
20 received into evidence.)

21 BY MR. STRICKLAND:

22 Q Notice about midway down of the page where it
23 starts having a narrative. It says, on 2/5 of 2009
24 at 2212 hours --

25 MR. CORNEY: Your Honor, I am going to object

1 to hearsay. It is admissible for him to --

2 THE COURT: It comes in.

3 BY MR. STRICKLAND:

4 Q On 2/5 of 2009 at 2212 hours an unknown male calls
5 Pop's New York Pizza Shop via telephone and made an
6 order for a delivery to the following address. Do
7 you see that?

8 A Yes.

9 Q And that matches the 2212 we have on our chronology
10 we have been doing?

11 A I'm sorry, it matches your chronology?

12 Q Or it matches this timeline we are doing up here.

13 A I mean, if you are saying it goes with your theory
14 or the case you are presenting, I mean --

15 THE COURT: It goes with his theory. And of
16 course we don't know that they called at 2212.

17 BY MR. STRICKLAND:

18 Q All right. Take a look at Exhibit 9. This is a,
19 as I understand it, a search warrant package dated
20 February 6, 2009, correct?

21 A That is what it looks like.

22 Q And this is in your file?

23 A I believe it -- I'm pretty sure it was.

24 Q This is something you would obtain as part of your
25 investigation?

1 A Right. Yes, this is really -- I mean, yes.

2 MR. STRICKLAND: All right. Your Honor, we
3 offer this in as Exhibit 9.

4 THE COURT: All right.

5 (WHEREUPON, Plaintiff's Exhibit No. 9
6 was marked for identification and
7 received into evidence.)

8 BY MR. STRICKLAND:

9 Q On the search warrant you see where they are asking
10 for firearms, ammunition, and a dark in color
11 hoodie?

12 A Yes.

13 Q If you look on the last page, they have searched
14 his room and it says, nothing taken, nothing found?

15 A Yes, I see that.

16 Q Did you take that to conclude that they had
17 searched for the guns and the ammunition and the
18 piece of clothing that was worn by the suspect in
19 Mr. Brooks' apartment and they could not find it?

20 A Well, yes, but it is pretty -- I mean, if you are
21 wanting to draw a conclusion from that point,
22 people don't usually go into their house, if we're
23 talking speculatively, and, you know, put a weapon
24 that they just used to commit a crime -- and
25 usually people are pretty smart and resourceful

1 about getting rid of clothes they were wearing at
2 the time.

3 So, I mean, I don't really think that that
4 is -- I mean, it is there. It would be something
5 you would drive home to a jury or you would say and
6 you would repeat, but that doesn't mean that -- I
7 mean, I don't really -- I don't think it is as
8 relevant as you think it is.

9 Q The point remains they couldn't find -- they never
10 found the clothing in Mr. Brooks' possession that
11 the suspect was wearing, correct?

12 A Well, I don't have any statistics, but, I mean, it
13 is pretty typical to never find a gun or never find
14 the clothing in criminal cases.

15 Q Do you have anything to state that they did find
16 the clothing or the gun --

17 A No.

18 Q -- or the ammunition in Mr. Brooks' possession or
19 any place he lived?

20 A No. I don't say that I did.

21 Q Take a look at Exhibit 10. This appears to be
22 another search warrant package dated April 20,
23 2009, is that correct?

24 A That is what it look like. I mean, have you
25 already stipulated this into evidence or no? I

1 mean, yes, it looks like a search warrant dated
2 April 20th, 2009.

3 Q What are they looking for in this search warrant?

4 A You'd like me to read it? What part would you like
5 me to read, Mr. Strickland?

6 Q Well, look at the description of property. Doesn't
7 that tell us what they are looking for?

8 A Sure. Why don't you just tell me what part you
9 want me to read in the record, and I'll read it for
10 you.

11 Q I'm just asking -- well, I'll ask you a leading
12 question. That might cut to the chase. They are
13 asking for the clothing that he was wearing when he
14 was booked the night of the arrest, correct?

15 A Are we on the second page?

16 Q Yes.

17 A Yes.

18 Q Turn to the last page, or the next to the last
19 page. This is a return. It says, one blue jean
20 pants, one gray shirt, one pair of boots, correct?

21 A Right.

22 Q Would you not agree, then, that he was not arrested
23 wearing the clothing that the suspect was wearing
24 at the time of the robbery?

25 A Well, he also wasn't wearing -- he also wasn't

1 arrested wearing the clothes that some of the
2 witness statements you are citing say he was
3 wearing.

4 Q Well, we'll get to those statements in just a
5 moment and you will have your opportunity to point
6 that out if you can.

7 A Well, I mean, I don't -- is that what I'm supposed
8 to do, is I'm supposed to prove his guilt or
9 something? I mean, I don't understand what you
10 want me to point out.

11 All right. Okay. This is -- these clothes
12 are different from the -- these clothes are
13 different from other descriptions, numerous
14 descriptions given by different people at different
15 times.

16 Q All right. You are saying there are statements
17 that have him wearing different clothes than what
18 he was arrested in?

19 A Yes.

20 Q Can you point those out to me?

21 A I think you just you showed -- you -- okay. Well,
22 I was just looking at it. Let's see. The
23 statement from Katrina Morgan says he was wearing a
24 pair of jean bib overalls and one black glove.

25 Q Okay.

1 A And that is Page 2 of Katrina Morgan's thing. So
2 it seems like there are a variety of people who say
3 he was wearing a variety of things over the course
4 of the evening.

5 Q Do you have any other --

6 A So he would have -- if even two of these statements
7 are right, then he would have had to change clothes
8 once. Or, I mean, that is -- I don't know.

9 Q Do you have any other description of the clothing?

10 A I don't know. I haven't looked at this file in a
11 while. I'm just -- I guess if you are trying to
12 say that there were different clothes or there were
13 some differences in the clothes here, that is not
14 the only, you know, difference in clothes. I mean,
15 you were relying on a statement earlier to prove a
16 point where they describe him in something
17 completely different as well.

18 Q Take a look at Exhibits 11, 12, 13, 14, 15, and 16.
19 Just a general question, trying to save some time
20 here, are these all statements that were taken as
21 part of your investigation into Mr. Brooks' case by
22 your investigator, Mr. McNeeley?

23 A Yes.

24 Q And these would all be statements that you would
25 take into account in evaluating Mr. Brooks' alibi?

1 A Yes.

2 Q Are there any of these statements that you consider
3 to be unreliable?

4 A I don't think they are -- I don't -- I mean, I
5 don't really think it is a question of whether they
6 are reliable or not. I think that is kind of
7 simplistic.

8 Q Well, when you were evaluating the strength of the
9 alibi, certainly as you review these statements you
10 are going to make some judgment calls, are you not?

11 A Well, I'm sure, as in relevant or not relevant.

12 Q All right. Well, what in particular did you find
13 was irrelevant in any of these statements?

14 A Well, I mean -- I don't know if it is necessary to
15 go through all of them, but I think -- you know,
16 some of these just say -- okay, let's see. I don't
17 remember my thought process exactly two and a half
18 years ago. Let's see. There is a Terrence
19 Thompson, who says that he believed the assault
20 happened at 8:00 or 8:30. There is -- and he never
21 went -- he never actually followed up to come to
22 headquarters to file reports at the bottom. That
23 certainly would -- you know, I think that points to
24 a problem with solidifying, you know, the events if
25 Mr. Thompson never really established on the

1 record --

2 MR. STRICKLAND: Let's do it this way, Your
3 Honor. I would move to introduce Exhibits 11
4 through 16.

5 THE COURT: All right.

6 MR. CORNEY: And, Your Honor, not for the
7 truth of matter asserted. It is hearsay.

8 THE COURT: I know. It is from the
9 investigator, though.

10 MR. CORNEY: I just want to make sure I put it
11 on the record. Thank you, Judge.

12 THE COURT: All right.

13 (WHEREUPON, Plaintiff's Exhibits No.
14 11-16 were marked for identification and
15 received into evidence.)

16 BY MR. STRICKLAND:

17 Q Mr. Thompson here, he says that he was in a fight
18 with a man named Thomas Brooks, correct?

19 A Yes.

20 Q Now, let's look at Mr. Bethel, which is Exhibit 12.

21 A Right. Mr. Bethel was the guy who gave him a ride
22 to Burger King.

23 Q Correct. That was about 6:00 o'clock that evening,
24 right?

25 A That's what the statement says.

1 Q All right. Now, let's look at Kenneth Hurey, who
2 is Exhibit 13.

3 Now, Mr. Hurey gives a pretty graphic
4 description of how the fight broke out, does he
5 not?

6 A I haven't read this in a while. I take your word
7 for it.

8 Q Take a look at it.

9 A Okay.

10 THE WITNESS: Well, you know what? I am going
11 to have to go to the bathroom. I apologize. I
12 just need to -- I mean, I will be extremely
13 lightning fast, but if we are going to read through
14 all these individually, I need to go, Judge, if
15 that is all right.

16 THE COURT: You can go.

17 THE WITNESS: All right, thank you, sir.

18 THE COURT: Does anybody else need to step
19 out? We will stretch.

20 (Pause.)

21 THE BAILIFF: Court come to order. Remain
22 seated.

23 THE WITNESS: I apologize to the Court.

24 THE COURT: No problem.

25 DIRECT EXAMINATION CONTINUES

1 BY MR. STRICKLAND:

2 Q Mr. Bailey, we were talking about the statement of
3 Mr. Hurey, which has been introduced as Exhibit 13.
4 I was asking you about the build-up to the fight
5 that Mr. Hurey describes here about how Katrina
6 Morgan came in with a female friend. And a male
7 subject, Mr. Brooks, was asking to buy beer, or \$2
8 to buy a beer. He gave her \$10. When she came
9 back outside Brooks asked her for his change, and
10 she wouldn't give it to him. They had words and
11 the girl swung at Brooks. Brooks pushed her away.
12 The guy that was with him got involved and he and
13 Brooks began fighting.

14 Do you recall having that statement at the
15 time you talked to Mr. Brooks about his options?

16 A I know I went over the statements with Thomas. I'm
17 pretty sure that I went over all these with him.
18 Because he was concerned about, you know, what we
19 had done to investigate it.

20 Now, keep in mind, these are -- you know, this
21 is paraphrased. I mean, I don't know, it might not
22 need to be said, but these are write-up summaries
23 of our investigator, not actual statements.

24 THE COURT: I understand.

25 A Yes, sir.

1 THE COURT: They are just summaries. It is
2 hearsay, but that is what you had access to?

3 A Yes, sir. So, yes, we -- I believe we went over
4 all these together.

5 Q All right. Well, looking through these statements,
6 isn't it fair to assume when you look at
7 Mr. Hurey's statement at 13, Kristina Morgan's
8 statement at 14, and Katrina Morgan's statement at
9 15, they all basically describe the fight as going
10 down the same way, correct?

11 A Well, I mean, they have some consistencies in their
12 statements, if that is what you mean.

13 Q Right. I mean, some dispute about buying a beer.
14 Some dispute about change not being brought back.
15 Altercation between Mr. Brooks and Ms. Morgan. And
16 then the gentleman, Mr. Thompson, steps in to
17 defend Ms. Morgan, correct?

18 A I don't disagree with that -- how -- I mean, those
19 facts being stated by some of these people.

20 Q Now, you said earlier that no one really -- or that
21 you didn't know that there was a delay between the
22 time the fight broke out and the time that the
23 9-1-1 calls were placed and the time that the EMS
24 call was placed.

25 What do you have in your file to document

1 there was such a delay?

2 A Well, you know, I don't have anything that I can
3 think of right now that specifically documents it.
4 I mean, you know, there is -- the victim of the
5 assault says it happened much earlier than this.
6 So, I mean, so, you know, there might have been a
7 delay there. I don't know.

8 Q Well, wouldn't it be -- certainly all things being
9 equal, one would assume, or certainly you would
10 assume as part of your investigation that when
11 someone is getting beaten up bad enough to go to a
12 hospital, he doesn't wait around for about two and
13 a half hours before he called 9-1-1?

14 A What do you mean by all things being equal?

15 Q Well, assuming that the statements are accurate
16 which your investigator took out talks about a
17 pretty vicious fight going on and talks about
18 Ms. Morgan going into a bathroom as it is going on
19 and calling 9-1-1. Didn't that place you on notice
20 that there was a 9-1-1 call placed as the fight was
21 going on?

22 A I'm sorry, I don't understand -- I don't understand
23 what you are asking me.

24 Q Well, you had said --

25 A Or what you --

1 Q --- there was confusion over what time the fight
2 happened. And you got a 9-1-1 call at
3 11:00 o'clock and you have got an EMS call at
4 11:00 o'clock. You say you got a witness
5 statement, Mr. Thompson, where he says, I'm not
6 sure, around 8:30 or something. But what do you
7 have to show that there was that much of a delay
8 over Mr. Thompson's -- other than Mr. Thompson's
9 *I'm not sure* statement?

10 A Well, I don't really think I used the word
11 confusion. And also, I'm not -- you know, I'm not
12 trying to establish --

13 THE COURT: That's right.

14 A -- Mr. Brooks' guilt or anything. That is not --

15 THE COURT: He is not trying to establish his
16 guilt.

17 A I feel like you are trying to get me to play
18 devil's advocate with you or something, and I
19 don't -- I'm not here to tell you why Thomas Brooks
20 is -- would be found guilty in front of a jury, I'm
21 here to tell you what I interpreted as potential
22 strengths and/or weaknesses of the case at the
23 time.

24 Q But it is your testimony that you -- well, you
25 assumed in advising Mr. Brooks there was a delay of

1 two and a half --

2 A I didn't say -- I think I said today that there
3 were -- I mean, if you are talking about a delay, I
4 think the first time we -- I said I mentioned
5 earlier that there might have been some delay
6 there. I don't know. I think -- it is hard to
7 say. Some of these numbers are harder to pin down.
8 Some are -- I think there are some maybe
9 discrepancy within the numbers there. But I'm not
10 saying that there is -- that hasn't been like an
11 assertion by me that there is this definite
12 confusion thing or there was definitely a delay.

13 Q All right. Let's look at -- there are also some
14 driving instructions and directions in here. One,
15 I believe it is Number 17. If you would pull that
16 up.

17 A All right.

18 Q Did you do a Map Quest search to determine how far
19 it was from the scene of the robbery back to where
20 the 9-1-1 call was made?

21 A No, I don't think so.

22 Q Okay. Have you ever seen this document before?

23 A I mean, I don't -- you know, I guess not. I don't
24 know where this came from. I mean, I could have
25 run it. I don't remember doing it.

1 Q All right. And the same with Number 18. This is
2 walking directions to [REDACTED]?

3 A Where is this document coming from?

4 Q Number 18.

5 A No, I know, I mean what is this --

6 Q I'm asking you did that come from your file?

7 A I don't remember it coming from my file. I think I
8 had conversations with Ms. Justice about this
9 stuff. I don't know. I don't -- I mean, I
10 don't -- I mean, honestly I don't remember if it
11 came from my file or not. And not everything was
12 printed out either.

13 Q Didn't you sit down as part of your negotiations
14 with the Solicitor and discuss this timeline?

15 A Yes, we definitely sat down and discussed the
16 timeline.

17 Q And did you discuss that it would take roughly nine
18 minutes to walk from the scene of the robbery to
19 the scene of the fight?

20 A I don't remember specifics and I don't remember
21 quantifying or, you know, how many minutes it would
22 take to walk. I remember us sitting -- you know,
23 talking about numbers.

24 Q And you said you drive this area all the time. Are
25 they fairly close proximity to each other?

1 A Well, I mean, I said I'm familiar with the area. I
2 didn't mean that I drive the route between the
3 house and Suds. I am saying I drive through
4 Millwood a fair -- I drive down Millwood a fair
5 amount.

6 Q So you did not do as part of your advising
7 Mr. Brooks, you didn't do any analysis how long it
8 would take someone to walk from the scene of the
9 robbery to the scene of the fight?

10 A I didn't test it out myself, no.

11 Q You didn't test it out? So sitting here today you
12 don't know how long that would take?

13 A Not -- no. I didn't time it. I didn't walk from
14 the scene to the fight to his house, no.

15 Q And you did not think that was important as part of
16 testing Mr. Brooks' alibi to see if someone could?

17 A Well, you know, getting back earlier, I know we
18 have spent a lot of time on this, but, you know,
19 our discussions with Mr. Brooks were not -- you
20 know, this is assuming that Mr. Brooks wanted a
21 trial, which pretty early on Mr. Brooks led me to
22 believe that he wanted -- or said that he wanted a
23 good deal and that that was more important than
24 asserting his innocence. Maybe I should have
25 stated that earlier with greater -- you know, if we

1 were -- if we were going to go to trial, which we
2 were never on track to go to trial, I would have
3 definitely gone to the scene and I would have
4 definitely walked it out. But when you've got
5 somebody who is interested in potentially taking a
6 deal, you don't go to the scene and, you know, use
7 a stopwatch, or whatever, to the same extent you do
8 if you are set for trial.

9 I don't remember this one ever being tracked
10 for a trial because I thought we had a potentially
11 -- we would have potential for a good plea offer,
12 and Mr. Brooks was definitely interested in a plea
13 offer.

14 And once that happens and you move forward to
15 the next stage, the Solicitor is negotiating for
16 plea offer, then you are on a different kind of
17 track. So you don't investigate for trial the same
18 way you get your facts in order for a guilty plea.

19 So, you know, to answer your question, could I
20 have done these things? Absolutely. Would I have
21 done them if we had gone to trial? I probably
22 would have done some of these. I might not have
23 done all of them. I might have done all of them.

24 Q Well, let me be sure I understand.

25 A I don't know if you understand -- I'm sorry.

1 Q Well, I'm just trying to understand. You are
2 telling me that when a man -- when you are
3 appointed to be a man's attorney and he is telling
4 you he didn't do it and he is telling you he has
5 got this alibi, but he tells you -- I mean, you
6 don't think you have got any obligation to go out
7 there and investigate the alibi?

8 A Absolutely you do. But if -- you know, if your
9 person is not interested in a trial, then you don't
10 proceed with investigations if you are going to
11 trial.

12 Q Well, you see this timeline.

13 A Right. But that doesn't -- you are not
14 answering -- I mean, I don't understand what you
15 are -- the timeline doesn't have anything to do
16 with whether or not he wanted to accept a guilty
17 plea and whether or not he wanted to plead guilty.

18 Q Well, if a man is innocent and a man has got an
19 alibi and he is counting on his lawyer to tell him
20 if his alibi is going to pan out, you are the only
21 link he has got to the outside world on this
22 investigation, aren't you?

23 A Well, he did have -- I would make sure he had
24 copies of his discovery. He got it several
25 different times. I asked him not to keep it at the

1 jail because you have people that will, you know,
2 sometimes get all the discovery and snitch on him,
3 but I don't think -- if I remember correctly -- I
4 can't remember, I think he kept -- no, he kept it
5 at the jail even though I told him not to. But
6 that doesn't -- I mean, that is an advice thing
7 just because you don't know who can get access to
8 it. So he had access to his discovery. And if
9 there was something he wanted to discuss further or
10 if he was interested in pursuing a defense that
11 would, you know, go to trial, you know, he didn't
12 say it to me.

13 I looked at the timeline. I thought there
14 were potentially some problems with that and the
15 witnesses. I told him that. But I never
16 discouraged him from going to trial.

17 Q Well, you see here on this, this is what we did
18 simply, 2246 is the estimated time that the victim
19 gave as to when the fight occurred -- or when the
20 robbery occurred. And you have got the 9-1-1 call,
21 fight, and the EMS call for the fight at
22 11:00 o'clock. That is 14 minutes.

23 A I'm sorry, is that a question? I mean, if you are
24 asking me should I have done more math --

25 THE COURT: You need to just address those

1 things to me and quit going over it with him. You
2 can reject all that, actually. It depends on your
3 viewpoint on it.

4 MR. STRICKLAND: It is just leading up to the
5 question, Your Honor, that he has got a lot of
6 stuff he had to do. And if he pulled off that
7 robbery, he has got a lot of stuff he has got to do
8 in 14 minutes. So we'll address that with Your
9 Honor.

10 THE COURT: I understand. But you need to
11 also understand that you can plead guilty under
12 Alford and get the death penalty if you knowingly
13 and voluntarily do it.

14 MR. STRICKLAND: Yes, sir.

15 THE COURT: So, you know --

16 A I never told Mr. Brooks to take responsibility for
17 something he didn't do. He seemed interested in a
18 plea deal. That is what we did.

19 Q Now, you mentioned earlier that Mr. Brooks wrote
20 you a good number of letters. Do you have those
21 letters with you?

22 A I've got a file of some of those letters, yes.

23 Q All right. Look at this letter to you dated 3/26
24 of 2009.

25 A I thought I did. This is my file. I think most of

1 these are his letters. So which one are you
2 looking for?

3 Q 3/26/2009.

4 A Okay. What is it -- is this on white -- is this on
5 white paper or yellow -- is this one of the forms
6 or is this -- because I have got a lot of them.

7 Q The copy that I have is on white. This is on line
8 paper, just regular notebook paper.

9 A Okay. So it is on -- okay. Because I must have
10 maybe even a few dozen, if not more, from him. You
11 are looking for what? May what?

12 Q I'm looking for March --

13 A I'm sorry, March what? I see one for March 6.

14 Q March 26.

15 A Okay. I see March 25th to my boss. April. May.
16 Right now I just see one that says March -- I mean,
17 maybe you should show me the one that you have got.

18 Q All right. I am going to hand you this stack. I
19 certainly don't want to go through all these, but
20 they are all stapled together and I don't want to
21 take out Mr. Brooks' statement.

22 Here is a letter dated March 26th, 2009. This
23 is the first page. Put your finger there. Turn it
24 over to the back page and I'll ask you about
25 specific --

1 A This one here.

2 Q No, where I asked you to put your finger so we
3 wouldn't lose our place. There we go. Look here
4 where he says, I'm not interested in pleading
5 rather to this charge or lesser included charge,
6 not even if they -- what does that say?

7 A Offer.

8 Q -- offer time served on petit larceny. I do not
9 wish to plea.

10 A I want my rights on this matter.

11 Q All right.

12 A Okay.

13 Q So do you recall that being his position?

14 A Sometimes. Frequently, especially when you get
15 this much jail mail, they will say one thing in one
16 letter and then they will change their mind the
17 next time you visit them or in the next letter.
18 So.

19 Q All right.

20 A And that was also just a couple of months after he
21 was arrested, if my math is right. You know, this
22 is -- he pled guilty I guess, gosh, like a year and
23 a half later or so. So I think -- I mean, his
24 position seemed to change as time went on.

25 Q And it is your position that your -- or did your

1 advice to him or the information you gave him about
2 how his alibi checked out, did that play any role
3 in his changing?

4 A I didn't think it was a rock-solid alibi. And I
5 don't think it was one thing. Like I said, you
6 know, Thomas, this isn't a rock-solid alibi, you
7 should plead guilty. And then all of a sudden he
8 said, okay, I will plead guilty. We had a lot of
9 discussions over periods of time. And it seemed
10 pretty -- it seemed early on that he was interested
11 in pleading guilty. I wasn't trying to talk him
12 into it.

13 Q Just a few more questions. Exhibit 20.

14 A Oh, just for record, you are citing one statement
15 out of literally dozens of letters that he sent
16 over the course of a year and a half. So I think
17 his position changed a lot on that.

18 Q I'm sure Mr. Corney will ask you questions, he will
19 go into that if he so chooses. But take a look at
20 Exhibit 20.

21 A Is this the discovery motion?

22 Q Yes.

23 A Okay.

24 Q Was this your Brady request or something different?

25 A We had -- there are two things. You have got a

1 Rule 5 motion for discovery and you have got a
2 Brady motion.

3 Q Did you do both?

4 A Yes.

5 Q What would be the difference between the two?

6 A Oh, gosh. One of them is for all evidence used to
7 prosecute, as in the Defendant is entitled to all
8 evidence the State uses to prosecute them. And
9 then other one is that the State has a duty to turn
10 over any particularly exculpatory evidence. And we
11 do them -- they are separate, they are distinct,
12 but we always file both of them together.

13 Q Let me ask you specifically about the 9-1-1 tape
14 for the fight at Suds. Do you recall Mr. Brooks
15 being very interested in getting a recording of
16 that call?

17 A I don't remember him being particularly interested
18 in it, no.

19 Q Take a look at Exhibit 21. You have it?

20 A Yes, I do.

21 Q This is an order of Judge Michelle Childs
22 requesting that -- or ordering that the 9-1-1 calls
23 made on or around February 6, 2009, in reference to
24 incidents, plural, that led to his arrest be
25 preserved for evidentiary purposes?

1 A I submitted this because there had been times where
2 if you wait too long, 9-1-1 tapes aren't preserved.
3 And, you know, this was pretty -- you know, the
4 case was still relatively new here. But I wanted
5 to make sure that they didn't get erased over or
6 run over.

7 Sometimes the Solicitor's Office keeps -- I
8 mean, I don't know the exact protocol, but
9 sometimes the State will make an effort to preserve
10 them and sometimes they don't, or at least if it
11 happened -- there had been occurrences where it
12 hadn't happened. I wanted to make sure that
13 whatever they said, they were preserved so we could
14 have access to them.

15 And I remember speaking with the Solicitor,
16 and the Solicitor, I mean, was on notice that we
17 didn't want them destroyed. And I, you know, I
18 think it was really just to put on the record to
19 make sure that nothing happened to them.

20 Q So you wanted the 9-1-1 audio for the robbery
21 preserved?

22 A Right. That's right.

23 Q And you wanted the 9-1-1 audio for the fight
24 preserved?

25 A I don't -- at this time, I don't think I knew

1 enough about the fight to know that they had called
2 9-1-1. So I -- this -- I'm -- it was a few years
3 ago, but I remember filing this specifically for
4 the 9-1-1 phone call. I don't think that it had
5 anything to do with -- because I didn't realize
6 the -- I mean, I didn't -- I would have specified
7 that the fight -- that I wanted the calls for the
8 9-1-1 fight if I would have been -- you know, to
9 make sure. So I don't think that was my intention
10 at the time. I wasn't -- that wasn't on my mind
11 when I did this particular motion.

12 THE COURT: Well, look at Exhibit 7. You
13 wrote Dolly Garfield and said you wanted a copy of
14 that EMS report of the fight.

15 THE WITNESS: Right. Yeah. But I'm just
16 saying during this order.

17 THE COURT: I understand.

18 THE WITNESS: Exhibit 7 was in --

19 THE COURT: You don't have to look.

20 THE WITNESS: Yes, that was May, and this was
21 in April. I was just trying to answer honestly.
22 But I don't think I was thinking of the fight when
23 I drafted this -- or had the judge sign this order.

24 Q I will represent to you, and you correct me if I'm
25 wrong, but there is no tape of the 9-1-1 call from

1 the Suds fight in your file, is there?

2 A I mean, there is no physical copy of it.

3 Q All right. So is it safe therefore to assume you
4 never got a copy of it?

5 A No, it is -- I don't think it is safe, because
6 frequently they would send them to us by e-mail and
7 we would just save them on our computer.

8 Q The audio?

9 A Yes. All the time. They send them to us in a,
10 like a Wave file type thing and we would save it on
11 the computer. And sometimes they would send them
12 to us on CD's and sometimes they would send them to
13 us in audio.

14 Q Your file did apparently have the CD of the robbery
15 call?

16 A Okay. Well, again, keep in mind, this is -- if I
17 get some of that wrong, I might, but, okay, if it
18 had it -- if it had it -- I mean, I know I was
19 given to it. Nobody withheld it from me, if that
20 is what you mean.

21 Q Okay. But you don't have it in your file. You
22 said there is another file out there that --

23 A You know, I honestly -- I mean, this was two and a
24 half years ago. I don't remember -- let's put it
25 this way. If something were missing, I would have

1 made a point to get it. You know, things get
2 misplaced in the office. You know, there is always
3 a chance that -- I mean, if you are saying -- are
4 you saying that you see some record of me having
5 the hard disk in my file? I know it was turned
6 over to me. It might have been e-mailed to me. I
7 don't know.

8 Q Well, you say it was turned over to you, but yet we
9 can't get a copy out of your file. We asked you to
10 bring your file here today. Did you not bring your
11 whole file with you?

12 A Well, I haven't worked in this courthouse in --
13 since November. I did bring -- bring the file that
14 they had to pull out of archives. I don't know if
15 that stuff is now on the computer, if the lawyer
16 that inherited the computer from me.

17 Q The simple point I'm trying to make is, if there
18 was an audio of that 9-1-1 call of the fight, I
19 haven't seen it, and I have asked for it from
20 various sources. You are saying now that you know
21 it was given to you. Well, if it was given to you,
22 then why can't we get a copy of it?

23 A I thought you just -- okay. I'm kind of not
24 understanding what you are asking me.

25 THE COURT: All right, now, don't badger him.

1 He has explained why. He no longer even works
2 here.

3 MR. STRICKLAND: Well, Your Honor, we served a
4 subpoena yesterday.

5 THE COURT: That's fine. That's fine. I
6 understand how it operates. And, understand, you
7 are bringing somebody in for something that
8 happened two and a half years ago. He no longer
9 works there. He doesn't have access to it. Plus,
10 they wipe out hard drives and things all the time.

11 Looking at Exhibit 7, Ms. Garfield gave him
12 that tape. She gave him that tape. Where it is
13 today I don't know. And if you really needed it,
14 you should have asked one of us to direct him to
15 present it at the trial, rather than the general
16 thing to him, who has no control over it.

17 MR. CORNEY: Your Honor, just to be clear, I
18 think the Solicitor turned over the EMS report. I
19 don't know that she necessarily turned over the
20 tape of the Suds fight, but there is a 9-1-1 tape
21 of the robbery, 9-1-1 call that we have listened
22 to. The Suds laundromat fight 9-1-1 tape I think
23 is what he is alluding to. And I'll handle it in
24 argument and on cross-examination.

25 THE COURT: All right.

1 MR. STRICKLAND: Your Honor, for the record,
2 we have a subpoena that we served on the Fifth
3 Circuit Public Defender's Office to bring the file
4 here today.

5 THE COURT: And he brought what he had from
6 archives.

7 THE WITNESS: I picked it up on Wednesday.

8 MR. STRICKLAND: Your Honor, I would like to
9 mark this subpoena. This will be 22.

10 (WHEREUPON, Plaintiff's Exhibit No. 22
11 was marked for identification and
12 received into evidence.)

13 MR. STRICKLAND: Your Honor, I don't know if I
14 formally asked that 20 be introduced, Exhibit 20,
15 but I assume there wouldn't be any problem with
16 that.

17 THE COURT: All right.

18 (WHEREUPON, Plaintiff's Exhibit No. 20
19 was marked for identification and
20 received into evidence.)

21 MR. STRICKLAND: 21 of course is the Court's
22 order, which I also ask to be introduced as Exhibit
23 21.

24 THE COURT: Okay.
25

1 (WHEREUPON, Plaintiff's Exhibit No. 21
2 was marked for identification and
3 received into evidence.)

4 BY MR. STRICKLAND:

5 Q Finally, Mr. Bailey, look at the transcript which
6 was attached as part of the record handed up by the
7 Assistant Attorney General.

8 A Yes.

9 Q Turn to Page 16.

10 A Okay.

11 Q Look at the Line 7. There is a question posed by
12 the Court: What was the ID? Was a description of
13 the clothing worn by the Defendant the same as what
14 he had on the night in question?

15 And Ms. Garfield says -- in Line 10 says:

16 Yes, sir. Yes, sir.

17 Was that an accurate answer?

18 A Well, you will notice that right after that I say,
19 starting on Line 25: Thank you, Your Honor. I
20 would -- well, it looks like I'm stuttering a lot.
21 I would -- I mean, I would disagree a little bit.
22 I don't think it is super material about the nature
23 of gray, you know, pants versus, you know, jeans
24 versus black pants. There may have been some
25 discrepancies there in clothing.

1 So I actually addressed, you know, when the
2 Solicitor said that it matched, you know, I went on
3 record saying it was different, or that -- I was
4 trying to clear up that there were some
5 discrepancies.

6 I don't think it was her intent to represent
7 it as anything other. I think she just said -- I
8 mean, she answered a question and then I clarified
9 a few lines later. And then she didn't dispute
10 what I was saying about discrepancies. I don't
11 think -- you know --

12 Q One second, Your Honor.

13 THE COURT: All right.

14 BY MR. STRICKLAND:

15 Q Mr. Bailey, just one follow-up. Your file should
16 contain a letter dated March 8, 2009. This is on
17 an inmate request form that you mentioned. If you
18 would turn to that letter.

19 A Are we talking about one of Mr. Brooks' letters?

20 Q That's correct.

21 A Okay. Which date?

22 Q This is March the 8th, 2009.

23 A If you would like to show me yours, it might save
24 some time. I would be happy to look through mine,
25 if you would like.

1 Another thing is this was -- this -- not only
2 did Mr. Brooks get this photocopied afterwards by
3 our office, but I think it got photocopied for use.
4 So it is not in the best order, not the order I
5 left it in.

6 Q Well, let me defend myself. I didn't make the
7 copies, so --

8 A Okay. If my office photocopied it, it is in a
9 little bit different state than I remember it.

10 Q All right. I draw your attention, this is a
11 letter, Public Defender Inmate Request Form dated
12 March 8, 2009, from Mr. Brooks to Mr. Bailey, who I
13 assume is you.

14 Pick up reading here on the second page.

15 A Okay.

16 Q Where he has got it underlined.

17 A I need you to subpoena patrol car surveillance
18 tapes, and also a possible 9-1-1 call made from
19 laundromat on night in question, also 9-1-1 call
20 made by alleged victim, and finally the description
21 that was broadcast citywide.

22 Do you want me to keep reading?

23 Q No, that is all.

24 A Okay.

25 Q So Mr. Brooks asked you to make sure you got both

1 of the 9-1-1 tapes, correct?

2 A Well, that seemed kind of vague. Maybe that is
3 what he meant. But he also talks about the victim.
4 He says -- I mean, you know, this happened in the
5 approximate area. I might have misread that. But
6 I -- you know, if he would have told me in our
7 subsequent conversations he specifically -- you
8 know, that is kind of clumped together. It talks
9 about police surveillance. It talks about a 9-1-1
10 phone call with the victim of -- the pizza guy.
11 And then it has that clumped into it.

12 So looking at it now highlighted and
13 underlined, it may mean the 9-1-1 -- he may have
14 meant the 9-1-1 call from the laundromat or Suds,
15 but he didn't say Suds. Looking at that, I
16 probably misread it saying he wanted the other
17 9-1-1 phone call.

18 Q Did you ever go by Suds?

19 A I mean, I know where it is. I didn't go there on
20 foot. Again, I would have had we proceeded to
21 trial.

22 Q Do you know what kind of establishment it was?

23 A It was a laundromat where you could get beer.

24 Q Okay. So the fact he referred to it as a
25 laundromat is not altogether true?

1 A Well, you know, I don't always read things
2 correctly. I mean, if you want to -- if you were
3 to sit down and read his stuff -- I read the stuff
4 that came from my clients, but, I mean, if you were
5 to read this folder, it is a lot of stuff. It is
6 not always grammatically perfect. And I certainly
7 could overlook or misread something. But if he
8 had -- you know, if he would have brought -- you
9 know, again, there were a bunch of things he is
10 requesting there, some of which I got. And I'm
11 just now looking at it here and saying, oh, I might
12 have looked at this and thought of -- you know, I
13 might have thought he meant the other 9-1-1 tape or
14 something.

15 If he would have asked me later -- again, I
16 met with him on a regular basis -- if he would have
17 said, I need these 9-1-1 tapes for this. And, you
18 know, I'm not blaming him, I'm just saying if he
19 would have, I would have done it. If I overlooked
20 it, you know, in one of his, you know, many lists
21 of things he wanted, I mean, or read it wrong, that
22 is certainly a possibility. But that is why we
23 also meet with our clients so that expectations are
24 clear.

25 Q Let me point out one further statement in this

1 letter we just referred to, the March 8, 2009
2 letter. And I stopped you or asked you to quit
3 reading. Pick up here with this sentence.

4 A Okay. Oh, okay.

5 The reason why 9-1-1 call or calls concerning
6 the servants from laundromat, Suds, is important,
7 along with employee that works there that goes by
8 the name Ms. Jackie.

9 And I can't read some of that stuff, something
10 ...alibis, alleged time of crime.

11 Q But you see where he has got laundromat, it says
12 Suds?

13 A Sure, he says it there. Keep in mind, I got this a
14 year and a half ago, so, you know, you took it away
15 twice before I could read the rest of it. Is there
16 any more you want me to read ahead of time?

17 Q No, no. If you want to read the rest of it, you
18 can.

19 A Perry Mason me? I mean, I'm done with it unless --

20 Q I'm not going to ask you anything else about it.
21 If you want to read the rest of it, you certainly
22 may.

23 A No, it's fine.

24 MR. STRICKLAND: All right. that's all I have
25 of this witness, Your Honor.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. CORNEY:

4 Q Mr. Bailey, I'll try to be pretty brief with you on
5 this. I think you touched on a lot of the stuff,
6 concerns that I had, on direct examination.

7 Referring to the victim's identification of
8 Mr. Brooks -- and I know that was done by a show-up
9 and you have done some testimony as to that. Do
10 you recall the certainty of his identification of
11 Mr. Brooks?

12 A Yes. In his statement he said that he was a
13 hundred percent certain that Mr. Brooks was the guy
14 who robbed him. That's what he said.

15 Q And I think we heard on the 9-1-1 tape that was
16 played earlier, but just to make sure it is clear,
17 the victim also said that Mr. Brooks was not
18 wearing a mask at the time?

19 A That's right.

20 Q Or anything covering the face?

21 A That's right.

22 Q And was that victim prepared to testify at trial
23 from your understanding?

24 A My understanding was yes, but he was in Maryland,
25 so --

1 Q Okay.

2 A I mean, my understanding that -- was that he was --
3 that they had communication with him, because the
4 Solicitor's Office has to have communication with
5 these types of -- with, you know, alleged victims
6 before things can happen.

7 But my understanding was, other than him
8 coming down from Maryland, it wouldn't be -- it
9 wouldn't -- there wouldn't have been any obstacles
10 or problems with him coming to testify.

11 Q Okay. As far as the 9-1-1 phone call tape that we
12 just discussed a minute ago, and I believe
13 Mr. Strickland referenced Exhibit 21, you had made
14 a motion obviously to have the 9-1-1 -- some 9-1-1
15 phone call tape preserved, correct?

16 A That's right, yeah.

17 Q And at the time you are doing that, just to make
18 sure I understood your testimony correctly, that
19 was for the purpose of if you went to trial at a
20 later date?

21 A Right. I mean, you know, there is kind of a -- you
22 know, when it is -- especially when it is early,
23 you might -- you want to act even before discovery
24 is done or before you have gotten everything in to
25 make sure certain things are preserved or certain

1 statements are taken.

2 So until you have made a decision or the
3 client, I should say, has made a decision to go to
4 trial, you have to take certain measures to be
5 ready for it. And that was why I asked -- you
6 know, that is why I asked Judge Childs to sign the
7 order to preserve the 9-1-1 tapes.

8 Q It was never your intention to have those 9-1-1
9 phone call tapes preserved indefinitely for
10 collateral attack, appeal, anything along those
11 lines?

12 A No. And, you know, especially after Mr. Brooks
13 said he wanted to plead to a lesser charge, you
14 know, you become less concerned with making sure
15 there is a hard copy in your file forever.

16 You know, I guess if I would have known, you
17 know, they would have been asking for it, I would
18 have made sure that certain things got moved to a
19 hard copy as opposed to on the computer.

20 Q Terrence Thompson was the victim of the Suds fight
21 that we have been discussing this morning, is that
22 correct?

23 A That is my understanding.

24 Q And you had him interviewed by your private
25 investigator?

1 A Right. That's right.

2 Q And based on your recollection of that interview,
3 was it your understanding Mr. Thompson was going to
4 be willing to assist Mr. Brooks in this or provide
5 testimony at trial on his behalf?

6 A I am surprised that McNeeley got a hold of him. I
7 didn't expect he would be very cooperative since he
8 and Mr. Brooks had had fights. I mean, on those
9 the statement is pretty brief. He didn't seem to
10 want to talk. My understanding, talking with Mack,
11 was that he didn't seem to want to talk a lot. And
12 the police had even wanted him to go and fill
13 something out at police headquarters about the
14 assault, and he didn't want to go do that either
15 after EMS.

16 So sometimes we get lucky and we find guys,
17 and sometimes we don't. But, you know, we --
18 certainly we would have gone and tried to make him
19 cooperate or, you know, subpoena him or get more.

20 I didn't find him to be particularly -- I'm
21 surprised we got these like three or four sentences
22 out of him from Mack, but Mack is pretty
23 persuasive, I guess.

24 Q And as far as I think Kristina and Katrina Morgan,
25 they were witnesses I guess, and they gave

1 statements to McNeeley as to the Suds fight as
2 well?

3 A Yes.

4 Q And there were some -- one of them -- I believe one
5 of them in their statement mentioned something
6 about being a prior girlfriend of Mr. Brooks?

7 A That is what -- that is what I got from
8 Mr. McNeeley's statement.

9 Q And I believe that in that there is some reference
10 to the fact that Mr. Thompson had shoved or hit her
11 that night, something along those lines, during
12 that fight?

13 A I remember something like that, yes.

14 Q Okay. In a situation like that, would you have
15 concerns about calling her to testify at trial
16 where that could come out potentially?

17 A I would. I didn't think it was -- I thought it was
18 potentially -- it was potentially damaging, or it
19 didn't look good for, you know, possible
20 credibility. I mean, plus, it looked like that the
21 two women involved were kind of really working
22 themselves up into like a frenzy over it and, you
23 know, I certainly didn't want the trial to turn
24 into real housewives of whatever county shows,
25 but --

1 Q All right. Do you recall Mr. Brooks' house being
2 very close to the Suds location?

3 A That is what I remember, yes.

4 Q And all of this occurred within a half mile
5 essentially, based on the Map Quest?

6 A That is what I -- that is what I believe to be
7 correct.

8 Q Okay. In your experience as a criminal defense
9 attorney, would you agree that a true alibi in its
10 very essence is -- it involved a physical
11 impossibility of someone being in two places at
12 once?

13 A Yes, I would agree.

14 Q It is an alibi that leaves the door open to some
15 possibility that someone could have been in two
16 places is not an airtight quote/unquote alibi.

17 A Right. That is not the kind of -- that is not what
18 I would call an alibi. I mean, I guess it is an
19 alibi, but that is not what I would call the
20 strongest one.

21 Q And were you able to discuss with Mr. Brooks that
22 by pleading guilty he was going to waive his
23 ability to present this alibi -- potential alibi or
24 alleged alibi defense?

25 A Right. Yeah, I've got my -- I've got a rights form

1 if you want to put this into the exhibit. I've got
2 the actual one he signed from September 16th of
3 2010.

4 And it says, you give up your right -- I mean,
5 I go -- I went through this with all my clients
6 during a guilty plea, 22 questions, and there
7 wasn't a spot for PCR, but I did put a spot at the
8 bottom that said, PCR advised, and had him sign
9 there.

10 Q And I won't introduce that for the purpose that he
11 was advised at the plea hearing by the judge as
12 well?

13 A Yes. Yes.

14 Q Okay. Were you also able to explain to him what a
15 plea under North Carolina v. Alford was?

16 A Yes. That -- I mean, that was important. You
17 know, Thomas had said that he didn't commit this,
18 but as, you know, as time progressed, he seemed
19 more concerned with the deal than asserting his
20 innocence at trial.

21 I think he understood weaknesses,
22 potentially -- I think he understood, you know, ID
23 issues. He certainly didn't seem as adamant or as
24 interested in going forward in a trial as I guess
25 he or his counsel are today.

1 And, I'm sorry, I forgot the question.

2 Q Just that you had reviewed with him what North
3 Carolina v. Alford --

4 A Oh, right. Yeah, I mean, that was kind of part of
5 it. I was like -- I mean, basically I told him, I
6 was like, this is -- you know, North Carolina vs.
7 Alford means that you don't want to roll the dice
8 because it is very likely that they can convict you
9 based on evidence, and you get the benefit of a
10 plea deal, and if you have problems saying you are
11 guilty, then, you know, you can plead under North
12 Carolina v. Alford.

13 Q And he seemed to understand that based on your
14 discussion?

15 A Yes. I think that was an important part of the
16 plea was he still asserted his innocence, albeit
17 maybe not extremely vehemently near the end, but
18 that was part of it.

19 Q And he knew he would get sentenced all the same
20 under Alford as a regular plea?

21 A Yes.

22 Q And I think even at the plea hearing you even
23 mentioned that he didn't want to roll the dice. I
24 think those were the exact words you may have used.

25 A It sounds like words I'd use.

1 Q All right. Based on your conversations, your
2 investigation, and just considering the case as a
3 whole, do you think you gave Mr. Brooks all the
4 advice and information necessary to make a
5 voluntary informed decision as to whether to plead
6 and waive his defenses or go to trial?

7 A Yes, I do.

8 Q Did you ever coerce him, you know, ever in any way
9 force him to take the plea deal?

10 A No.

11 Q In the end, was it his sole decision whether to go
12 to trial to present an alibi defense?

13 A Yes.

14 MR. CORNEY: That's all the questions I have,
15 Your Honor. Thank you.

16 MR. STRICKLAND: Your Honor, just to cover the
17 bases here, we went through all these 22 exhibits
18 and I believe all the objections were stated. I'd
19 like just to be sure we didn't miss a formal
20 introduction.

21 THE COURT: Yes, we will put them all in.

22 MR. STRICKLAND: All right. Nothing further
23 from the witness, Your Honor.

24 (Plaintiff's Exhibits 10, 17, 18 and 19
25 are now entered into evidence.)

1 THE COURT: You can hop down.

2 (Witness steps down.)

3 MR. STRICKLAND: Your Honor, I will call
4 Thomas Brooks.

5 THE COURT: All right.

6 (Witness approaches.)

7 THE COURT: Mr. Brooks, do you swear or affirm
8 you are going to truthfully testify?

9 THE WITNESS: I do, Your Honor.

10 THE COURT: Then take the stand.

11 (Witness complies.)

12 THOMAS BROOKS,
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STRICKLAND:

16 Q Mr. Brooks, you filed this PCR petition regarding
17 your plea in the case from a pizza robbery that
18 occurred on or about February 5th, 2009, correct?

19 A Yes, sir.

20 Q And were you in Columbia, South Carolina, on
21 February 5th, 2009?

22 A Yes, sir.

23 Q What were you -- where did you grow up?

24 A I grew up in Marion County, South Carolina.

25 Q How did you -- what brought you to Columbia?

1 A Well, my mother -- you know, my mother passed away.
2 The house that she left for me and my brother, it
3 burned down. And, you know, I had no place to
4 stay. And, you know, I moved in with my
5 grandmother in Sumter. And, you know, she -- me
6 and her had a situation and, you know, she wanted
7 me to get out on my own. She said I wasn't doing
8 enough searching for a job, you know. She is old.
9 She is like 93 years old. She don't understand the
10 situation with --

11 Q Not to cut you off, but just trying to establish
12 how you got to Columbia. So you came here
13 basically to look for a job?

14 A Yes, sir. Yes, sir.

15 Q And I think you had some interest in going to
16 welding school, is that right?

17 A Yes, sir.

18 Q All right. If you would speak up just a little
19 bit, because I'm sure the court reporter can hear
20 you sitting right there, but we might have a little
21 trouble hearing you. I know you are naturally
22 soft-spoken.

23 A Okay.

24 Q Now, let's talk about February 5th, 2009. What did
25 you do that day? Did you go to work?

1 A Yes, sir, I went to work.

2 Q And I believe the testimony, just to kind of move
3 things along here, you were looking for a second
4 job, you went to Burger King about 6:00 o'clock?

5 A Yes, sir.

6 Q Is that right? Now, what is the name of the
7 gentleman that took you to Burger King?

8 A Mr. James Bethel.

9 Q Mr. Bethel. And, Mr. Bethel, was he a friend of
10 yours?

11 A No, sir, he was my landlord, but you could say he
12 was -- I mean, he is a friend, just, I mean, due to
13 the fact that -- I mean, we -- you know, he was my
14 landlord.

15 Q So at the time all this happened, you were living
16 at a building he owned, he was your landlord?

17 A Yes, sir.

18 Q And that was on Millwood?

19 A Yes, sir.

20 Q Now, was that right across the street from this
21 place we have been talking about, the Suds
22 laundromat/bar?

23 A Yes, sir, directly across the street.

24 Q Now, let's talk about what happened leading up to
25 when you got arrested. Did you go to Suds that

1 night?

2 A Yes, sir.

3 Q Did you do any drinking that night?

4 A Yes, sir.

5 Q How much drinking did you do?

6 A I drunk approximately nine beers out of a 12-pack
7 and shared three with my --

8 THE COURT REPORTER: I'm sorry, with who?

9 THE WITNESS: Ma'am?

10 THE COURT REPORTER: You shared beer with who?

11 THE WITNESS: My roommates. My boarder mates.

12 A They was in the room at the house with me. Three
13 with them. You know, I went across the street to
14 Suds to buy another beer.

15 And, you know, I went in. She said --

16 Ms. Jackie, the one that was running the bar, she
17 said I was too intoxicated, she wouldn't --

18 Q We'll get to that in just a minute. I'm just
19 trying to focus here on a proper sequence.

20 So you said you had about nine beers out of
21 two 6-packs you had bought?

22 A Yes, sir.

23 Q Were you intoxicated when you went to Suds after
24 you had all those beers?

25 A Yes, sir.

1 Q Now, what time do you remember going to Suds?

2 A Approximately 9:50. Approximately 10:50.

3 Approximately 10:50.

4 Q All right. So you think you got there around
5 10:50?

6 A Yes, sir.

7 Q All right. Now, what were you trying to go to Suds
8 for?

9 A I was going to Suds to buy another beer and return
10 back to the -- across the street to the house to go
11 in and try to get some sleep so I could wake up in
12 the morning because I had to report to work.

13 Q So you went to Suds to buy a beer, another beer?

14 A Yes, sir. Because it was the shortest -- I mean,
15 it is the shortest route. I mean, you know.

16 Q When you went to Suds -- when you went to Suds, did
17 you see anybody you knew?

18 A Well, I seen a couple of people that I was
19 associated with on the weekends, so forth, when I
20 would go out there, you know, to either do the same
21 or just, you know, to get something to eat, they
22 would be out there.

23 And I told them, being that Ms. Jackie had
24 told me that I had drunk enough, that I was too
25 intoxicated, she wasn't going to sell me no beer.

1 Q Let me stop you there. We need to explain who Ms.
2 Jackie is. Ms. Jackie, she is the lady that owns
3 or operates Suds?

4 A Well, she works -- she was working that night. She
5 works there.

6 Q She works there?

7 A Yes, sir.

8 Q She is in charge of who comes in and who goes out,
9 so forth?

10 A Yes, sir.

11 Q And you wanted to buy a beer from her?

12 A Yes, sir.

13 Q And she told you you couldn't have a beer because
14 you had had too much to drink?

15 A Yes, sir.

16 Q So that is when you go outside and you find the
17 Morgan sisters and you ask them to go get you a
18 beer?

19 A Yes, sir.

20 Q Now, did one of them volunteer to go in and buy you
21 a beer?

22 A Well, after telling me they -- if I give them \$2
23 they would. So, I mean, I said, well, I mean, if
24 that is what you want, then, if you are going to
25 charge me, then, yes, okay, I agree. And they went

1 back in to purchase beer for me.

2 Q So you gave one of the sisters some money. Was it
3 Katrina?

4 A Kristina.

5 Q Kristina. You gave Kristina the money to go buy
6 you a beer?

7 A Yes, sir.

8 Q And she buys you a beer and brings it back out to
9 you?

10 A Yes, sir.

11 Q And according to these statements here, there is a
12 dispute, she doesn't give you your change back,
13 right?

14 A Correct.

15 MR. CORNEY: Your Honor, just to move this
16 along, I am going to object, Your Honor, relevance.
17 He is here to tell you he got there at 10:50. That
18 establishes what time he was there.

19 THE COURT: We are not trying the case. I
20 don't know why you are doing all this.

21 MR. CORNEY: He has already testified what
22 time he showed up at Suds. That is his alibi. And
23 he was at Suds at 10:50.

24 THE COURT: That's right. He can testify to
25 that.

1 BY MR. STRICKLAND:

2 Q All right. So the testimony has been you got in a
3 fight at Suds?

4 A Yes, sir.

5 Q What time did the fight happen?

6 A Well, approximately -- being -- getting there at
7 10:50 with all that occurring, me not having a
8 watch, it could have been -- that would have took
9 about five minutes, approximately 10:55. I mean,
10 all that was not a quick, you know -- about
11 approximately 10:55.

12 Q So about 10:55 you get in a fight?

13 A Yes, sir.

14 Q Now, did you know the guy you were in a fight with?

15 A No, sir. I didn't -- I never seen him around there
16 before. I mean --

17 Q How were you dressed that night?

18 A I had on -- that night I had on a coat, I mean, a
19 coat and a gray tank top up under the coat and
20 light blue jeans and black boots.

21 Q You said light blue jeans?

22 A Yes, sir.

23 Q All right. Now, after the fight, what did you do?

24 A Well, I went back home. When I got home I wanted
25 to -- I guess just wanted to think about it because

1 I was so worked up over it because, I mean, you
2 know, I had one guy -- the guy that I was fighting,
3 he was like when he jumped me, he like acted like
4 he got a gun and he swing, I mean, he swing and hit
5 me in my eye and swell my eye up. And then the
6 females got involved, and then all three of them, I
7 felt like they had lynched me and they had done me
8 wrong. And the only thing I was doing was trying
9 to get a beer. And, I mean, you know, I was kind
10 of hurting because, I mean --

11 Q All right, we don't really need to talk about the
12 fight or what happened during the fight. I'm just
13 more interested and the judge is more interested in
14 what happened when the police got there.

15 A I was inside.

16 Q How much time went from when you had the fight and
17 went back home, you are at home, I presume, and
18 then the police show up, right?

19 A Uh-huh.

20 Q All right. So how much time passed from when the
21 fight broke up to when the police came?

22 A From my understanding -- from my understanding it
23 was about an hour -- over an hour. An hour and 15
24 minutes.

25 Q About an hour?

1 A Yes, sir.

2 Q So what did the police tell you when they came?

3 A They didn't tell me nothing. They just put cuffs
4 on me and just put me in the back seat of the
5 patrol car. They didn't tell me anything.

6 Q What happened when you were sitting in the back of
7 the police car?

8 A I sat in there for like 30 -- 30 -- about 30
9 minutes, approximately 30 minutes. And the next
10 thing I know I'm going to Number One Justice
11 Square.

12 Q That is the holding --

13 A Yeah. I'm thinking it was about the fight, but,
14 you know what I'm saying, something drew to my
15 attention, I mean, just as far as at the most
16 citing disturbance, whatever, or disorderly conduct
17 rather. You know, it is too much of a process, I
18 mean, for a simple fight, you know what I'm saying,
19 for a simple fight that I was defending myself in.

20 Q When did you find out you were being charged with
21 something more serious than a fight?

22 A When I got to Number One Justice Square.

23 Q Now, Mr. Bailey was appointed to be your Public
24 Defender, correct? Is that right?

25 A Yes, sir.

1 Q Now, how many -- how soon after you got arrested
2 did you talk to Mr. Bailey?

3 A I'll say approximately within a week.

4 Q Did you tell Mr. Bailey all about your alibi about
5 being in the fight?

6 A Yes, sir. Most definitely. Most definitely. Yes,
7 sir.

8 Q Did you give Mr. Bailey all the information you
9 thought he needed to investigate that alibi?

10 A Yes, sir. Yes, sir.

11 Q Now, did Mr. Bailey come back and tell you what he
12 found out when he checked out your alibi?

13 A He told me -- he came back with, I mean, stuff they
14 are saying that was discrepancies with the time,
15 and so on and so forth, the time, and so on and so
16 forth, didn't provide me an alibi, it was
17 inconsistent with the time they was using -- that
18 the police was going with the armed -- alleged
19 armed robbery. And he said that technically there
20 were not an alibi, such as he said today, you know
21 what I'm saying.

22 Q Let me stop you there, and let the court reporter
23 catch up.

24 And, Mr. Brooks, I know this is a very
25 stressful time for you and people -- you know, you

1 talk fast anyway and you talk soft-spoken, but the
2 court reporter here has to take down everything we
3 say, so keep that in mind as you are talking, okay?

4 A Yes, sir.

5 Q And so as I understand what you just said,
6 Mr. Bailey told you your alibi didn't check out?

7 A Yes, sir.

8 Q Now, up until the point he told you your alibi
9 didn't check out, what was your thoughts about what
10 you are going to do with this charge against you?
11 You are going to plead guilty, you are going to
12 contest it, you want a trial? What was your
13 position?

14 A Well, my position was still to fight for the case,
15 I mean, fight for it, because, I mean, basically
16 being that my understanding that, you know, through
17 the incident reports the police was saying a call
18 was made -- a call was made to the restaurant, and
19 so on and so forth, and I wanted Mr. Bailey to, you
20 know what I mean, get the telephone records from
21 that restaurant to see what route that call was
22 made. And he -- I mean, he never did get the
23 records, but, you know what I'm saying, he got the
24 records, but he didn't get the exact -- I mean, the
25 exact number that the call was made from. I mean,

1 he -- the people that provided him with the phone
2 records, they are saying, yes, a call was made at
3 that time, told him specifically that he needed to
4 continue to investigate concerning a trump number
5 to whereas he had to contact the actual cellular
6 carrier concerning the number to get the specific
7 person who made that call. I mean, as we all know,
8 an armed robbery is a crime against person. And --

9 Q All right. Let me stop you there to be sure we
10 understand things correctly.

11 So you are saying you gave Mr. Bailey some
12 requests about checking out phone records and
13 checking out your alibi. But when all that was
14 done, when he had done all the investigation and
15 came back, I assume he sat down and talked with you
16 again and told you where your alibi stood, right?

17 A Uh-huh.

18 Q Is that right?

19 A Yes, sir.

20 Q And is it your understanding that based on what he
21 told you, your alibi was not going to hold up?

22 A Yes, sir.

23 Q If this case went to trial?

24 A Yes, sir.

25 Q Is that what led you to decide to start considering

1 a plea, a plea deal?

2 A I mean, well, he continued to -- I mean, continued
3 to, you know, to coerce me. Like, I mean, he
4 failed to investigate. He -- I mean, he wouldn't
5 ever -- everything I told him to do, he wouldn't do
6 it. It was just like he was, I mean, he was
7 sandbagging my case, sandbagging my defense. He
8 wouldn't do anything in reference to -- I mean, you
9 know, getting me -- getting me -- getting the
10 evidence or getting -- doing the things I requested
11 of him. He kept coercing me, I mean, giving me
12 negative, I mean, advice, and so on and so forth,
13 to whereas technically he psychologically was
14 draining me of, you know, of the fight -- of the
15 fight for my innocence, you know.

16 Q Let me ask you this, though, because I understand
17 you have got a lot to say, but I want to focus on
18 what the real issues are in this case.

19 Did Mr. Bailey walk you through these 9-1-1
20 calls like we have done this morning?

21 A No, sir. No, sir.

22 Q Did he show you this timeline like we have done
23 this morning?

24 A No, sir. He did none of that. He did none of
25 that. It was like he didn't even care.

1 Q If Mr. Bailey had done that, what would your
2 position have been on going to trial or trying to
3 do a plea?

4 A Well, my position was going to trial the whole
5 time. If he would have did that and showed me
6 what, I mean, exactly, I mean, you know what I
7 mean, concerning the evidence, what the evidence,
8 the actual strengths or weakness of the evidence,
9 which was weakness, I would have went to trial,
10 because that was my whole intention the whole time.

11 Q So if you had known what you have learned this
12 morning or seen this morning, you would not have
13 agreed to a plea deal, correct?

14 A Exactly not. Exactly not.

15 Q Did you have anything to do with the pizza robbery?

16 A No, sir. No, sir. I worked. I don't do things
17 like that.

18 Q Had you ever been on Maple Street?

19 A I don't remember Maple Street. I didn't grow up in
20 Columbia. I don't know where Maple Street at.

21 Q How long had you been in Columbia before you got
22 arrested?

23 A Approximately a year. Approximately. Not even
24 that. I wasn't in the area a whole year. I mean,
25 approximately one year.

1 Q Now, other than what we covered, have you got
2 anything else you want the judge to consider as
3 part of your PCR petition?

4 A Well, I mean, due to the fact that, I mean, I don't
5 even know where Maple Street and, I mean, I was
6 coerced. And my attorney, he really -- he didn't
7 do anything I requested. I mean, if he would
8 actually go through and look into the evidence and
9 see, I mean, everything and really view it, you
10 would see whereas everything I requested I had to
11 force and go and talk to -- I had to go over his
12 head and get in contact with his boss, Mr. -- the
13 chief, I think his name is Douglas Strickler, and
14 get him --

15 THE COURT: Yes, that was his name.

16 A And get him to force Mr. Bailey to -- I mean, even
17 get off his, you know, get off his tail and
18 actually do that, which, I mean, he even sandbagged
19 that and stalled that and resulted in, you know,
20 due to the fact that he stalled the investigation,
21 it came up fruitless, you know what I'm saying, to
22 the point where, I mean, the evidence that I
23 requested of him would, I mean, definitely had, I
24 mean, even if he felt that the alibis at that point
25 were not material, would have provided me a defense

1 to the point where I would have went to trial even
2 without, you know what I'm saying, the alibis based
3 on his, I mean, based on his decision, based on
4 his, I mean, legal -- his legal opinion.

5 Q All right. Have you got anything else you want the
6 judge to consider?

7 A No, sir.

8 Q Okay.

9 MR. STRICKLAND: That's all I have, Your
10 Honor, of this witness.

11 MR. CORNEY: Just one question, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CORNEY:

14 Q At your plea hearing you told the judge precisely
15 the opposite of what you just said. I mean, you
16 agree that Mr. Bailey had investigated everything
17 you wanted him to, that you were pleading guilty of
18 your own free will and accord. I mean, you told
19 the judge exactly the opposite of what you just
20 testified to, correct?

21 A I don't recall. Say again?

22 Q In the plea transcript you told the plea judge
23 exactly the opposite of what you just said?

24 A Based on what Mr. Bailey had told and explained to
25 me. I mean, based on a lot of things that my

1 attorney right here has uncovered was not -- he did
2 not even bring to my attention, you know what I'm
3 saying, he did not even bring to my attention, so,
4 I mean, a lot of things is new. A lot of things
5 new and a lot of things the investigation I
6 required him to do, I mean, he stalled, like I say,
7 he sandbagged, he never produced. He never
8 produced. So, I mean, really, I mean, that is a
9 question of -- I mean, a question of opinion or
10 theory, you know what I'm saying. That is based on
11 credibility. That is, I mean, his word against, I
12 mean, my word.

13 Q Well, I'm glad you bring that up. It is a question
14 of credibility. I mean, you told the judge right
15 there, he asked you, is there anything you contend
16 your attorney has not done either to investigate
17 your case or prepare your case today that he should
18 have done prior to coming to court today, and you
19 said, no, sir?

20 A And he also -- and my attorney also said today
21 that, I mean, he did not -- I mean, he did not --
22 the statements he did not have, he did not
23 investigate, he did not go over at the time. So he
24 obviously already stated that he did not, so I
25 don't know -- you are asking me a question he

1 already answered. He already answered -- he
2 already answered -- he answered the question
3 already during, I mean, during when he was on the
4 stand. He said the statements that he had
5 concerning EMS, and so on and so forth, drawing the
6 timeline, that he did not go -- that he did not
7 consider. He did not draw the timeline. So --

8 Q That is way beyond the question I asked you. Stop
9 right there.

10 A That is what I'm -- well, no. That is what I told
11 you, no, he did not.

12 MR. CORNEY: That's all the questions I have,
13 Your Honor.

14 MR. STRICKLAND: Nothing further, Your Honor.

15 THE COURT: Mr. Brooks, when you got arrested
16 you just testified they came to your house?

17 THE WITNESS: Yes, sir.

18 THE COURT: Well, at the plea hearing -- and I
19 don't know, I wasn't there -- they said ten minutes
20 after the call came in the cops drove by Millwood
21 Avenue and they saw a person matching the
22 description they had generally speaking go in the
23 laundromat and immediately come back out and they
24 apprehended you at the laundromat, not at your
25 house. I mean, I don't know. I'm asking.

1 THE WITNESS: Yes, sir. I mean, that is --
2 that is -- that is what I'm telling you, Your
3 Honor. I mean, I was home. Then they got reports
4 of search warrant saying they pulled me out -- I
5 mean, they had me at the house.

6 THE COURT: Reading it, there is no way they
7 would have come to your house. They didn't have
8 any reason to come to your house. And you need to
9 level with me when you are talking.

10 They saw you going into the laundromat and you
11 came back out and they apprehend you then. Then
12 they got a search warrant and search your house.
13 That makes sense. There was no way for them to
14 come to your house.

15 THE WITNESS: Yes, sir.

16 THE COURT: You are not even identified as an
17 individual at that point.

18 THE WITNESS: Excuse me, I didn't --

19 THE COURT: You just don't remember, I think,
20 because you had nine beers?

21 THE WITNESS: With all due respect, Your
22 Honor, but statements, I mean, in the motion of
23 discovery saying that the police, I mean, actually
24 saw me running in the house, it was not the
25 laundromat, I mean, with all due respect, I mean --

1 THE COURT: All right. The judge asked you if
2 the facts were correct, and you didn't correct him
3 at that point. You can step down.

4 THE WITNESS: Yes, sir. Thank you.

5 (Witness steps down.)

6 THE COURT: I'm just showing you I'm following
7 everything. That's all.

8 MR. STRICKLAND: No further witnesses, Your
9 Honor.

10 MR. CORNEY: Your Honor, the State would call
11 just very, very briefly Assistant Solicitor Dolly
12 Justice Garfield.

13 (Witness approaches.)

14 THE COURT: Do you swear or affirm you are
15 going to truthfully testify?

16 THE WITNESS: Yes, sir.

17 THE COURT: Then please take the stand.

18 (Witness complies.)

19 DOLLY JUSTICE GARFIELD,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORNEY:

23 Q Ms. Garfield, thank you for being here with us
24 today. You have been in the courtroom this morning
25 and heard the testimony of Mr. Brooks and

1 Mr. Bailey, correct?

2 A Yes, sir.

3 Q And do you remember prosecuting the case of Thomas
4 Brooks back in 2010?

5 A Yes, sir.

6 Q There has been a couple of allegations raised, and
7 I know you were in the courtroom to hear them, as
8 to prosecutorial misconduct, so I just wanted to
9 make sure you got an opportunity to address that.

10 As far as the EMS record of Terrence Thompson,
11 do you recall a request for that and whether or not
12 you turned that document over to Defense?

13 A Yes, sir. I believe Mr. Bailey sent me an e-mail,
14 which I printed and put in my file, on May 6th
15 expressing a need for an EMS report on Terrence
16 Thompson. We both agreed that it would be easier
17 for me to obtain this record rather than him. I
18 did so. I got the EMS record.

19 In our office -- well, I guess that is the
20 answer to your question.

21 Q Okay. And did you document that in any way? Is
22 there anything you have in your file that you can
23 document that you turned it over to him?

24 A Yes, sir. In our office our discovery work is -- I
25 have a file for discovery requests that come in on

1 a routine basis, and our paralegal, my particular
2 paralegal is named Andrea Trapp, she then gets
3 discovery requests and complies with them and turns
4 the evidence over herself to either the Public
5 Defender himself or to someone in the office.

6 When she does this, she creates -- it is a
7 standard form in our office called a discovery
8 checklist. I have a discovery checklist in my
9 folder where Ms. Trapp prepared this document. And
10 she documents that on May 20th, 2009 -- she fills
11 this out on May 20th, 2009, and then put the note
12 that she e-mailed the DHEC report, which is the EMS
13 report, to Mr. Bailey on May 21st, 2009.

14 Q Now, I don't think it needs to be part of the
15 record, as an officer of the court your testimony
16 is that is in your file, you have it up there with
17 you?

18 A Yes, sir. You can make it a Court Exhibit if you
19 would like. I would like to get a copy.

20 MR. CORNEY: I think that is something we can
21 do, Your Honor.

22 THE COURT: Okay.

23 MR. CORNEY: And I don't know that we have a
24 copy of it right now, but I will ask PCR counsel
25 very briefly if we can make a copy and put a copy

1 in.

2 THE COURT: You can make a copy and put the
3 copy in.

4 MR. CORNEY: Thank you, Your Honor.

5 MR. STRICKLAND: It says other DHEC report,
6 e-mailed on 5/21/09. I guess I can ask about this.
7 Is this supposed to show that the 9-1-1 call for
8 the EMS record was --- okay.

9 MR. CORNEY: And we'll make this an exhibit.
10 I will put up here just so I don't misplace it in
11 my stack of papers.

12 (WHEREUPON, Court's Exhibit No. 1 was
13 marked for identification and received
14 into evidence.)

15 BY MR. CORNEY:

16 Q Now, regarding the Suds, the 9-1-1 phone call,
17 audio recordings from the Suds altercation, were
18 you ever requested to turn that over? Do you ever
19 have any knowledge of the Defense looking for that?

20 A I was not. I saw the order that Mr. Bailey got
21 Judge Childs to sign today.

22 Q You said today was the first time you have seen
23 that?

24 A Yes, sir, to the best of my recollection.

25 Q Okay. And were you ever put on notice or in any

1 way requested to preserve that audiotape for the
2 Defense or to take any action in that regard?

3 A No. If Mr. Bailey had wanted me to try to get it,
4 I certainly would have complied, as I do with all
5 requests from Defense counsel, or PCR counsel.

6 Q And I believe Mr. Bailey testified a little bit
7 earlier about you and he kind of getting together
8 and setting out a timeline for the alibi defense
9 that Mr. Brooks is alleging?

10 A Yes, sir.

11 Q And do you recall those meetings with him?

12 A Yes, sir.

13 Q And, I mean, those took place as he testified and
14 it is something you were able to review with him?

15 A Yes, sir. We met in my office.

16 Q Okay. And obviously as the prosecuting attorney in
17 this action, you may not have the same stance as
18 Mr. Bailey had on it, but based on your, I guess,
19 review of the timeline, did you think that there
20 was an airtight alibi?

21 A I absolutely did not.

22 MR. CORNEY: I believe that is all questions I
23 have, Your Honor.

24 MR. STRICKLAND: Just a couple of questions.

25 CROSS-EXAMINATION

1 BY MR. STRICKLAND:

2 Q That exhibit that was just marked, what did that
3 show was being transmitted to Mr. Bailey?

4 A The EMS report.

5 Q Okay. And it is called a DHEC report?

6 A Yes, sir.

7 Q Okay. Would you have done that or was that done by
8 someone in your office?

9 A Someone in my office.

10 Q Do you know why it was called a DHEC report and not
11 an EMS report?

12 A Because DHEC, the Department of Health and
13 Environmental Control, has a standard document that
14 all EMS providers in the state use, to the best of
15 my knowledge.

16 Q Now, you also talked about this order Judge Childs
17 ordered to preserve the 9-1-1 tape. It is your
18 testimony you have never seen that order before?

19 A I don't think so. I didn't know that Mr. Bailey
20 was trying to get the 9-1-1 tape. I would have
21 been able to get it for him.

22 Q On the criminal side, are not orders from the Court
23 served on all parties?

24 A That would have been an order, I would think an ex
25 parte order that would have gone directly to the

1 Defense, so he didn't have to necessarily put me on
2 notice of it at that time. I was not aware of
3 anything about Suds until May 6th when Mr. Bailey
4 sent me the e-mail. I believe that order was
5 signed in April.

6 Q So the way that works then, he can approach the
7 judge for an ex parte order to do something like
8 this, preserve the 9-1-1 tape, and then it is up to
9 him to then serve the parties to be bound by it?
10 That is not automatically done by the Court?

11 A I know that there is -- Defense counsel meets with
12 judges ex parte often when it goes directly to the
13 Defense that we don't have to be put on notice of.
14 It has happened to me in previous cases.

15 Q All right. So if you had gotten this order, you
16 would have preserved the Suds fight?

17 A I wouldn't have preserved it. That is not in my
18 control. I would have helped Mr. Bailey get a copy
19 of it.

20 Q Okay. Who would have been in control? Who would
21 have had the ability?

22 A City of Columbia Police Department.

23 Q Now, would they have gotten a copy of this by
24 normal course?

25 A I don't know. I have never done that before.

1 Q We talked a little while ago about the comments you
2 made in the transcript when the judge asked you
3 about the clothing. Do you agree that Mr. Brooks
4 was arrested wearing different clothing than what
5 the suspect for the pizza robbery was described as
6 wearing?

7 A I agree that the pants that he was arrested in was
8 consistent.

9 Q What about the rest of the clothing?

10 A I'll agree with you after reviewing it today that
11 the top is different. There was no information
12 given as to shoes.

13 Q All right. Do you know what the Police
14 Department's policy is regarding preservation of
15 evidence in a guilty plea situation?

16 A No, sir.

17 Q Do what?

18 A No, sir.

19 Q Okay. And what about the records they keep
20 regarding a case when you are assigned to prosecute
21 a case, you have a standard form you send them to
22 request the documents you might need for your case?

23 A I don't understand what you are asking.

24 Q Well, what starts the thing in motion when you get
25 assigned a case to prosecute? You obviously have

1 to start creating a file. What is the process? Do
2 you have a standard request you make to the Police
3 Department? Does the Police Department just
4 automatically send you a file? How does that work?

5 A Kind of both. Normally they automatically send it,
6 but we also, either my secretary or paralegal sends
7 a request to the investigator.

8 Q Are the 9-1-1 records normally part of that initial
9 production they give you, or is that something --

10 A Only if you -- I'm sorry.

11 Q Or is that something you must specifically ask for
12 or is that something they routinely send you?

13 A It depends. If the investigator has requested it
14 and it is in the investigator's file, it will be
15 forwarded to me. If the investigator did not
16 specifically request it, it would be something that
17 was up to me to do.

18 Q So you basically get what the investigator
19 requests, and if you need anything else you could
20 ask for it?

21 A Yes, sir. Routinely done.

22 Q What about be-on-the-lookout reports? If they have
23 some relevance to the case, are they normally part
24 of the investigative file, or is that something you
25 would request?

1 A I wouldn't request it. There is nothing usually
2 admissible.

3 Q Do you know if they are maintained by the Police
4 Department?

5 A I don't know.

6 MR. STRICKLAND: All right, Your Honor, that's
7 all we have. Thank you.

8 THE COURT: Anything else?

9 MR. CORNEY: No further questions of this
10 witness, Your Honor. Thank you.

11 THE COURT: You can step down.

12 (Witness steps down.)

13 MR. CORNEY: No other witnesses, Your Honor.

14 MR. STRICKLAND: No reply, Your Honor.

15 THE COURT: How can I help y'all?

16 MR. STRICKLAND: Well, Your Honor, Mr. Brooks
17 of course requests that his relief sought in his
18 PCR petition be granted.

19 Just going back and making a few points. Your
20 Honor certainly has read all the exhibits and does
21 not need me to rehash everything, but just by way
22 of a quick summary, I believe the timeline is the
23 most compelling piece of evidence in this.

24 We know from it that the robbery or that
25 actually the call that led to the robbery took

1 place at 2212.

2 We know that at 2256 the 9-1-1 call was made
3 for the robbery.

4 And by the victim's statement on the 9-1-1
5 call, he said it happened about ten minutes
6 earlier. So that would back it up to 2246.

7 We also know, I believe it is not even
8 disputed that Mr. Brooks was involved in this
9 altercation at Suds.

10 There is, as I understand the State's
11 position, that there may be some dispute as to when
12 that fight actually took place.

13 But if Your Honor looks at all the statements,
14 the only thing that places that fight happening at
15 any time other than the 9-1-1 call and the EMS call
16 is the statement of the victim where he said it was
17 around 8:30, but he's not sure.

18 So certainly a person who has been out having
19 a good time, partying and drinking, and so forth,
20 is not going to be keeping track of time, he is not
21 going to be using his watch.

22 And certainly common sense tells us that the
23 9-1-1 call and the EMS call were made during or
24 shortly after the fight given the severity of that
25 fight. If this gentleman had to be transported to

1 the ambulance, or by the ambulance to the hospital,
2 they are not going to leave him laying on the side
3 of the road or in a booth at the bar for two and a
4 half hours.

5 So certainly the evidence shows that that
6 fight took place around 11:00 o'clock that night.

7 Now, with that being said, you have a very,
8 very short timeline, roughly only 14 minutes from
9 the time of the robbery to the time of the fight.

10 And in that timeline, if Mr. Brooks is indeed
11 the robber, which of course we say he is not, he
12 has got to perform the robbery, he has got to
13 distance himself from the scene, he has got to go
14 nine or ten minutes away to where Suds is located,
15 he has got to go into the bar and get in a fight,
16 and the fight has got to break up, he has got to
17 flee, and the people have got to make the calls.

18 Also, in transit he has got to get rid of the
19 clothes, because the testimony clearly shows he
20 wasn't wearing a hoodie. He has got to get rid of
21 the money. He has got to get rid of the gun. He
22 has to get rid of the ammunition.

23 It is just too much for a man to have done.
24 He certainly could not have done all of that in
25 that very brief timeframe.

1 The evidence shows in our position, Your
2 Honor, that this fight and this robbery were taking
3 place at about the same time. And that of course
4 leads to the perfect alibi: You can't be in two
5 places at one time.

6 And, granted, the alibi of being in a fight is
7 not the best of alibis, but nonetheless it is an
8 alibi.

9 Also, Your Honor, on the 9-1-1 call for the
10 robbery, the reason we brought this map in, and the
11 map is part of the record, if you look at the
12 description of what the victim said, he said he
13 turned left on Maple, which would put him facing
14 Millwood Avenue. And that would be the way that
15 the suspect, if he was going to Suds, would travel,
16 most direct route, as you see on how we have done
17 with the Map Quest, and so forth, Google Maps.
18 That would have been the route he would have taken
19 to get to Suds.

20 But yet the victim says on the 9-1-1 call that
21 the suspect went the opposite direction, that he
22 went behind him. So that even adds more time to
23 the timeline, that if Mr. Brooks did commit this
24 crime and he fled in that direction, he has to
25 circle the block and make a roundabout way to get

1 back to Suds. And that is going to add even more
2 time to this already extremely compressed and
3 perhaps even impossible timeframe that he has got
4 to do all these terrible things.

5 And, Your Honor, finally, common sense also
6 tells us, there is just no way in the world that a
7 man who committed a robbery is going to immediately
8 thereafter go get in a fight one mile away from the
9 robbery in order to draw suspicion on himself.
10 There would be no common sense for a person to do
11 something like that.

12 THE COURT: Except if the person had nine
13 beers. Go ahead.

14 MR. STRICKLAND: Well, Your Honor has read my
15 mind, because nine beers, can a man with nine beers
16 even commit a robbery? I mean, he is in no shape
17 to be committing a robbery.

18 But I'm just saying, if Mr. Brooks did all
19 this, as the State argues, you know, he is some
20 kind of criminal genius, because that is worthy of
21 a Columbo episode, that he is going to be able to
22 try to fabricate this alibi in such an elaborate
23 way.

24 But, Your Honor, we are here today of course
25 about ineffective assistance of counsel. And I'm

1 not here to talk bad about Mr. Bailey. He has got
2 a huge work load, I'm sure, as Public Defender. He
3 does a great job. All of our people in the Public
4 Defender's Office, Solicitor's Office, I certainly
5 hope they don't hold all this against me, but I'm
6 simply doing my job. And I feel very strongly that
7 Mr. Brooks did not commit this crime.

8 And I find it disturbing that not more
9 attention was paid to his alibi, because the
10 letters that we introduced and talked about and
11 read from, they all show that this man is saying, I
12 am innocent, here is my alibi, please check out my
13 alibi, please get the 9-1-1 tapes, please talk to
14 these witnesses. All these witnesses who don't
15 like him, obviously, because he had been in a fight
16 with them, they tell the truth, that gives him an
17 air of credibility.

18 So, Your Honor, I just -- we just maintain
19 that the alibi was not checked out. The alibi
20 supports that he did not commit this crime. And
21 that is just a basic case for ineffective
22 assistance of counsel. He should have had this
23 alibi checked out. He should have been properly
24 told how the alibi checked out. But yet the 9-1-1
25 calls for the fight were not requested. They were

1 not preserved. Even the little typewritten notes
2 that we have that we got for both calls, they were
3 not requested. We had to get these through other
4 sources for this hearing. They are not in the
5 Public Defender's file.

6 Your Honor, as to the allegation of
7 prosecutorial misconduct, the Solicitor has
8 testified that EMS record was transmitted. I
9 certainly have no reason to doubt her word, but it
10 is puzzling that the record is not in and of itself
11 in the file. Maybe with electronics, that is an
12 explanation. I don't know. We still raise the
13 issue, we preserve the issue, and we pursued the
14 issue.

15 As far as the misstatement at the hearing as
16 to what Mr. Brooks was wearing, it was in and of
17 itself a misstatement. He was not wearing the
18 clothes that matched the suspect's description.

19 So, Your Honor, in summary, we feel we have
20 made a case for ineffective assistance of counsel,
21 we maintain our position on the prosecutorial
22 misconduct, and we ask the Court to grant the
23 relief that Mr. Brooks requests.

24 He would not have made that decision to plead
25 guilty had he known where his alibi really stood.

1 And that is the standard by which the courts have
2 examined these types of cases. He was entitled to
3 an effective representation. He was entitled to an
4 effective investigation. He was told his alibi
5 didn't check out, when in fact it did. And that,
6 of course, is a prima facie case for ineffective
7 assistance of counsel and an involuntary guilty
8 plea.

9 Thank you, sir.

10 MR. CORNEY: Thank you, Your Honor. We are
11 not here to prove Mr. Brooks' innocence today. We
12 are not here to re-litigate this case. We're here
13 to determine Mr. Bailey's effectiveness as his plea
14 counsel based on Strickland v. Washington and the
15 two prongs that Strickland v. Washington set forth.

16 And in that regard, I will touch on it just in
17 that order.

18 First of all, as to deficiencies, Mr. Bailey's
19 testimony up there stands on its own. The State
20 would submit it is credible evidence that he
21 undertook a very thorough investigation into the
22 alibi defense, spent a lot of time working on
23 trying to establish getting the timeline to work,
24 sending private investigators to interview people
25 involved in it, and discuss all these matters with

1 Mr. Brooks, Your Honor.

2 I think the timeline that has been set forth
3 by Mr. Strickland as I tried to address through
4 objections that -- and I guess it is a faulty
5 timeline. I mean, the timeline set forth is
6 faulty. It can't be proven that that is exactly
7 the time that these things happened, they were
8 running on the same clock, the same times.

9 The Pop's Pizza receipt says a different day
10 entirely than what was said on the 9-1-1 phone call
11 date it took place. It said February 5th, 2009,
12 Pop's Pizza delivery receipt. And it says February
13 6th, 2009, on the 9-1-1 phone call date.

14 I mean, there is discrepancies there. And I
15 don't think that the times that have been set forth
16 on the board over here are indicative of what the
17 Court can look at to say that this is the exact
18 time this happened.

19 In that regard, Your Honor, under Glover v.
20 State, which is a 1995 case out of the South
21 Carolina Supreme Court, Glover, and I will just
22 cite it very -- I am quoting it very briefly.

23 It says: Since an alibi derives its potency
24 as a defense from the fact that it involves the
25 physical impossibility of the accused's guilt, a

1 purported alibi which leaves open the possibility
2 that the accused was the guilty party is no alibi
3 at all.

4 I mean, that is exactly the situation we have
5 here.

6 Also, Walker v. State decided by the Court of
7 Appeals earlier this year in February essentially
8 said: Testimony that makes it less likely that a
9 Defendant committed a crime is not an alibi and it
10 is not sufficient to prove the prejudice prong of
11 Strickland v. Washington.

12 That is exactly what we have. He is setting
13 forth things to say, well, you know, it is a pretty,
14 close timeframe here, so it is less likely that he
15 maybe could have gotten to both places at once.

16 All this happened within a half a mile of each
17 other, within, arguably, a 25 minute span, 20
18 minute span. I mean, these times are not set in
19 stone. And they have all been kind of just tossed
20 up there as if they are fact that the Court has to
21 look at as the particular time.

22 Your Honor, the 9-1-1 tapes, as far as that
23 goes, obviously Mr. Bailey made the motion to
24 preserve those tapes, because they are destroyed
25 after three months. This case wasn't going to

1 trial in three months. If this case was going to
2 trial, if at all, a year to year and a half later
3 when Mr. Brooks pled. That order that was issued
4 by Judge Childs is not an indefinite forever, we
5 are going to keep these tapes preserved forever and
6 ever, they were to be used at trial. He didn't go
7 to trial. The fact that they haven't produced the
8 tape to show what it says is indicative of the fact
9 that -- I mean, there is no prejudice proved in
10 that regard. And the order stands for itself and
11 that they weren't supposed to be preserved forever.
12 The minute that he chose to plead guilty, all bets
13 were off at that point. They don't have to be
14 preserved for the record indefinitely.

15 And, finally, I think the most telling thing
16 is, Mr. Strickland said a minute ago that he feels
17 strongly that Mr. Brooks didn't commit this crime.
18 Mr. Brooks feels strongly that he didn't commit
19 this crime.

20 Well, that is why he pled guilty under Alford,
21 Your Honor. That is what an Alford plea is: I
22 didn't commit the crime. I maintain my innocence,
23 but I have gone over all the evidence against me, I
24 have looked at the defenses with my attorney, and I
25 think there is enough evidence there to prove me

1 guilty.

2 That is exactly why he pled guilty to that.
3 He took the benefit of the bargain in getting an
4 armed robbery with a mandatory minimum penalty,
5 85 percent he was going to serve, pled down to a
6 seven years strong armed robbery. He took the
7 benefit of that bargain to not roll the dice and to
8 maintain his innocence while saying, you know what,
9 I think that victim identification saying he is a
10 hundred percent sure it is me is just too much to
11 risk going to trial on, so I want to plead guilty
12 and maintain my innocence.

13 I think that is very telling. And it is an
14 Alford plea situation, Your Honor.

15 Even taking the facts with the discrepancies
16 in the clothing, all the other things don't make a
17 bit of difference when he stands up there and says,
18 I want to maintain my innocence by pleading guilty,
19 I think that is what is best for me.

20 The State would ask that you dismiss his
21 application for PCR based on the record before this
22 Court and the testimony that is presented.

23 Thank you, Your Honor.

24 THE COURT: Anything else?

25 MR. STRICKLAND: Nothing further, Your Honor.

1 THE COURT: Okay. Well, Mr. Brooks, here is
2 how it shakes down.

3 The timelines are not etched in stone, as your
4 attorney has represented. There is great
5 discrepancy there. It was just a tangible nine
6 minute walk from where the fight occurred and where
7 the robbery took place.

8 Nobody seems to mention, talking about your
9 attorneys, that the victim positively identified
10 you.

11 Now, I recognize that it was a one person
12 show-up, but it does not really matter. It was not
13 stressed that it was going to come in. And the
14 victim says, absolutely he is the person. And
15 there was some discrepancy in the clothes, but the
16 officers saw him, according to what I read in the
17 transcript, with those clothes and said, that
18 matches the description. There is not much
19 difference between -- he didn't have a hoodie, but
20 there is not much difference between black jeans
21 and blue jeans.

22 The trial judge had not been on the bench long
23 when he did the plea, so he was more cautious, and
24 he obviously didn't like Alford pleas. You know,
25 he mentioned several times, I don't know whether

1 I'll take an Alford plea or not, you've got to
2 establish a basis.

3 You know, Mr. Bailey went on and on about how
4 he had potential defenses, he was not there, and so
5 forth. And he called out the discrepancy in the
6 clothing, and what have you.

7 It is just tough. He gets out in about six
8 months, doesn't he? So it is in his clear best
9 interest for me to deny it, even if I wanted to do
10 it, because you are not subjecting yourself to 30
11 years or at least a minimum of ten, 85 percenter,
12 when you are going to be out in six months, which
13 is why you pled under Alford. That is why you
14 pled. You didn't admit that you did it under that
15 scenario, just that based on the viewing all the
16 facts, high probability you would have been
17 convicted.

18 Any time an eyewitness says, he's the man, it
19 is pretty hard to win. Pretty hard to win. You
20 don't need to run that risk of getting a minimum of
21 ten, at least up to 30 on that.

22 Plus, even if I granted it, they wouldn't let
23 you out. You would be maxed out by the time your
24 appeal -- if I granted it and let you over, you
25 would have to try it again and you might get 30.

1 And you will be through with all this in a couple
2 of months.

3 The bottom line, I read the transcript.
4 Everything is there. You had your chance. The
5 judge says, is there anything you want to say,
6 Mr. Brooks?

7 And as I read it, you said, no, sir.

8 You had plenty of time to say you disagreed
9 with this, that, and the other.

10 He questioned you in detail about were you
11 satisfied with your attorney, and so forth, and so
12 forth.

13 And I recognize if you didn't do it, it is
14 hard to serve time. You have been in there a while
15 and you have got six more months and you will be
16 out.

17 I am just going to deny it. He didn't meet
18 the two-prong test.

19 Good luck.

20 MR. CORNEY: Thank you very much, Your Honor.
21 I will prepare a proposed order.

22 MR. STRICKLAND: Your Honor, one question
23 about procedural-wise. I'll need to talk of course
24 to Mr. Brooks about whether he wants to appeal, and
25 so forth, but Your Honor is ruling from the bench.

1 today, but I assume there is going to be a written
2 order prepared.

3 THE COURT: There will be a written order. He
4 will copy you with it. And you can comment. And
5 you can always submit an order yourself. I'll
6 consider it.

7 MR. STRICKLAND: And the appeal time will run
8 from when the written order is signed?

9 THE COURT: When an order is signed and
10 delivered to you.

11 MR. STRICKLAND: I just wanted to make sure.
12 Thank you very much, Your Honor.

13 (WHEREUPON, the proceedings were concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

(END OF TRANSCRIPT)

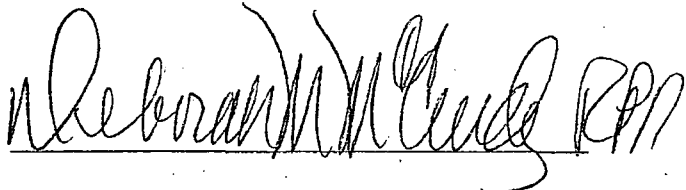
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 14th day of September, 2012.

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

June 8, 2013



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

\$	2300 [3] 47/8 47/11 47/12	according [2] 101/11 136/16	213
\$10 [1] 59/8	2305 [1] 32/14	account [1] 55/25	
\$2 [2] 59/7 100/22	23rd [1] 4/20	accounts [1] 22/12	
.	24th [1] 7/20	accurate [3] 61/15 80/17 140/11	
	25 [2] 80/19 133/17	accused [1] 133/2	
...alibis [1] 85/10	2546 [1] 64/2	accused's [1] 132/25	
0	25th [1] 70/15	acknowledge [1] 19/18	
09 [1] 118/6	26 [2] 69/23 70/14	across [4] 97/20 97/23 98/13 99/10	
1	26th [1] 70/22	act [1] 87/23	
10 [4] 2/24 52/21 80/15 94/24	3	acted [1] 103/3	
10:12 p.m [1] 32/8	3/26 [1] 69/23	action [2] 119/2 119/17	
10:45 p.m [1] 10/8	3/26/2009 [1] 70/3	actual [5] 36/20 59/23 92/2 107/5 109/8	
10:50 [6] 99/2 99/3 99/5 101/17 101/23	30 [9] 5/11 25/13 104/8 104/8 104/8	actually [9] 22/3 56/21 69/2 81/1 110/8	
102/7	104/9 137/10 137/21 137/25	110/18 114/23 124/25 125/12	
10:50 p.m [1] 10/3	3A [3] 38/12 38/14 38/18	adamant [3] 25/10 25/11 92/23	
10:55 [3] 102/9 102/11 102/12	4	add [2] 18/17 128/1	
11 [2] 55/18 57/3	427 [1] 43/14	address [8] 9/16 32/4 32/5 50/6 68/25	
11-16 [1] 57/14	5	69/8 116/9 132/3	
11:00 [2] 22/15 126/6	5/21/09 [1] 118/6	addressed [2] 48/10 81/1	
11:00 o'clock [3] 62/3 62/4 68/22	56 [1] 39/23	adds [1] 127/22	
11th [1] 12/9	5th [4] 95/18 95/21 96/24 132/11	admissibility [1] 9/14	
12 [4] 4/16 29/14 55/18 57/20	6	admissible [5] 17/15 18/14 45/24 50/1	
12-pack [1] 98/6	6-packs [1] 98/21	124/2	
13 [4] 55/18 58/2 59/3 60/7	65 [2] 7/23 7/23	admit [1] 137/14	
14 [7] 1/9 4/1 55/18 60/8 68/22 69/8	65 percent [2] 25/14 27/8	advice [4] 68/6 72/1 94/4 108/12	
1427 [1] 43/14	6:00 o'clock [2] 57/23 97/4	advise [2] 5/3 24/9	
14th [1] 140/15	6th [3] 116/14 121/3 132/13	advised [4] 29/9 39/4 92/8 92/11	
15 [7] 6/5 40/8 40/9 41/16 55/18 60/9	7	advising [5] 36/7 38/25 39/1 62/25 65/6	
103/23	7395 [1] 4/4	advocate [1] 62/18	
16 [6] 21/3 21/13 55/18 57/4 57/14 80/9	8	affirm [3] 11/5 95/7 115/14	
16th [1] 92/2	803 [1] 18/15	afterwards [1] 82/2	
17 [3] 3/1 63/15 94/24	85 percent [4] 5/12 7/21 8/2 135/5	again [10] 8/12 27/19 28/24 76/16 83/20	
18 [4] 3/2 64/1 64/4 94/24	85 percenter [1] 137/11	84/9 84/15 107/16 111/21 137/25	
19 [2] 3/3 94/24	8:00 [1] 56/20	against [6] 27/17 106/10 107/8 112/11	
1995 [1] 132/20	8:00 o'clock [1] 22/14	129/5 134/23	
2	8:30 [3] 56/20 62/6 125/17	age [1] 16/15	
2,300 [2] 48/2 48/7	8th [1] 81/22	ago [14] 17/11 26/11 40/7 40/9 40/10	
2/5 [2] 49/23 50/4	9	43/7 56/18 75/3 76/24 78/8 85/14 87/12	
20 [7] 52/22 72/13 72/20 79/14 79/14	9-1-1 [74] 2/15 2/16 2/17 2/18 2/19 10/6	122/1 134/16	
79/18 133/17	10/16 33/12 33/23 35/15 36/21 38/6	agree [12] 34/6 40/14 40/16 42/2 53/22	
2009 [23] 4/6 11/21 49/23 50/4 50/20	38/21 40/3 45/9 45/19 46/16 47/11	91/9 91/13 100/25 111/16 122/3 122/7	
52/23 53/2 69/24 70/3 70/22 73/23	47/13 48/5 60/23 61/13 61/19 61/20	122/10	
81/16 81/22 82/12 85/1 95/18 95/21	62/2 63/20 68/20 73/13 73/22 74/2	agreed [5] 17/14 26/25 45/18 109/13	
96/24 117/10 117/11 117/13 132/11	74/20 74/23 75/2 75/4 75/8 75/25 77/18	116/16	
132/13	78/20 78/21 78/22 82/18 82/19 83/1	ahead [4] 17/19 25/8 85/16 128/13	
2010 [3] 4/11 92/3 116/4	83/9 83/13 83/14 83/17 84/13 84/17	air [1] 129/17	
2011 [1] 4/20	85/5 86/15 87/11 87/14 87/14 88/7 88/8	airtight [2] 91/16 119/20	
2011-CP-40-7395 [1] 4/4	108/19 118/7 118/16 120/17 120/20	albeit [1] 93/16	
2011CP4007395 [1] 1/2	121/8 123/8 125/2 125/4 125/15 125/23	Alford [14] 4/12 5/24 69/12 92/15 93/3	
2012 [3] 1/9 4/1 140/15	127/9 127/20 129/13 129/24 132/10	93/7 93/12 93/20 134/20 134/21 135/14	
2013 [2] 7/20 140/19	132/13 133/22	136/24 137/1 137/13	
20509 [2] 31/23 31/23	93 [1] 96/9	alibi [70] 9/2 9/17 10/13 13/11 14/7	
20th [3] 53/2 117/10 117/11	94 [4] 2/24 3/1 3/2 3/3	14/11 19/9 20/10 20/24 21/19 21/22	
21 [5] 73/19 79/21 79/23 80/1 87/13	9:50 [1] 99/2	22/2 24/23 24/25 26/7 27/15 31/19 33/9	
21st [1] 117/13	A	44/2 45/8 55/25 56/9 65/16 67/5 67/7	
22 [5] 11/11 79/9 79/10 92/6 94/17	ability [2] 91/23 121/21	67/19 67/20 72/2 72/4 72/6 91/9 91/14	
2212 [10] 31/23 32/1 32/7 32/14 32/21	able [5] 91/21 92/14 119/14 120/21	91/16 91/18 91/19 91/23 91/23 91/24	
49/24 50/4 50/9 50/16 125/1	128/21	94/12 101/22 105/4 105/9 105/12	
2246 [6] 35/7 40/15 40/16 40/17 68/18	absolutely [7] 8/8 23/7 32/12 66/20 67/8	105/16 105/20 106/6 106/8 107/13	
125/6	119/21 136/14	107/16 107/21 119/8 119/20 127/4	
2248 [1] 35/5	accept [1] 67/16	127/6 127/8 128/22 129/9 129/12	
2254 [2] 39/12 39/21	accepted [1] 5/25	129/13 129/19 129/19 129/23 129/24	
2256 [6] 34/4 39/24 40/2 40/14 40/16	access [5] 60/2 68/7 68/8 74/14 78/9	130/25 131/4 131/22 132/23 133/1	
125/2	accomplish [1] 7/15	133/2 133/9	
2257 [1] 34/10	accord [1] 111/18	alibis [3] 110/24 111/2 127/7	
2258 [1] 34/20		allegation [2] 18/10 130/6	
22nd [1] 4/11		allegations [1] 116/6	
		allege [2] 8/23 18/24	
		alleged [7] 22/8 25/24 82/20 85/10 87/5	
		91/24 105/18	
		alleges [1] 18/7	
		alleging [1] 119/9	

A		
allow [1] 31/7 allows [1] 18/16 alluded [1] 27/16 alluding [1] 78/23 almost [1] 9/19 along [5] 85/7 88/10 90/11 97/3 101/16 already [14] 8/10 25/18 27/7 27/16 47/23 48/10 52/25 101/21 112/24 113/1 113/1 113/2 113/3 128/2 altercation [5] 13/6 13/15 60/15 118/17 125/9 although [1] 24/15 altogether [1] 83/25 always [14] 12/18 13/3 13/18 15/2 16/14 16/16 26/5 28/15 28/17 73/12 77/2 84/1 84/6 139/5 am [18] 17/24 25/23 27/2 27/3 30/24 35/2 36/14 47/10 49/25 58/10 65/3 70/18 89/6 101/16 129/12 132/22 138/17 140/16 ambiguous [1] 43/20 ambulance [3] 48/4 126/1 126/1 ammunition [4] 51/10 51/17 52/18 126/22 amount [2] 24/12 65/5 analysis [1] 65/7 and/or [1] 62/22 Andrea [1] 117/2 angles [1] 25/1 another [11] 5/15 8/3 26/3 40/24 46/15 52/22 76/22 82/1 98/14 99/9 99/13 answer [7] 15/23 31/3 42/5 66/19 75/21 80/17 116/20 answered [6] 24/18 81/8 113/1 113/1 113/2 113/2 answering [1] 67/14 answers [2] 36/16 49/13 anybody [3] 30/15 58/18 99/17 anyway [1] 106/1 apart [2] 10/9 26/3 apartment [1] 51/19 apologize [2] 58/11 58/23 apparently [2] 5/23 76/14 appeal [12] 4/19 6/12 6/15 6/16 6/18 6/19 6/20 88/10 137/24 138/24 139/7 140/13 appealing [1] 26/18 Appeals [1] 133/7 appears [1] 52/21 appellate [1] 30/23 application [3] 4/3 4/20 135/21 applying [1] 20/14 appointed [5] 11/25 12/4 14/4 67/3 104/23 appointment [1] 12/10 appoints [1] 12/8 appreciate [1] 7/8 apprehend [1] 114/11 apprehended [1] 113/24 approach [4] 9/8 26/8 29/9 121/6 approaches [3] 11/4 95/6 115/13 approximate [2] 41/11 83/5 approximately [14] 10/3 40/15 98/6 99/2 99/2 99/3 102/6 102/9 102/11 104/9 105/3 109/23 109/23 109/25 approximations [2] 40/21 40/22 April [6] 5/1 52/22 53/2 70/15 75/21 121/5 April 20 [1] 52/22 April 20th [1] 53/2	archives [2] 77/14 79/6 area [5] 22/10 64/24 65/1 83/5 109/24 aren't [4] 7/15 44/9 67/22 74/2 arguably [1] 133/17 argue [1] 44/19 argues [1] 128/19 argument [2] 30/24 78/24 arguments [1] 9/15 armed [20] 4/7 4/14 5/10 5/11 6/3 6/4 6/22 6/23 7/21 7/22 8/1 10/21 12/1 25/12 25/14 105/18 105/19 107/8 135/4 135/6 around [11] 10/8 20/22 22/14 22/15 61/12 62/6 73/23 99/4 102/15 125/17 126/6 arrest [3] 26/22 53/14 73/24 arrested [10] 53/22 54/1 54/18 71/21 97/25 105/1 109/22 113/15 122/4 122/7 aside [1] 22/7 ask [20] 5/17 27/2 27/3 30/12 38/10 38/19 53/11 70/24 72/18 73/13 79/22 85/20 100/17 108/16 117/24 118/6 123/11 123/20 130/22 135/20 asked [21] 14/13 27/4 32/16 41/23 48/19 59/9 67/25 71/2 77/9 77/19 78/14 79/14 82/25 84/15 85/2 88/5 88/6 112/15 113/8 115/1 122/2 asking [20] 33/25 35/13 35/25 36/12 36/13 36/14 42/12 51/9 53/11 53/13 59/4 59/7 61/23 64/6 68/24 77/24 88/17 112/25 113/25 122/23 assault [3] 56/19 61/5 89/14 asserted [2] 57/7 93/16 asserting [3] 26/19 65/24 92/19 assertion [1] 63/11 assigned [3] 12/15 122/20 122/25 assist [1] 89/4 assistance [5] 8/22 128/25 129/22 130/20 131/7 ASSISTANT [3] 1/19 80/7 115/11 associated [1] 99/19 assume [13] 32/8 34/17 34/24 39/9 48/12 60/6 61/9 61/10 76/3 79/15 82/13 107/15 139/1 assumed [1] 62/25 assuming [5] 22/15 22/16 35/2 61/15 65/20 at [179] attached [1] 80/6 attack [1] 88/10 attacked [1] 25/1 attempted [1] 25/18 attention [5] 82/10 104/15 112/2 112/3 129/9 attorney [17] 1/18 1/19 1/20 7/5 8/11 36/9 67/3 80/7 91/9 110/6 112/1 112/16 112/20 119/16 134/24 136/4 138/11 attorneys [1] 136/9 audio [10] 2/16 2/17 10/5 36/21 74/20 74/23 76/8 76/13 77/18 118/17 audiotape [1] 119/1 authenticate [4] 17/16 18/2 18/2 34/15 automatically [3] 121/10 123/4 123/5 available [1] 20/4 Avenue [5] 13/7 42/24 64/2 113/21 127/14 average [1] 24/15 avoid [1] 17/15 aware [2] 16/18 121/2 away [5] 59/11 85/14 96/1 126/14 128/8	bad [3] 22/19 61/11 129/1 badger [1] 77/25 Bailey [44] 4/8 10/13 11/2 11/17 11/21 17/6 18/2 19/8 21/18 38/18 45/17 46/24 59/2 80/5 81/15 82/12 86/4 104/23 105/2 105/4 105/8 105/11 106/6 106/19 107/11 108/19 109/1 110/16 111/16 111/24 116/1 116/13 117/13 118/20 119/3 119/6 119/18 120/3 120/19 121/3 121/18 129/1 133/23 137/3 Bailey's [2] 131/13 131/18 BAILIFF [1] 58/21 bar [4] 97/22 98/16 126/3 126/15 Barber [1] 17/13 bargain [3] 24/10 135/3 135/7 based [20] 8/21 8/23 20/24 24/8 89/2 91/5 93/9 93/13 94/1 107/20 111/2 111/3 111/3 111/24 111/25 112/10 119/18 131/14 135/21 137/15 bases [1] 94/17 basic [2] 10/23 129/21 basically [7] 6/1 30/2 60/9 93/5 96/13 106/15 123/18 basics [1] 9/1 basis [4] 17/18 84/16 117/1 137/2 bathroom [2] 58/11 61/18 be-on-the-lookout [1] 123/22 bearings [1] 42/22 beat [2] 22/19 25/17 beaten [1] 61/11 beating [1] 23/8 become [1] 88/14 beer [18] 59/7 59/8 60/13 83/23 98/10 98/14 99/9 99/13 99/13 99/25 100/11 100/13 100/18 100/21 101/1 101/6 101/8 103/9 beers [7] 98/6 98/20 98/24 114/20 128/13 128/15 128/15 began [1] 59/13 behalf [1] 89/5 behind [1] 127/22 believed [1] 56/19 belt [1] 27/8 bench [2] 136/22 138/25 benefit [3] 93/9 135/3 135/7 best [8] 7/3 23/8 82/4 118/24 120/14 127/7 135/19 137/8 Bethel [5] 57/20 57/21 97/8 97/9 97/9 bets [1] 134/12 better [1] 21/7 between [7] 25/12 60/15 60/21 65/2 73/5 136/19 136/20 beyond [1] 113/8 bib [1] 54/24 big [1] 25/25 bill [1] 4/5 bit [8] 19/8 27/15 40/18 80/21 82/9 96/19 119/6 135/17 black [9] 26/2 27/24 41/20 41/25 42/10 54/24 80/24 102/20 136/20 Blair [1] 29/23 blaming [1] 84/18 block [1] 127/25 blue [6] 27/24 42/10 53/19 102/20 102/21 136/21 board [1] 132/16 boarder [1] 98/11 bond [1] 12/7 booked [1] 53/14 booth [1] 126/3 boots [2] 53/20 102/20 boss [3] 12/6 70/15 110/12
	B	
	backing [1] 40/13	

B both [12] 22/25 23/20 24/5 24/5 28/3 73/3 73/12 82/25 116/16 123/5 130/2 133/15 bothered [1] 28/15 bottom [8] 32/14 41/22 43/10 43/11 47/24 56/22 92/8 138/3 bought [1] 98/21 bound [1] 121/9 Brady [5] 14/21 15/3 16/3 72/24 73/2 break [3] 21/15 21/18 126/16 brief [4] 8/19 86/4 89/9 126/25 briefly [3] 115/11 117/25 132/22 bring [11] 17/15 19/24 27/23 77/10 77/10 77/13 77/13 79/3 112/2 112/3 112/13 bringing [4] 18/6 18/8 18/25 78/7 brings [1] 101/8 broadcast [1] 82/21 broke [3] 58/4 60/22 103/21 Brooks [82] 1/4 4/3 4/5 4/11 4/24 5/9 8/16 9/2 9/18 9/25 11/25 12/11 12/17 15/1 15/21 16/2 16/8 19/22 20/6 22/24 26/7 28/24 29/10 36/7 38/25 39/1 57/18 59/7 59/9 59/11 59/11 59/13 59/15 60/15 62/19 62/25 65/7 65/19 65/20 65/21 66/12 69/16 69/19 73/14 82/2 82/12 82/25 86/8 86/11 86/13 86/17 88/12 89/4 89/8 90/6 91/21 94/3 95/4 95/7 95/12 95/16 105/24 113/15 115/25 116/4 119/9 122/3 124/16 125/8 126/10 127/23 128/18 129/7 130/16 130/23 132/1 134/3 134/17 134/18 136/1 138/6 138/24 Brooks' [16] 16/19 21/19 31/19 33/8 45/8 51/19 52/10 52/18 55/21 55/25 62/14 65/16 70/21 81/19 91/1 131/11 brother [1] 96/2 brought [6] 30/3 60/14 79/5 84/8 95/25 127/10 build [1] 59/4 build-up [1] 59/4 building [1] 97/16 bunch [2] 21/9 84/9 Burger [5] 20/13 20/15 57/22 97/4 97/7 burned [1] 96/3 business [1] 13/6 buy [8] 59/7 59/8 98/14 99/9 99/13 100/11 100/20 101/5 buying [1] 60/13 buys [1] 101/8	96/19 101/24 115/3 116/22 117/18 117/20 117/25 118/2 118/6 121/6 124/11 124/15 128/15 132/17 139/4 139/5 can't [18] 6/19 23/9 26/2 26/10 26/10 32/12 34/15 34/15 34/18 34/18 35/16 45/11 68/4 77/9 77/22 85/9 127/4 132/6 cannot [1] 12/22 captioned [1] 140/13 car [7] 28/19 28/20 30/3 30/4 82/17 104/5 104/7 care [1] 108/25 CAROLINA [16] 1/1 1/7 1/9 4/12 5/24 18/15 92/15 93/3 93/6 93/12 95/20 95/24 132/21 140/4 140/10 140/14 carrier [1] 107/6 carries [2] 5/11 6/5 cases [9] 12/7 12/7 12/7 14/22 28/6 30/15 52/14 121/14 131/2 catch [1] 105/23 cautious [1] 136/23 CD [1] 76/14 CD's [1] 76/12 cellular [1] 107/5 certain [8] 22/17 25/1 25/1 86/13 87/25 87/25 88/4 88/18 certainly [31] 7/11 19/24 22/6 23/3 24/1 24/2 26/3 28/22 29/17 30/25 36/9 45/1 56/9 56/23 61/8 61/9 70/19 84/6 84/22 85/21 89/18 90/23 92/23 119/4 124/20 125/18 125/22 126/5 126/24 129/4 130/9 certainty [1] 86/10 CERTIFICATE [1] 140/1 certify [2] 140/10 140/16 chance [4] 29/17 30/6 77/3 138/4 chances [1] 30/16 change [6] 55/7 59/9 60/14 71/16 71/24 101/12 changed [1] 72/17 changing [1] 72/3 charge [8] 4/10 12/18 71/5 71/5 88/13 100/8 100/25 106/10 charged [7] 5/9 9/3 9/20 10/7 12/1 12/19 104/20 charges [1] 36/8 chase [1] 53/12 check [9] 14/7 19/9 20/9 21/19 35/8 106/6 106/9 129/12 131/5 checked [7] 14/18 45/2 72/2 105/12 129/19 129/23 129/24 checking [3] 44/1 107/12 107/13 checklist [3] 3/10 117/8 117/8 chief [1] 110/13 Childs [5] 73/21 88/6 118/21 120/16 134/4 chooses [1] 72/19 chose [1] 134/12 chosen [1] 24/1 chronology [2] 50/9 50/11 circle [1] 127/25 Circuit [3] 79/3 140/9 140/23 cite [2] 43/9 132/22 citing [3] 54/2 72/14 104/16 citizens [1] 29/14 City [1] 121/22 citywide [1] 82/21 claim [1] 16/19 clarified [1] 81/8 clear [6] 20/1 78/17 81/4 84/24 86/16 137/8 clearly [3] 23/11 40/22 126/19	client [2] 24/17 88/3 client's [2] 16/17 44/1 clients [4] 26/17 84/4 84/23 92/5 clock [2] 41/7 132/8 close [7] 6/24 22/9 22/10 22/10 64/25 91/2 133/14 closed [3] 2/15 33/12 33/22 clothes [13] 52/1 54/1 54/11 54/12 54/17 55/7 55/12 55/13 55/14 126/19 130/18 136/15 136/17 clothing [15] 27/22 51/18 52/10 52/14 52/16 53/13 53/23 55/9 80/13 80/25 122/3 122/4 122/9 135/16 137/6 clumped [2] 83/8 83/11 coat [3] 102/18 102/19 102/19 coerce [2] 94/8 108/3 coerced [1] 110/6 coercing [1] 108/11 collateral [1] 88/10 color [1] 51/10 Columbia [8] 1/9 13/7 95/20 95/25 96/12 109/20 109/21 121/22 Columbo [1] 128/21 come [15] 9/16 34/17 46/4 46/5 56/21 58/21 64/6 90/16 105/11 113/23 114/7 114/8 114/14 116/25 136/13 comes [5] 34/7 45/25 49/12 50/2 100/8 comfortable [2] 39/25 40/1 coming [7] 16/18 34/9 64/3 64/7 87/8 87/10 112/18 comment [2] 42/2 139/4 comments [1] 122/1 commit [10] 5/14 51/24 92/17 127/23 128/16 129/7 129/20 134/17 134/18 134/22 committed [4] 5/20 23/1 128/7 133/9 committing [1] 128/17 common [5] 1/1 125/22 128/5 128/10 140/14 communicate [1] 15/16 communication [2] 87/3 87/4 compared [1] 25/13 compelling [1] 124/23 Complainant [1] 34/20 complete [1] 140/11 completely [1] 55/17 complied [1] 119/4 complies [4] 11/9 95/11 115/18 117/3 comply [1] 14/15 compressed [1] 128/2 computer [5] 76/7 76/11 77/15 77/16 88/19 concede [1] 23/6 conceivability [1] 28/2 conceivable [3] 22/24 23/3 23/3 concern [1] 12/25 concerned [3] 59/18 88/14 92/19 concerning [5] 85/5 107/4 107/6 109/7 113/5 concerns [4] 9/17 24/18 86/6 90/15 conclude [2] 21/21 51/16 concluded [1] 139/13 conclusion [2] 24/8 51/21 conduct [1] 104/16 conferred [1] 8/15 confessions [1] 30/20 confirm [3] 32/1 32/7 37/13 confirming [1] 10/20 confusion [3] 62/1 62/11 63/12 consequences [1] 7/15 consider [6] 24/9 56/2 110/2 111/6 113/7 139/6
--	---	---

C consideration [2] 40/20 47/17 considered [1] 31/18 considering [2] 94/2 107/25 consistencies [1] 60/11 consistent [1] 122/8 consulted [1] 15/20 contact [2] 107/5 110/12 contain [2] 16/8 81/16 contains [1] 9/22 contend [1] 112/15 contest [1] 106/12 continue [2] 47/16 107/4 continued [2] 108/2 108/2 CONTINUES [2] 21/16 58/25 continuity [1] 17/20 control [5] 15/6 78/16 120/13 121/18 121/20 conversation [1] 24/23 conversations [4] 26/19 64/8 83/7 94/1 convict [1] 93/8 convicted [3] 5/15 8/6 137/17 convincing [2] 23/19 24/4 cooperate [1] 89/19 cooperative [1] 89/7 copies [2] 67/24 82/7 cops [1] 113/20 copy [25] 16/22 16/23 19/18 19/25 20/3 20/5 20/6 36/23 70/7 75/13 76/2 76/4 77/9 77/22 88/15 88/19 117/19 117/24 117/25 117/25 118/2 118/3 121/18 121/23 139/4 corner [1] 43/15 CORNEY [9] 1/19 2/4 2/7 2/9 8/20 9/12 37/4 45/18 72/18 correct [47] 14/6 16/3 18/10 19/12 20/7 26/22 28/23 29/13 31/24 32/18 32/22 33/24 34/12 39/9 40/3 41/20 42/15 44/5 45/21 45/22 48/5 48/6 48/17 49/8 50/20 52/11 52/23 53/14 53/20 57/18 57/23 60/10 60/17 75/24 81/20 83/1 87/15 88/22 91/7 95/18 101/14 104/24 109/13 111/20 115/2 115/2 116/1 Corrections [1] 8/4 correctly [4] 68/3 84/2 87/18 107/10 couldn't [3] 7/25 52/9 100/13 counsel [12] 8/22 92/25 117/24 119/5 119/5 121/11 128/25 129/22 130/20 131/7 131/14 140/17 counting [1] 67/19 county [10] 1/2 4/6 4/9 11/24 30/16 30/21 90/24 95/24 140/5 140/14 couple [9] 17/10 34/3 37/20 38/19 71/20 99/18 116/6 119/24 138/1 course [15] 7/21 42/14 47/19 48/19 50/16 55/3 72/16 79/21 121/24 124/17 126/11 127/3 128/24 131/6 138/23 Court's [2] 79/21 118/12 courthouse [1] 77/12 courtroom [2] 115/24 116/7 courts [1] 131/1 cover [1] 94/16 covered [1] 110/1 covering [1] 86/20 CP [1] 4/4 creates [1] 117/6 creating [1] 123/1 credibility [4] 90/20 112/11 112/14 129/17 credible [1] 131/20 crime [15] 5/15 5/20 9/2 12/19 30/3	51/24 85/10 107/8 127/24 129/7 129/20 133/9 134/17 134/19 134/22 criminal [5] 29/25 52/14 91/8 120/22 128/20 cross [8] 2/4 2/7 2/10 38/9 78/24 86/2 111/12 119/25 cross-examination [5] 38/9 78/24 86/2 111/12 119/25 cuffs [1] 104/3 cut [2] 53/12 96/11 D damaging [1] 90/18 dark [3] 27/23 42/9 51/10 date [7] 7/20 31/23 34/11 81/21 87/20 132/11 132/13 dated [7] 50/19 52/22 53/1 69/23 70/22 81/16 82/11 days [2] 12/6 12/14 deal [10] 26/9 27/11 65/23 66/6 69/18 92/19 93/10 94/9 108/1 109/13 death [1] 69/12 debate [1] 18/25 debated [1] 16/25 DEBORAH [3] 1/24 140/8 140/23 decide [2] 29/15 107/25 decided [1] 133/6 decision [7] 5/6 88/2 88/3 94/5 94/11 111/3 130/24 defeatist [1] 30/25 defend [2] 60/17 82/6 Defendant [5] 1/8 1/20 73/7 80/13 133/9 Defender [5] 10/15 82/11 104/24 117/5 129/2 Defender's [7] 4/9 9/22 9/24 11/23 79/3 129/4 130/5 defending [2] 44/17 104/19 defense [18] 14/3 23/8 68/10 91/8 91/24 94/12 108/7 110/25 116/12 118/19 119/2 119/5 119/8 121/1 121/11 121/13 131/22 132/24 defenses [3] 94/6 134/24 137/4 deficiencies [1] 131/18 definite [1] 63/11 definitely [8] 63/12 64/15 66/3 66/4 66/12 105/6 105/6 110/23 delay [8] 60/21 61/1 61/7 62/7 62/25 63/3 63/5 63/12 delivered [2] 32/4 139/10 delivery [3] 32/5 50/6 132/12 deny [2] 137/9 138/17 Department [6] 8/3 120/12 121/22 123/3 123/3 124/4 Department's [1] 122/14 depends [2] 69/2 123/13 depth [1] 5/2 derives [1] 132/23 describe [2] 55/16 60/9 described [1] 122/5 describes [1] 59/5 description [13] 2/13 3/9 27/21 41/19 53/6 55/9 58/4 80/12 82/20 113/22 127/12 130/18 136/18 descriptions [2] 54/13 54/14 destroyed [2] 74/17 133/24 detail [1] 138/10 determine [3] 36/15 63/18 131/13 devil's [1] 62/18 DHEC [5] 117/12 118/5 120/5 120/10 120/12 dice [3] 93/7 93/23 135/7 did [115] 4/19 6/2 10/20 12/10 12/18	13/3 13/10 13/13 14/7 14/21 15/25 16/6 16/10 16/21 16/23 19/9 19/17 20/3 20/9 20/24 21/21 21/21 22/1 23/2 23/5 23/5 24/8 26/24 32/1 32/7 34/23 35/8 35/13 36/12 36/14 38/21 40/7 42/17 43/7 44/18 45/8 51/16 52/15 52/20 56/12 63/18 64/6 64/17 65/6 65/15 67/23 68/17 69/18 69/25 71/25 72/2 73/3 75/11 76/14 77/10 77/13 82/2 83/18 92/7 94/8 95/23 95/25 96/24 96/25 97/25 98/3 98/5 99/16 100/20 102/5 102/14 102/23 104/2 104/20 105/2 105/4 105/8 105/11 106/22 108/19 108/22 108/24 108/24 109/5 109/15 112/1 112/3 112/21 112/21 112/22 112/22 112/23 112/24 113/6 113/6 113/7 113/11 116/18 116/21 119/19 119/21 120/2 123/15 127/23 128/18 129/7 129/20 131/5 136/23 137/14 difference [7] 25/12 42/12 55/14 73/5 135/17 136/19 136/20 differences [2] 32/15 55/13 different [19] 22/12 26/17 26/17 32/13 54/12 54/13 54/14 54/14 54/17 55/12 55/17 66/16 67/25 72/24 81/3 82/9 122/4 122/11 132/9 digital [1] 16/15 direct [12] 2/3 2/6 2/9 4/19 11/19 21/16 58/25 78/14 86/6 95/14 115/21 127/16 direction [2] 127/21 127/24 directions [2] 63/14 64/2 directly [4] 43/15 97/23 120/25 121/12 disagree [3] 31/12 60/18 80/21 disagreed [1] 138/8 discouraged [2] 25/4 68/16 discovery [16] 3/4 3/10 17/13 17/25 67/24 68/2 68/8 72/21 73/1 87/23 114/23 116/24 116/25 117/3 117/7 117/8 discrepancies [8] 22/21 27/22 80/25 81/5 81/10 105/14 132/14 135/15 discrepancy [4] 63/9 136/5 136/15 137/5 discuss [5] 64/14 64/17 68/9 91/21 131/25 discussed [6] 16/24 16/25 19/15 39/8 64/15 87/12 discussing [2] 17/9 88/21 discussion [1] 93/14 discussions [5] 12/21 26/12 39/6 65/19 72/9 disk [1] 77/5 dismiss [1] 135/20 disorderly [1] 104/16 dispute [8] 18/19 39/14 39/22 60/13 60/14 81/9 101/12 125/11 disputed [1] 125/8 distance [1] 126/13 distinct [1] 73/11 disturbance [1] 104/16 disturbing [1] 129/8 Docket [1] 4/4 document [13] 15/10 15/17 31/13 33/7 33/11 60/25 63/22 64/3 116/12 116/21 116/23 117/9 120/13 documents [4] 34/16 61/3 117/10 122/22 does [15] 8/16 16/8 36/1 36/16 36/17 42/2 58/4 58/18 71/6 117/6 123/3 123/4 124/20 129/3 136/12 doesn't [15] 6/23 7/2 25/21 29/5 29/24 35/15 52/6 53/6 61/12 67/13 67/15 68/6 78/9 101/12 137/8
--	---	---

D doing [10] 20/16 50/10 50/12 63/25 87/17 96/7 101/20 103/8 108/10 129/6 Dolly [5] 48/13 48/15 75/13 115/11 115/19 done [33] 10/16 23/20 24/5 30/10 30/10 59/19 66/20 66/21 66/22 66/23 66/23 68/24 84/19 85/19 86/8 86/9 87/24 103/7 107/14 107/14 108/20 108/22 109/1 112/16 112/18 120/7 120/7 121/10 121/25 123/21 126/23 126/24 127/16 door [1] 91/14 doubt [6] 29/19 29/19 29/19 29/20 37/11 130/9 Doug [1] 12/6 Douglas [1] 110/13 down [26] 14/12 21/2 21/12 28/25 32/14 32/21 34/10 49/22 60/10 63/7 64/13 64/15 65/4 84/3 87/8 95/1 95/2 96/3 106/2 107/15 115/3 115/5 124/11 124/12 135/5 136/2 dozen [1] 70/10 dozens [1] 72/15 drafted [1] 75/23 draining [1] 108/14 draw [4] 51/21 82/10 113/7 128/9 drawed [1] 104/14 drawing [1] 113/5 dressed [1] 102/17 drifted [1] 13/1 drink [1] 100/14 drinking [3] 98/3 98/5 125/19 drive [6] 16/14 52/5 64/24 65/2 65/3 65/4 drives [1] 78/10 driving [1] 63/14 drove [3] 42/19 42/19 113/20 drunk [2] 98/6 99/24 due [5] 97/12 110/4 110/20 114/21 114/25 duly [3] 11/18 95/13 115/20 during [8] 12/17 75/16 90/11 92/6 103/12 113/3 113/3 125/23 duty [1] 73/9	emergency [1] 10/18 emphasis [1] 44/18 employed [1] 11/22 employee [1] 85/7 EMS [38] 2/20 14/14 15/5 15/12 15/20 16/1 16/7 16/8 16/19 17/8 17/15 18/1 18/22 19/15 19/19 20/3 20/10 22/14 47/22 48/20 60/23 62/3 68/21 75/14 78/18 89/15 113/5 116/10 116/15 116/18 117/12 118/8 120/4 120/11 120/14 125/15 125/23 130/8 end [3] 93/17 94/11 139/25 enough [7] 22/21 22/21 61/11 75/1 96/8 99/24 134/25 entered [2] 17/13 94/25 enthusiastic [1] 29/7 entirely [1] 132/10 entitled [4] 6/19 73/7 131/2 131/3 entries [1] 34/12 Environmental [1] 120/13 episode [1] 128/21 equal [2] 61/9 61/14 erased [1] 74/5 ERNEST [1] 1/14 especially [5] 25/16 27/24 71/14 87/22 88/12 ESQ [1] 1/18 essence [1] 91/10 essentially [3] 25/23 91/5 133/7 establish [7] 19/1 44/24 62/12 62/15 96/11 131/23 137/2 established [3] 23/25 24/2 56/25 establishes [1] 101/18 establishing [2] 9/25 35/10 establishment [1] 83/22 estimated [1] 68/18 etched [1] 136/3 EV [2] 2/13 3/9 evaluating [2] 55/25 56/8 even [30] 28/16 40/24 55/6 68/5 70/10 71/6 78/1 87/23 89/12 93/22 93/22 108/25 109/23 110/5 110/16 110/18 110/24 111/1 112/2 112/3 114/16 125/7 127/22 128/1 128/3 128/16 130/1 135/15 137/9 137/22 evening [4] 22/9 32/9 55/4 57/23 event [1] 7/17 events [1] 56/24 eventually [2] 5/25 14/15 ever [14] 15/19 30/19 42/17 63/22 66/9 83/18 94/8 94/8 108/5 109/18 118/18 118/18 118/25 134/6 every [2] 24/11 45/4 everybody [1] 36/17 everyone [1] 9/7 everything [13] 7/6 16/16 22/8 64/11 87/24 106/2 108/5 110/9 110/10 111/16 115/7 124/21 138/4 evidentiary [1] 73/25 ex [3] 120/24 121/7 121/12 exact [6] 9/19 74/8 93/24 106/24 106/25 132/17 exactly [10] 56/17 109/6 109/14 109/14 111/19 111/23 132/6 133/4 133/12 135/2 examination [11] 11/19 21/16 38/9 58/25 78/24 86/2 86/6 95/14 111/12 115/21 119/25 examined [1] 131/2 examples [1] 8/23 excellent [1] 30/23 Except [1] 128/12	exceptional [1] 10/14 exculpatory [1] 73/10 Excuse [1] 114/18 Exhibit 1 [1] 32/25 Exhibit 10 [1] 52/21 Exhibit 12 [1] 57/20 Exhibit 13 [2] 58/2 59/3 Exhibit 2 [2] 33/6 33/15 Exhibit 20 [2] 72/13 72/20 Exhibit 21 [1] 73/19 Exhibit 3A [1] 38/18 Exhibit 4 [2] 45/8 45/15 Exhibit 5 [3] 46/13 46/17 47/20 Exhibit 6 [2] 17/4 17/19 Exhibit 7 [4] 48/12 48/23 75/12 78/11 Exhibit 8 [2] 49/7 49/16 Exhibit 9 [1] 51/3 exhibits [14] 2/12 3/8 9/5 9/12 9/15 11/11 21/3 35/18 55/18 57/3 57/13 94/17 94/24 124/20 expect [1] 89/7 expectations [1] 84/23 expedite [1] 9/6 experience [1] 91/8 explain [2] 92/14 100/1 explained [3] 7/9 78/1 111/24 explaining [1] 7/8 explanation [1] 130/12 explored [1] 10/13 expressing [1] 116/15 extent [1] 66/7 extremely [4] 23/18 58/12 93/17 128/2 eye [2] 103/5 103/5 eyewitness [1] 137/18 F fabricate [1] 128/22 face [1] 86/20 facing [4] 5/4 6/3 43/18 127/13 fact [16] 18/5 22/6 23/6 23/13 23/15 42/3 83/24 90/10 97/13 110/4 110/20 131/5 132/24 133/20 134/7 134/8 factor [1] 30/5 factors [1] 28/4 facts [8] 9/1 28/11 30/1 60/19 66/18 115/2 135/15 137/16 failed [1] 108/4 fair [4] 24/12 60/6 65/4 65/4 fairly [2] 37/15 64/25 familiar [2] 42/21 65/1 far [10] 5/8 5/25 35/25 63/18 87/11 89/24 104/15 116/10 130/15 133/22 fascia [1] 131/6 fast [2] 58/13 106/1 faulty [2] 132/4 132/6 February [10] 11/21 12/9 50/20 73/23 95/18 95/21 96/24 132/11 132/12 133/7 February 11th [1] 12/9 February 5th [4] 95/18 95/21 96/24 132/11 February 6 [1] 50/20 Federal [1] 18/14 feel [5] 36/9 37/3 62/17 129/6 130/19 feels [2] 134/16 134/18 felt [4] 23/13 23/13 103/7 110/24 female [1] 59/6 females [1] 103/6 few [8] 8/23 9/14 12/5 70/10 72/13 75/2 81/9 124/19 Fifth [3] 79/2 140/9 140/23 fight [89] 2/18 2/19 9/17 10/3 10/8 10/17 10/20 10/20 13/8 13/12 14/8 14/11
---	---	--

F fight... [77] 15/21 16/1 16/7 22/13 22/25 23/6 23/15 24/6 41/8 44/25 45/7 45/9 45/19 46/16 47/11 47/13 57/17 58/4 59/4 60/9 60/22 61/17 61/20 62/1 64/19 65/9 65/14 68/19 68/21 68/21 73/14 74/23 75/1 75/7 75/8 75/14 75/22 76/1 77/18 78/20 78/22 88/20 90/1 90/12 102/3 102/5 102/12 102/14 102/23 103/12 103/12 103/16 103/21 104/13 104/18 104/19 104/21 105/5 106/14 106/15 108/14 108/15 121/16 125/12 125/14 125/24 125/25 126/6 126/9 126/15 126/16 127/2 127/6 128/8 129/15 129/25 136/6 fighting [2] 59/13 103/2 fight [2] 10/1 89/8 file [49] 9/22 13/20 13/23 15/2 15/2 16/5 16/6 16/8 16/11 16/12 16/17 19/19 20/11 31/13 33/7 45/15 50/22 55/10 56/22 60/25 64/6 64/7 64/11 69/22 69/25 73/12 76/1 76/10 76/14 76/21 76/22 77/5 77/9 77/10 77/11 77/13 79/3 81/15 88/15 116/14 116/22 116/25 117/16 123/1 123/4 123/14 123/24 130/5 130/11 filed [2] 4/19 95/16 filing [1] 75/3 fill [1] 89/12 fills [1] 117/10 finally [4] 80/5 82/20 128/5 134/15 find [15] 13/14 16/6 22/1 22/24 51/19 52/9 52/13 52/13 52/15 56/12 89/16 89/20 100/16 104/20 129/8 fine [4] 35/12 78/5 78/5 85/23 finger [2] 70/23 71/2 fingers [1] 19/22 firearms [1] 51/10 fit [1] 27/21 five [6] 12/14 21/14 27/3 35/22 40/7 102/9 fled [1] 127/24 flee [1] 126/17 fluctuation [1] 41/15 focus [3] 26/8 98/19 108/17 folder [2] 84/5 117/9 follow [4] 21/5 24/4 32/20 81/15 follow-up [2] 24/4 81/15 followed [3] 24/18 24/19 56/21 following [3] 38/8 50/6 115/6 follows [3] 11/18 95/13 115/20 foot [1] 83/20 force [3] 94/9 110/11 110/16 foregoing [1] 140/10 forever [4] 88/15 134/4 134/5 134/11 forgot [3] 13/18 13/19 93/1 form [5] 81/17 82/11 91/25 117/7 122/21 formal [1] 94/19 formally [1] 79/14 forms [1] 70/5 forth [21] 7/17 21/11 21/12 99/19 100/9 105/15 105/16 106/19 108/12 113/5 125/19 127/17 131/15 132/2 132/5 132/15 133/13 137/5 138/11 138/12 138/25 forward [6] 7/2 7/10 7/13 8/16 66/14 92/24 forwarded [1] 123/15 fought [1] 29/21 found [6] 8/6 10/14 51/14 52/10 62/20 105/12	four [3] 27/3 30/16 89/21 free [1] 111/18 frenzy [1] 90/22 frequently [4] 12/21 16/12 71/14 76/6 friend [3] 59/6 97/9 97/12 front [4] 26/1 28/9 31/10 62/20 fruitless [1] 110/21 fully [1] 10/13 further [9] 38/9 68/9 84/25 94/22 113/14 115/8 124/9 135/25 140/16 G Garfield [8] 48/13 48/15 75/13 78/11 80/15 115/12 115/19 115/23 gave [14] 6/6 8/5 18/22 57/21 59/8 68/19 72/1 78/11 78/12 89/25 94/3 101/2 101/5 107/11 general [4] 1/19 55/19 78/15 80/7 generally [3] 6/21 49/10 113/22 genius [1] 128/20 gentleman [6] 13/9 15/20 16/7 60/16 97/7 125/25 gets [3] 29/23 117/2 137/7 getting [17] 6/24 14/11 30/17 31/4 52/1 61/11 65/17 73/15 102/6 108/9 108/9 108/9 108/10 119/7 131/23 135/3 137/20 girl [1] 59/11 girlfriend [1] 90/6 give [12] 6/6 10/23 13/10 13/13 27/6 40/6 59/10 92/4 100/22 101/12 105/8 123/9 given [6] 54/14 76/19 77/21 77/21 122/12 125/24 gives [3] 27/7 58/3 129/16 giving [1] 108/11 glad [1] 112/13 glove [1] 54/24 Glover [2] 132/19 132/21 goes [8] 12/7 18/18 50/13 50/15 85/7 100/8 121/12 133/23 gone [9] 8/10 9/4 16/6 31/2 66/3 66/21 89/18 120/25 134/23 good [6] 65/23 66/11 69/20 90/19 125/19 138/19 Google [1] 127/17 gosh [2] 71/22 73/6 gotten [9] 5/8 5/19 10/16 10/17 14/14 87/24 121/15 121/23 133/15 grammatically [1] 84/6 Grand [1] 4/6 grandmother [1] 96/5 grant [1] 130/22 granted [5] 5/4 124/18 127/6 137/22 137/24 graphic [1] 58/3 gray [4] 27/24 53/20 80/23 102/19 great [4] 10/15 30/24 129/3 136/4 greater [1] 65/25 grew [1] 95/24 grow [2] 95/23 109/19 guess [18] 17/25 18/4 20/11 27/12 35/7 55/11 63/23 71/22 88/16 89/23 89/25 91/18 92/24 102/25 116/19 118/6 119/18 132/4 guilt [5] 14/25 54/8 62/14 62/16 132/25 guilty [32] 4/12 8/7 8/22 12/25 24/9 25/9 25/11 26/15 62/20 66/18 67/16 67/17 69/11 71/22 72/7 72/8 72/11 91/22 92/6 93/11 106/11 111/17 122/15 130/25 131/7 133/2 134/12 134/20 135/1 135/2 135/11 135/18	gun [5] 42/15 52/13 52/16 103/4 126/21 guns [1] 51/17 guy [14] 22/19 23/8 26/2 26/2 28/19 28/20 30/6 57/21 59/12 83/10 86/13 102/14 103/2 103/2 guy's [1] 43/22 guys [2] 28/18 89/16 H hadn't [1] 74/12 half [15] 8/3 17/11 22/4 56/17 61/13 63/1 71/23 72/16 76/24 78/8 85/14 91/4 126/4 133/16 134/2 hammered [1] 31/2 hand [1] 70/18 handcuff [1] 28/19 handcuffed [1] 30/2 handed [2] 6/1 80/6 handle [1] 78/23 handled [1] 48/15 handling [1] 8/24 hands [1] 5/21 happen [3] 40/7 87/6 102/5 happened [26] 6/17 8/9 15/9 22/9 22/9 26/10 28/12 28/23 56/20 61/5 62/2 74/11 74/12 74/19 78/8 83/4 97/15 97/24 103/12 103/14 104/6 121/14 125/5 132/7 132/18 133/16 happening [1] 125/14 happens [2] 26/4 66/14 happy [2] 29/6 81/24 hard [12] 16/14 19/18 19/25 29/21 63/6 77/5 78/10 88/15 88/19 137/19 137/19 138/14 harder [1] 63/7 hasn't [1] 63/10 have [266] haven't [9] 5/8 5/22 27/19 30/17 55/10 58/6 77/12 77/19 134/7 having [6] 17/15 49/23 59/14 77/4 102/7 125/18 he [392] he's [3] 44/1 125/17 137/18 head [2] 25/17 110/12 headed [2] 10/23 15/25 headquarters [2] 56/22 89/13 Health [1] 120/12 hear [6] 5/13 10/2 10/5 47/2 96/19 116/7 heard [4] 37/5 37/13 86/15 115/25 hearing [9] 20/7 30/10 92/11 93/22 96/21 111/14 113/18 130/4 130/15 hearings [2] 29/23 30/9 hearsay [5] 18/5 48/25 50/1 57/7 60/2 held [1] 6/14 help [2] 9/6 124/15 helped [1] 121/18 her [11] 47/4 48/19 59/8 59/9 59/11 81/6 90/10 90/15 96/6 100/11 130/9 hereby [1] 140/10 hereto [1] 140/17 herself [1] 117/4 hey [1] 28/20 high [2] 24/16 137/16 highlighted [3] 37/20 37/23 83/12 himself [3] 117/5 126/13 128/9 hit [2] 90/10 103/4 hold [4] 16/10 89/6 107/21 129/5 holding [1] 104/12 holes [2] 24/24 26/7 home [7] 31/2 52/5 102/24 102/24 103/17 103/17 114/3 honestly [4] 45/14 64/10 75/21 76/23
---	--	---

H	index [3] 2/1 11/16 17/21 indicate [1] 25/10 indicating [1] 10/7 indicative [2] 132/16 134/8 indicted [1] 4/5 individual [2] 10/1 114/17 individually [1] 58/14 individuals [1] 19/11 ineffective [5] 8/22 128/25 129/21 130/20 131/6 information [6] 13/10 13/13 72/1 94/4 105/8 122/11 informed [1] 94/5 inherited [1] 77/16 initial [1] 123/8 inmate [3] 24/15 81/17 82/11 innocence [12] 12/18 14/25 26/19 65/24 92/20 93/16 108/15 131/11 134/22 135/8 135/12 135/18 innocent [2] 67/18 129/12 inside [1] 103/15 instructions [1] 63/14 intelligent [1] 5/5 intend [1] 11/14 intent [1] 81/6 intention [3] 75/9 88/8 109/10 interest [5] 7/3 26/16 96/15 137/9 140/17 interested [15] 26/13 26/14 29/1 66/5 66/12 67/9 68/10 69/17 71/4 72/10 73/15 73/17 92/24 103/13 103/13 interpret [4] 35/14 35/16 36/3 42/8 interpretation [1] 46/3 interpreted [1] 62/21 interrupt [1] 25/8 interview [3] 13/15 89/2 131/24 interviewed [1] 88/24 into [44] 5/2 5/8 7/1 14/11 16/15 19/6 25/19 32/16 32/25 33/4 33/15 33/19 38/5 38/11 38/16 40/20 46/11 46/21 47/17 49/5 49/11 49/20 51/7 51/22 52/25 55/21 55/25 57/15 61/18 72/12 72/19 79/12 79/20 80/3 83/11 90/22 90/24 92/1 94/25 110/8 114/10 118/14 126/15 131/21 intoxicated [3] 98/17 98/23 99/25 introduce [4] 11/15 48/9 57/3 92/10 introduced [7] 38/11 47/23 59/3 79/14 79/22 129/10 140/12 introduction [1] 94/20 investigate [13] 19/9 34/23 36/10 36/13 36/15 59/19 66/17 67/7 105/9 107/4 108/4 112/16 112/23 investigated [2] 36/12 111/16 investigating [1] 33/8 investigation [19] 10/16 14/2 14/3 15/13 20/23 23/5 31/19 32/7 49/11 50/25 55/21 61/10 67/22 94/2 107/14 110/20 112/5 131/4 131/21 investigations [1] 67/10 investigative [1] 123/24 investigator [14] 9/25 13/14 13/16 13/21 19/10 55/22 57/9 59/23 61/16 88/25 123/7 123/13 123/15 123/18 investigator's [1] 123/14 investigators [1] 131/24 invite [1] 7/11 involuntary [2] 8/21 131/7 involved [12] 9/18 10/1 10/19 13/5 13/12 13/15 59/12 90/21 91/10 103/6 125/8 131/25 involves [1] 132/24	irrelevant [1] 56/13 is [447] isn't [3] 19/20 60/6 72/6 issue [4] 30/23 130/13 130/13 130/14 issued [1] 134/3 issues [3] 13/1 92/23 108/18 it [479] it's [1] 85/23 its [3] 91/9 131/19 132/23 itself [7] 42/7 42/7 44/4 48/18 130/10 130/17 134/10
I	I'd [4] 24/14 28/2 93/25 94/18 I'll [12] 21/13 31/12 53/9 53/11 70/24 78/23 86/4 105/3 122/10 137/1 138/23 139/5 I'm [98] 5/25 7/1 7/2 7/13 7/14 8/12 8/12 15/9 20/23 21/1 21/1 21/2 21/23 23/2 23/2 23/21 25/7 27/1 27/22 29/8 30/8 30/14 30/14 32/16 32/19 32/20 35/12 36/12 36/13 37/10 39/3 40/1 42/4 47/2 47/15 50/11 50/23 53/11 54/7 54/8 55/11 56/11 59/16 61/22 62/5 62/9 62/11 62/11 62/19 62/20 63/9 64/6 65/1 66/25 67/1 68/23 70/12 70/13 71/4 72/18 75/2 75/15 75/24 77/17 77/23 80/20 84/10 84/18 84/18 85/19 85/20 89/20 93/1 96/19 98/8 98/18 103/12 104/10 104/13 104/14 104/18 105/21 106/23 110/21 111/2 112/2 112/10 112/13 113/10 113/25 114/2 115/6 115/6 123/10 128/18 128/25 129/2 129/5 I've [5] 47/6 69/22 91/25 91/25 92/1 ID [15] 2/13 3/9 22/7 25/15 27/18 28/2 28/7 28/11 28/21 29/10 29/15 29/18 30/11 80/12 92/22 ID's [6] 25/16 28/8 29/4 29/12 29/22 31/5 idea [1] 43/3 identification [21] 19/5 30/1 30/7 30/18 33/3 33/18 38/4 38/15 46/10 46/20 49/4 49/19 51/6 57/14 79/11 79/19 80/2 86/7 86/10 118/13 135/9 identified [4] 28/12 49/1 114/16 136/9 identify [2] 31/16 48/12 identity [1] 33/11 immediately [2] 113/23 128/7 important [8] 43/25 44/2 45/1 65/15 65/23 85/6 92/16 93/15 impossibility [2] 91/11 132/25 impossible [1] 128/3 imprisonment [1] 4/16 incident [7] 2/15 2/22 22/11 33/12 33/22 49/7 106/17 incidents [1] 73/24 included [3] 4/14 15/5 71/5 including [1] 9/8 inconsistent [1] 105/17 incumbent [1] 36/9 indeed [1] 126/10 indefinite [1] 134/4 indefinitely [2] 88/9 134/14	J Jackie [5] 85/8 98/16 99/23 100/2 100/2 jail [8] 6/9 12/7 26/21 27/10 27/12 68/1 68/5 71/15 James [1] 97/8 jean [2] 53/19 54/24 jeans [9] 41/24 42/3 42/10 42/10 80/23 102/20 102/21 136/20 136/21 job [7] 20/14 24/20 96/8 96/13 97/4 129/3 129/6 jot [1] 32/20 JR [1] 1/14 judge [26] 1/14 5/24 6/5 8/5 17/13 57/11 58/14 73/21 75/23 88/6 92/11 103/13 110/2 111/6 111/14 111/19 111/22 112/14 115/1 118/21 120/16 121/7 122/2 134/4 136/22 138/5 judge's [1] 5/21 judges [1] 121/12 judgment [2] 15/16 56/10 Judicial [1] 140/9 jumped [1] 103/3 June [1] 140/19 Justice [5] 64/8 104/10 104/22 115/12 115/19
	K Katrina [8] 46/24 47/4 54/23 55/1 59/5 60/8 89/24 101/3 keep [10] 14/19 44/19 59/20 67/25 76/16 82/22 85/13 106/3 122/19 134/5 keeping [2] 30/6 125/20 keeps [1] 74/7 Kenneth [1] 58/1 kept [3] 68/4 68/4 108/11 kin [1] 140/16 KINARD [1] 1/14 kind [18] 35/9 41/23 56/6 66/16 77/23 83/2 83/8 83/22 87/21 90/21 91/17 93/4 97/2 103/9 119/7 123/5 128/20 133/19 King [5] 20/13 20/15 57/22 97/4 97/7 knew [4] 25/15 74/25 93/19 99/17 knowing [1] 7/3 knowingly [1] 69/12 knowledge [2] 118/19 120/15 known [4] 13/6 88/16 109/11 130/25 knows [1] 45/5 Kristina [5] 60/7 89/24 101/4 101/5 101/5	
	L lady [1] 100/2 laid [1] 22/22 landlord [4] 24/20 97/11 97/14 97/16 lapsed [3] 34/21 34/24 35/1 larceny [1] 71/8 last [4] 44/23 51/13 53/18 53/18 later [7] 12/25 44/19 71/23 81/9 84/15 87/20 134/2 laundromat [12] 78/22 82/19 83/14	

L laundromat... [9] 83/23 83/25 85/6 85/11 97/22 113/23 113/24 114/10 114/25 laundromat/bar [1] 97/22 laundry [1] 20/16 Lawton [1] 4/13 lawyer [3] 39/20 67/19 77/15 lay [1] 42/21 laying [1] 126/2 leading [3] 53/11 69/4 97/24 leads [2] 24/19 127/4 learned [1] 109/11 least [7] 8/3 10/9 18/5 46/4 74/10 137/11 137/21 leave [1] 126/2 leaves [2] 91/14 133/1 led [4] 65/21 73/24 107/25 124/25 left [6] 43/7 43/15 43/17 82/5 96/2 127/13 legal [2] 111/4 111/4 legitimate [1] 31/8 less [3] 88/14 133/8 133/14 lesser [4] 4/13 26/20 71/5 88/13 let [13] 5/1 42/22 66/24 73/13 82/6 84/25 100/1 105/22 105/22 107/9 108/16 137/22 137/24 let's [17] 19/8 26/9 27/15 31/9 39/24 40/2 45/7 54/22 56/16 56/18 57/2 57/20 58/1 63/13 76/24 96/24 97/24 letter [10] 12/8 69/23 70/22 71/16 71/17 81/16 81/18 82/11 85/1 85/2 letters [8] 24/13 69/20 69/21 69/22 70/1 72/15 81/19 129/10 level [1] 114/9 life [3] 5/17 5/19 8/11 light [2] 102/20 102/21 lighting [1] 30/4 lightly [1] 28/10 lightning [1] 58/13 likelihood [1] 31/3 likely [3] 93/8 133/8 133/14 limited [1] 30/4 line [8] 14/22 28/16 46/23 70/7 80/11 80/15 80/19 138/3 Line 7 [1] 80/11 line-ups [1] 28/16 lines [9] 43/11 43/12 43/12 43/12 43/13 43/13 81/9 88/11 90/11 link [1] 67/21 list [1] 47/10 listen [2] 37/1 38/21 listened [7] 38/24 39/3 39/6 39/8 44/13 44/21 78/21 lists [1] 84/20 literally [1] 72/15 litigate [1] 131/12 little [10] 19/8 21/7 27/15 80/21 82/9 96/18 96/20 119/6 122/1 130/1 lived [2] 22/10 52/19 living [1] 97/15 load [1] 129/2 loathe [1] 28/7 located [1] 126/14 location [1] 91/2 log [1] 39/23 long [9] 27/2 37/17 37/18 40/11 65/7 65/12 74/2 109/21 136/22 longer [2] 78/1 78/8 look [49] 7/2 17/3 19/23 20/11 22/7 27/4 31/9 31/21 33/6 34/4 34/20 36/22 37/21 38/18 40/4 43/6 43/10 45/8 46/13 47/22	47/23 48/8 49/7 50/18 51/13 52/21 52/24 53/6 55/18 57/20 58/1 58/8 60/6 63/13 69/23 71/3 72/19 73/19 75/12 75/19 80/5 80/11 81/24 90/19 96/13 110/8 127/11 132/17 133/21 looked [8] 25/1 25/19 32/16 55/10 68/13 84/12 90/20 134/24 looking [18] 15/10 22/23 27/20 42/17 43/5 53/3 53/7 54/22 60/5 70/2 70/11 70/12 78/11 83/12 83/15 84/11 97/3 118/19 lookout [1] 123/22 looks [10] 5/9 6/8 6/9 12/8 31/22 34/8 50/21 53/1 80/20 125/13 Lord [1] 45/4 lose [1] 71/3 lot [22] 21/10 24/13 24/15 27/7 34/16 41/4 65/18 69/5 69/7 70/6 72/8 72/17 80/20 84/5 86/5 89/11 108/17 111/25 112/4 112/4 112/5 131/22 loved [1] 29/3 luck [1] 138/19 lucky [1] 89/16 lynched [1] 103/7 M Mack [4] 13/18 89/10 89/22 89/22 mail [8] 2/21 16/13 48/13 48/18 71/15 76/6 116/13 121/4 mailed [4] 16/13 77/6 117/12 118/6 mails [1] 45/13 maintain [9] 12/18 13/4 17/20 129/18 130/21 134/22 135/8 135/12 135/18 maintained [1] 124/3 maintenance [1] 24/17 makes [2] 114/13 133/8 making [2] 88/14 124/19 male [2] 50/4 59/6 man [10] 32/5 57/18 67/2 67/18 67/18 126/23 128/7 128/15 129/11 137/18 man's [1] 67/3 mandatory [1] 135/4 many [9] 7/9 23/18 24/19 27/12 28/6 30/9 64/21 84/20 105/1 map [5] 63/18 91/5 127/10 127/11 127/17 Maple [11] 43/1 43/3 43/8 43/14 43/15 43/17 109/18 109/19 109/20 110/5 127/13 Maps [1] 127/17 March [15] 4/25 5/1 7/20 27/13 70/12 70/13 70/13 70/14 70/15 70/16 70/22 81/16 81/22 82/12 85/1 March 24th [1] 7/20 March 25th [1] 70/15 March 26 [1] 70/14 March 26th [1] 70/22 March 6 [1] 70/13 March 8 [3] 81/16 82/12 85/1 March the [1] 81/22 Marion [1] 95/24 mark [1] 79/9 marked [18] 12/12 17/19 19/5 33/3 33/18 38/4 38/15 46/10 46/20 49/4 49/19 51/6 57/14 79/11 79/19 80/2 118/13 120/2 Maryland [2] 86/24 87/8 mask [1] 86/18 Mason [1] 85/19 match [1] 11/15 matched [2] 81/2 130/18 matches [4] 50/9 50/11 50/12 136/18	matching [1] 113/21 material [2] 80/22 110/25 mates [1] 98/11 math [3] 41/14 68/24 71/21 matter [4] 4/22 57/7 71/10 136/12 matters [2] 9/6 131/25 max [2] 4/24 7/20 max-out [1] 7/20 maxed [2] 8/10 137/23 May 20th [1] 117/11 May 21st [1] 117/13 May 6th [2] 116/14 121/3 May of [1] 4/6 maybe [9] 32/15 63/8 65/24 70/10 70/17 83/2 93/17 130/11 133/15 McCURDY [3] 1/24 140/8 140/23 McIntosh [1] 4/13 McNeeley [7] 13/18 13/21 14/9 19/10 55/22 89/6 90/1 McNeeley's [1] 90/8 mean [208] means [5] 34/24 35/2 35/17 36/1 93/7 meant [5] 34/23 35/4 83/3 83/14 84/13 measures [1] 88/4 meaty [1] 28/8 medical [1] 10/18 meet [3] 12/10 84/23 138/17 meetings [2] 24/12 119/11 meets [1] 121/11 mention [1] 136/8 mentioned [10] 19/10 27/14 46/25 47/5 63/4 69/19 81/17 90/5 93/23 136/25 met [6] 9/11 13/3 24/12 45/18 84/16 119/15 Michelle [1] 73/21 middle [1] 40/5 midway [1] 49/22 might [20] 22/4 26/20 30/23 32/17 53/12 59/21 61/6 63/5 66/22 66/23 76/17 77/6 81/23 83/5 84/11 84/13 87/23 96/20 122/22 137/25 mile [4] 10/9 91/4 128/8 133/16 military [1] 32/8 Millwood [9] 13/6 42/23 43/18 64/2 65/4 65/4 97/18 113/20 127/14 mind [7] 59/20 71/16 75/10 76/16 85/13 106/3 128/15 mindset [1] 29/9 mine [1] 81/24 minimum [6] 5/11 8/1 8/2 135/4 137/11 137/20 minus [1] 40/16 minute [10] 21/8 35/19 41/16 87/12 98/18 133/17 133/18 134/12 134/16 136/6 minutes [23] 21/14 34/24 35/1 35/22 35/23 40/7 40/9 40/10 40/13 40/23 41/16 64/18 64/21 68/22 69/8 102/9 103/24 104/9 104/9 113/19 125/5 126/8 126/14 minutes' [1] 34/21 mirrors [1] 48/5 mischaracterization [1] 40/19 misconduct [4] 8/24 116/8 130/7 130/22 misidentifications [1] 25/20 misplace [1] 118/10 misplaced [1] 77/2 misread [3] 83/5 83/16 84/7 miss [1] 94/19 missing [1] 76/25 misstatement [2] 130/15 130/17 moment [4] 19/14 43/7 45/7 54/5
---	--	---

M	Mr. James [1] 97/8 Mr. McNeeley [1] 55/22 Mr. McNeeley's [1] 90/8 Mr. Strickland [6] 5/2 37/11 53/5 87/13 132/3 134/16 Mr. Strickland's [1] 37/8 Mr. Thompson [6] 56/25 57/17 60/16 62/5 89/3 90/10 Mr. Thompson's [2] 62/8 62/8 Mr. Tom [1] 4/21 Ms [3] 85/8 100/1 100/2 Ms. [10] 60/15 60/17 61/18 64/8 78/11 80/15 98/16 99/23 115/23 117/9 Ms. Garfield [3] 78/11 80/15 115/23 Ms. Jackie [2] 98/16 99/23 Ms. Justice [1] 64/8 Ms. Morgan [3] 60/15 60/17 61/18 Ms. Trapp [1] 117/9 much [18] 6/6 22/18 28/7 42/11 61/5 62/7 71/15 98/5 100/14 103/16 103/20 104/17 126/23 135/10 136/18 136/20 138/20 139/12 multi [1] 21/4 multi-task [1] 21/4 must [2] 70/9 123/11 myself [3] 65/10 82/6 104/19	93/11 note [2] 41/19 117/11 notebook [5] 9/7 36/22 37/20 37/22 70/8 notes [3] 25/10 33/22 130/1 nothing [8] 51/14 51/14 74/19 94/22 104/3 113/14 124/1 135/25 notice [9] 34/3 46/23 49/22 61/19 74/16 80/18 118/25 121/2 121/13 notified [1] 14/10 November. [1] 77/13 now [57] 15/4 16/5 19/8 20/9 24/8 26/20 27/14 31/7 31/9 31/23 32/1 33/21 34/3 34/6 39/11 40/4 41/12 41/19 42/17 44/21 45/7 46/13 57/20 58/1 58/3 59/20 60/20 61/3 69/19 70/16 77/15 77/20 77/25 83/12 84/11 94/25 96/24 97/6 97/20 97/24 99/1 99/7 100/20 102/14 102/23 104/23 105/1 105/11 106/8 110/1 117/14 117/24 118/16 120/16 121/23 126/7 136/11 Number 17 [1] 63/15 Number 18 [2] 64/1 64/4 Number One [1] 104/10 numbering [1] 17/20 numbers [9] 11/14 11/15 36/11 36/14 36/15 36/18 63/7 63/9 64/23 numerous [1] 54/13
N	name [9] 13/17 18/22 31/21 46/24 47/4 85/8 97/6 110/13 110/15 named [2] 57/18 117/2 narrative [1] 49/23 nationwide [1] 30/22 naturally [1] 96/21 nature [1] 80/22 near [1] 93/17 necessarily [3] 6/13 78/19 121/1 necessary [2] 56/14 94/4 need [23] 18/1 21/3 21/4 21/13 41/3 44/19 58/12 58/14 58/18 59/22 68/25 69/10 82/17 84/17 100/1 103/11 114/8 116/15 122/22 123/19 124/21 137/20 138/23 needed [4] 19/22 78/13 105/9 107/3 needs [1] 117/14 negative [1] 108/12 negotiating [1] 66/15 negotiations [2] 4/15 64/13 neither [1] 140/16 never [27] 12/24 12/24 25/4 29/23 30/18 30/20 37/5 37/13 45/11 45/12 52/9 52/13 52/13 56/20 56/21 56/25 66/2 68/15 69/16 76/4 88/8 102/15 106/22 112/7 112/7 120/18 121/25 new [4] 50/5 74/4 112/4 112/5 next [8] 4/25 5/1 11/12 53/18 66/15 71/17 71/17 104/9 nice [1] 6/9 night [14] 10/4 18/22 23/15 30/4 53/14 80/14 82/19 90/11 98/1 98/3 100/4 102/17 102/18 126/6 nighttime [1] 27/25 nine [11] 35/19 41/16 64/17 98/6 98/20 114/20 126/14 128/12 128/15 128/15 136/5 Nobody [2] 76/19 136/8 none [2] 108/24 108/24 nonetheless [1] 127/7 nor [2] 30/18 140/17 normal [2] 14/3 121/24 normally [3] 123/5 123/8 123/23 North [6] 4/12 5/24 92/15 93/2 93/6	221 o'clock [7] 22/14 57/23 62/3 62/4 68/22 97/4 126/6 object [2] 49/25 101/16 objection [2] 18/4 49/2 objections [3] 47/16 94/18 132/4 obligation [2] 16/2 67/6 obstacle [1] 22/5 obstacles [1] 87/9 obtain [4] 19/17 49/10 50/24 116/17 obtained [2] 19/16 33/8 obviously [13] 10/10 18/1 18/18 30/5 40/20 44/18 87/14 112/24 119/16 122/25 129/15 133/23 136/24 occurred [7] 13/5 41/11 68/19 68/20 91/4 95/18 136/6 occurrences [1] 74/11 occurring [1] 102/7 off [7] 40/23 43/15 69/6 96/11 110/17 110/17 134/13 offer [12] 32/24 33/14 38/2 46/17 48/22 49/15 51/3 66/11 66/13 66/16 71/7 71/8 offered [1] 47/20 office [28] 4/9 11/23 12/9 14/10 15/11 15/17 16/20 16/21 16/24 19/16 20/2 37/8 49/13 74/7 77/2 79/3 82/3 82/8 87/4 116/19 116/24 117/5 117/7 119/15 120/8 120/9 129/4 129/4 officer [1] 117/15 officers [1] 136/16 Official [2] 1/25 140/8 often [1] 121/12 oh [9] 14/23 23/21 28/24 30/14 72/14 73/6 84/11 85/4 93/4 old [2] 96/8 96/9 on [180] once [6] 10/11 15/23 55/8 66/14 91/12 133/15 only [15] 5/20 7/23 15/14 16/23 18/4 18/10 19/2 27/17 55/14 67/20 82/1 103/8 123/10 125/14 126/8 onto [2] 43/8 43/17 open [4] 38/6 46/3 91/14 133/1 opening [1] 8/19

O operates [2] 78/6 100/3 operator [3] 33/23 40/6 43/21 opinion [3] 42/13 111/4 112/9 opportunity [3] 16/5 54/5 116/9 opposed [1] 88/19 opposite [4] 111/15 111/19 111/23 127/21 options [3] 25/3 39/9 59/15 order [31] 3/5 17/13 18/13 50/6 58/21 66/18 73/21 75/16 75/23 79/22 82/4 82/4 88/7 118/20 120/16 120/18 120/24 120/25 121/4 121/7 121/15 128/9 131/17 134/3 134/10 138/21 139/2 139/3 139/5 139/8 139/9 ordered [1] 120/17 ordering [1] 73/22 orders [1] 120/22 others [1] 21/13 ought [1] 36/11 our [27] 11/2 12/6 12/9 13/13 14/17 16/14 18/4 18/10 24/11 26/19 49/13 50/9 59/23 65/19 71/3 76/7 82/3 83/6 84/23 116/19 116/24 116/24 117/1 117/7 127/1 129/3 130/21 outline [1] 10/23 outside [4] 42/10 59/9 67/21 100/16 overalls [1] 54/24 overcome [2] 22/6 25/25 overlook [1] 84/7 overlooked [1] 84/19 own [3] 96/7 111/18 131/19 owned [1] 97/16 owns [1] 100/2	patrol [2] 82/17 104/5 Pause [2] 8/14 58/20 PCR [11] 4/3 4/20 5/4 92/7 92/8 95/16 110/3 117/24 119/5 124/18 135/21 PCR's [1] 5/18 penalty [2] 69/12 135/4 people [22] 5/19 13/14 17/15 18/1 21/10 24/20 24/20 24/21 35/21 41/11 51/22 51/25 54/14 55/2 60/19 68/1 99/18 105/25 107/1 126/17 129/3 131/24 percent [11] 5/12 7/21 7/23 7/23 8/2 25/14 25/23 27/8 86/13 135/5 135/10 percentor [1] 137/11 perfect [2] 84/6 127/4 perfected [1] 6/16 perfectly [1] 31/8 perform [1] 126/12 perhaps [1] 128/3 period [1] 6/10 periods [1] 72/9 Perry [1] 85/19 person [14] 14/4 16/1 18/6 18/10 18/24 67/9 107/7 107/8 113/21 125/18 128/10 128/12 136/11 136/14 persuasive [1] 89/23 petit [1] 71/8 petition [3] 95/16 110/3 124/18 photo [2] 41/8 41/9 photocopied [3] 82/2 82/3 82/8 physical [4] 16/11 76/2 91/10 132/25 Pick [2] 82/14 85/3 picked [1] 79/7 picture [1] 28/18 piece [2] 51/18 124/23 pin [1] 63/7 pizza [16] 2/14 10/6 31/17 32/3 32/4 32/5 32/10 32/21 49/8 50/5 83/10 95/17 109/15 122/5 132/9 132/12 place [22] 9/19 9/21 10/3 10/7 10/9 10/21 41/8 41/10 43/4 44/25 52/19 61/19 71/3 96/3 97/21 119/13 125/1 125/12 126/6 127/3 132/11 136/7 place's [1] 31/17 placed [5] 30/2 32/10 60/23 60/24 61/20 places [7] 10/10 28/3 91/11 91/16 125/14 127/5 133/15 Plaintiff [3] 1/5 1/18 2/12 Plaintiffs [15] 19/4 33/2 33/17 38/3 38/14 46/9 46/19 49/3 49/18 51/5 57/13 79/10 79/18 80/1 94/24 play [5] 36/21 37/9 37/15 62/17 72/2 played [2] 38/6 86/16 playing [1] 38/9 plea [39] 8/22 20/6 24/9 24/9 25/2 26/16 26/22 26/25 66/11 66/16 66/18 67/17 69/18 71/9 92/6 92/11 92/15 93/10 93/16 93/20 93/22 94/9 95/17 108/1 108/1 109/3 109/13 111/14 111/22 111/22 113/18 122/15 131/8 131/13 134/21 135/14 136/23 137/1 plead [13] 5/16 25/11 67/17 69/11 72/7 72/8 88/13 93/11 94/5 106/11 130/24 134/12 135/11 pleading [5] 71/4 72/11 91/22 111/17 135/18 pleas [3] 1/1 136/24 140/14 pled [12] 4/11 5/22 5/23 7/22 25/9 71/22 134/3 134/20 135/2 135/5 137/13 137/14 plenty [1] 138/8 plural [1] 73/24 plus [4] 25/15 78/9 90/20 137/22	point [35] 7/10 17/3 19/2 23/12 24/22 26/5 35/19 35/19 36/7 36/20 38/10 41/1 41/16 41/17 43/6 43/25 44/2 44/23 44/24 51/21 52/9 54/5 54/10 54/20 55/16 77/1 77/17 84/25 106/8 110/22 110/24 111/1 114/17 115/3 134/13 points [4] 37/20 44/16 56/23 124/19 police [20] 15/12 28/16 28/20 34/16 83/9 89/12 89/13 103/14 103/18 103/21 104/2 104/7 105/18 106/17 114/23 121/22 122/13 123/2 123/3 124/3 policy [2] 12/13 122/14 Pop's [6] 2/14 32/3 32/10 50/5 132/9 132/12 posed [1] 80/11 position [14] 7/10 15/15 16/21 71/13 71/24 71/25 72/17 106/13 106/14 109/2 109/4 125/11 127/1 130/21 positive [2] 22/7 25/23 positively [1] 136/9 possessed [1] 16/20 possession [2] 52/10 52/18 possibility [4] 26/14 84/22 91/15 133/1 possible [3] 25/2 82/18 90/19 potency [1] 132/23 potential [8] 14/11 18/5 24/24 27/10 62/21 66/11 91/23 137/4 potentially [9] 22/20 28/4 66/5 66/10 68/14 90/16 90/18 90/18 92/22 precisely [1] 111/14 prejudice [2] 133/10 134/9 preliminary [1] 4/22 premarked [1] 11/13 prepare [3] 20/24 112/17 138/21 prepared [5] 9/7 37/7 86/22 117/9 139/2 preparing [1] 41/5 present [3] 78/15 91/23 94/12 presented [1] 135/22 presenting [2] 10/24 50/14 preservation [1] 122/14 preserve [7] 74/9 88/7 119/1 120/17 121/8 130/13 133/24 preserved [14] 73/25 74/2 74/13 74/21 74/24 87/15 87/25 88/9 121/16 121/17 130/1 134/5 134/11 134/14 presume [1] 103/17 pretrial [1] 29/21 pretty [27] 12/12 12/16 22/9 22/19 25/9 25/11 25/25 27/1 28/8 30/8 35/9 50/23 51/20 51/25 52/13 58/3 59/17 61/17 65/21 72/10 74/3 86/4 89/9 89/22 133/13 137/19 137/19 previous [1] 121/14 prima [1] 131/6 primarily [1] 8/21 print [1] 16/16 printed [5] 19/21 19/24 43/13 64/12 116/14 printout [1] 37/18 prior [3] 5/20 90/6 112/18 private [3] 9/24 88/24 131/24 probability [1] 137/16 probably [8] 6/14 12/5 12/15 37/12 40/9 40/12 66/21 83/16 probation [3] 4/18 6/7 6/11 problem [3] 56/24 58/24 79/15 problems [4] 25/16 68/14 87/10 93/10 procedural [1] 138/23 procedural-wise [1] 138/23 proceed [1] 67/10 proceeded [1] 83/20 proceedings [2] 139/13 140/12
P p.m [3] 10/3 10/8 32/8 pack [1] 98/6 package [3] 2/23 50/19 52/22 packet [1] 6/1 packs [1] 98/21 page [16] 40/5 40/5 41/22 42/17 43/10 47/24 49/22 51/13 53/15 53/18 53/19 55/1 70/23 70/24 80/9 82/14 Page 16 [1] 80/9 Page 2 [2] 41/22 55/1 Page 3 [1] 40/5 Page 4 [2] 42/17 43/10 paid [1] 129/9 pair [2] 53/20 54/24 pan [1] 67/20 pants [6] 41/23 42/1 53/20 80/23 80/24 122/7 paper [3] 70/5 70/8 70/8 papers [1] 118/11 paralegal [4] 45/13 117/1 117/2 123/6 paraphrased [1] 59/21 parole [2] 5/17 5/19 part [23] 14/3 15/4 20/21 20/23 23/5 49/11 50/24 53/4 53/8 55/21 61/10 64/13 65/6 65/15 80/6 93/4 93/15 93/18 110/3 117/14 123/8 123/23 127/11 parte [3] 120/25 121/7 121/12 particular [6] 22/1 36/2 56/12 75/11 117/1 133/21 particularly [3] 73/10 73/17 89/20 parties [2] 120/23 121/9 party [3] 10/19 133/2 140/17 partying [1] 125/19 pass [1] 9/8 passed [3] 22/18 96/1 103/20	patrol [2] 82/17 104/5 Pause [2] 8/14 58/20 PCR [11] 4/3 4/20 5/4 92/7 92/8 95/16 110/3 117/24 119/5 124/18 135/21 PCR's [1] 5/18 penalty [2] 69/12 135/4 people [22] 5/19 13/14 17/15 18/1 21/10 24/20 24/20 24/21 35/21 41/11 51/22 51/25 54/14 55/2 60/19 68/1 99/18 105/25 107/1 126/17 129/3 131/24 percent [11] 5/12 7/21 7/23 7/23 8/2 25/14 25/23 27/8 86/13 135/5 135/10 percentor [1] 137/11 perfect [2] 84/6 127/4 perfected [1] 6/16 perfectly [1] 31/8 perform [1] 126/12 perhaps [1] 128/3 period [1] 6/10 periods [1] 72/9 Perry [1] 85/19 person [14] 14/4 16/1 18/6 18/10 18/24 67/9 107/7 107/8 113/21 125/18 128/10 128/12 136/11 136/14 persuasive [1] 89/23 petit [1] 71/8 petition [3] 95/16 110/3 124/18 photo [2] 41/8 41/9 photocopied [3] 82/2 82/3 82/8 physical [4] 16/11 76/2 91/10 132/25 Pick [2] 82/14 85/3 picked [1] 79/7 picture [1] 28/18 piece [2] 51/18 124/23 pin [1] 63/7 pizza [16] 2/14 10/6 31/17 32/3 32/4 32/5 32/10 32/21 49/8 50/5 83/10 95/17 109/15 122/5 132/9 132/12 place [22] 9/19 9/21 10/3 10/7 10/9 10/21 41/8 41/10 43/4 44/25 52/19 61/19 71/3 96/3 97/21 119/13 125/1 125/12 126/6 127/3 132/11 136/7 place's [1] 31/17 placed [5] 30/2 32/10 60/23 60/24 61/20 places [7] 10/10 28/3 91/11 91/16 125/14 127/5 133/15 Plaintiff [3] 1/5 1/18 2/12 Plaintiffs [15] 19/4 33/2 33/17 38/3 38/14 46/9 46/19 49/3 49/18 51/5 57/13 79/10 79/18 80/1 94/24 play [5] 36/21 37/9 37/15 62/17 72/2 played [2] 38/6 86/16 playing [1] 38/9 plea [39] 8/22 20/6 24/9 24/9 25/2 26/16 26/22 26/25 66/11 66/16 66/18 67/17 69/18 71/9 92/6 92/11 92/15 93/10 93/16 93/20 93/22 94/9 95/17 108/1 108/1 109/3 109/13 111/14 111/22 111/22 113/18 122/15 131/8 131/13 134/21 135/14 136/23 137/1 plead [13] 5/16 25/11 67/17 69/11 72/7 72/8 88/13 93/11 94/5 106/11 130/24 134/12 135/11 pleading [5] 71/4 72/11 91/22 111/17 135/18 pleas [3] 1/1 136/24 140/14 pled [12] 4/11 5/22 5/23 7/22 25/9 71/22 134/3 134/20 135/2 135/5 137/13 137/14 plenty [1] 138/8 plural [1] 73/24 plus [4] 25/15 78/9 90/20 137/22	point [35] 7/10 17/3 19/2 23/12 24/22 26/5 35/19 35/19 36/7 36/20 38/10 41/1 41/16 41/17 43/6 43/25 44/2 44/23 44/24 51/21 52/9 54/5 54/10 54/20 55/16 77/1 77/17 84/25 106/8 110/22 110/24 111/1 114/17 115/3 134/13 points [4] 37/20 44/16 56/23 124/19 police [20] 15/12 28/16 28/20 34/16 83/9 89/12 89/13 103/14 103/18 103/21 104/2 104/7 105/18 106/17 114/23 121/22 122/13 123/2 123/3 124/3 policy [2] 12/13 122/14 Pop's [6] 2/14 32/3 32/10 50/5 132/9 132/12 posed [1] 80/11 position [14] 7/10 15/15 16/21 71/13 71/24 71/25 72/17 106/13 106/14 109/2 109/4 125/11 127/1 130/21 positive [2] 22/7 25/23 positively [1] 136/9 possessed [1] 16/20 possession [2] 52/10 52/18 possibility [4] 26/14 84/22 91/15 133/1 possible [3] 25/2 82/18 90/19 potency [1] 132/23 potential [8] 14/11 18/5 24/24 27/10 62/21 66/11 91/23 137/4 potentially [9] 22/20 28/4 66/5 66/10 68/14 90/16 90/18 90/18 92/22 precisely [1] 111/14 prejudice [2] 133/10 134/9 preliminary [1] 4/22 premarked [1] 11/13 prepare [3] 20/24 112/17 138/21 prepared [5] 9/7 37/7 86/22 117/9 139/2 preparing [1] 41/5 present [3] 78/15 91/23 94/12 presented [1] 135/22 presenting [2] 10/24 50/14 preservation [1] 122/14 preserve [7] 74/9 88/7 119/1 120/17 121/8 130/13 133/24 preserved [14] 73/25 74/2 74/13 74/21 74/24 87/15 87/25 88/9 121/16 121/17 130/1 134/5 134/11 134/14 presume [1] 103/17 pretrial [1] 29/21 pretty [27] 12/12 12/16 22/9 22/19 25/9 25/11 25/25 27/1 28/8 30/8 35/9 50/23 51/20 51/25 52/13 58/3 59/17 61/17 65/21 72/10 74/3 86/4 89/9 89/22 133/13 137/19 137/19 previous [1] 121/14 prima [1] 131/6 primarily [1] 8/21 print [1] 16/16 printed [5] 19/21 19/24 43/13 64/12 116/14 printout [1] 37/18 prior [3] 5/20 90/6 112/18 private [3] 9/24 88/24 131/24 probability [1] 137/16 probably [8] 6/14 12/5 12/15 37/12 40/9 40/12 66/21 83/16 probation [3] 4/18 6/7 6/11 problem [3] 56/24 58/24 79/15 problems [4] 25/16 68/14 87/10 93/10 procedural [1] 138/23 procedural-wise [1] 138/23 proceed [1] 67/10 proceeded [1] 83/20 proceedings [2] 139/13 140/12

P process [3] 56/17 104/17 123/1 produce [1] 14/24 produced [3] 112/7 112/8 134/7 production [1] 123/9 progressed [1] 92/18 prong [2] 133/10 138/18 prongs [1] 131/15 proper [2] 38/1 98/19 properly [1] 129/23 property [1] 53/6 proposed [1] 138/21 prosecute [4] 73/7 73/8 122/20 122/25 prosecuting [2] 116/3 119/16 prosecutorial [4] 8/24 116/8 130/7 130/21 protocol [1] 74/8 prove [9] 12/22 12/22 13/11 14/25 54/8 55/15 131/11 133/10 134/25 proveable [1] 13/1 proved [1] 134/9 proven [4] 23/14 23/17 23/22 132/6 provide [4] 16/22 20/3 89/4 105/16 provided [4] 38/11 45/20 107/1 110/25 providers [1] 120/14 proving [1] 18/20 proximity [1] 64/25 psychologically [1] 108/13 Public [12] 4/9 9/22 9/24 10/15 11/23 79/3 82/11 104/23 117/4 129/2 129/3 130/5 pull [2] 63/15 77/14 pulled [2] 69/6 114/4 purchase [1] 101/1 purported [1] 133/1 purports [1] 37/11 purpose [3] 18/15 87/19 92/10 purposes [4] 17/24 18/20 42/23 73/25 pursuant [1] 4/12 pursued [1] 130/13 pursuing [2] 29/7 68/10 pushed [1] 59/11 put [28] 11/12 19/21 28/19 29/4 40/14 43/21 44/17 45/13 51/23 57/10 70/23 71/2 74/18 76/24 92/1 92/7 94/21 104/3 104/4 116/14 117/11 117/25 118/2 118/10 118/25 121/1 121/13 127/13 puzzling [1] 130/10	raised [1] 116/6 rare [1] 30/21 rather [5] 14/16 71/5 78/15 104/17 116/17 re [1] 131/12 re-litigate [1] 131/12 reached [2] 9/13 24/8 read [33] 5/8 5/22 21/4 21/9 21/12 21/13 28/13 35/18 37/22 43/23 44/21 53/4 53/5 53/9 53/9 58/6 58/13 84/1 84/3 84/3 84/5 84/21 85/9 85/15 85/16 85/17 85/21 124/20 128/14 129/11 136/16 138/3 138/7 reader [1] 21/2 reading [4] 82/14 82/22 85/3 114/6 reads [1] 36/17 ready [1] 88/5 real [2] 90/24 108/18 realize [1] 75/5 really [20] 12/20 15/7 23/14 27/25 51/1 52/3 52/7 56/5 56/25 60/20 62/10 74/18 78/13 90/21 103/11 110/6 110/9 112/8 130/25 136/12 reason [6] 24/13 39/14 85/5 114/8 127/10 130/9 reasons [1] 10/12 recall [11] 12/3 28/12 31/14 59/14 71/13 73/14 86/10 91/1 111/21 116/11 119/11 reclaim [5] 2/14 31/17 31/17 132/9 132/12 receive [1] 16/10 received [16] 19/6 33/4 33/19 38/5 38/16 46/11 46/21 47/25 49/5 49/20 51/7 57/15 79/12 79/20 80/3 118/13 receiving [1] 33/23 recharged [1] 6/22 recognize [3] 33/7 136/11 138/13 recollection [2] 89/2 118/24 recommendations [1] 4/15 record [41] 1/6 2/20 4/23 9/19 10/19 15/5 16/7 16/9 16/20 17/8 17/24 19/15 19/19 20/1 20/3 20/10 20/25 44/4 46/23 47/22 48/20 53/9 57/1 57/11 72/14 74/18 77/4 79/1 80/6 81/3 116/10 116/17 116/18 117/15 118/8 127/11 130/8 130/10 134/14 135/21 140/11 recorded [1] 34/8 recording [5] 35/15 36/20 38/1 38/8 73/15 recordings [1] 118/17 records [14] 9/4 14/14 15/20 20/13 20/18 45/9 45/19 106/20 106/23 106/24 107/2 107/12 122/19 123/8 reduction [2] 26/15 29/1 refer [3] 11/11 11/14 36/2 reference [7] 18/13 42/23 44/1 44/24 73/23 90/9 108/8 referenced [2] 43/7 87/13 referred [3] 13/16 83/24 85/1 Referring [1] 86/7 regard [4] 119/2 131/16 132/19 134/10 regarding [7] 9/13 37/21 48/19 95/16 118/16 122/14 122/20 regards [1] 36/8 regular [3] 70/8 84/16 93/20 rehash [1] 124/21 reject [1] 69/2 relative [1] 140/13 relatively [1] 74/4 release [1] 27/13 released [1] 7/24 relevance [2] 101/16 123/23	relevant [4] 15/12 52/8 56/11 56/11 223 reliable [6] 27/25 34/14 34/17 34/18 34/19 56/6 relief [3] 5/4 124/17 130/23 relying [1] 55/15 Remain [1] 58/21 remained [1] 26/21 remains [1] 52/9 remember [29] 22/22 24/11 24/12 28/14 32/15 45/11 45/14 45/16 56/17 63/25 64/7 64/10 64/20 64/20 64/22 66/9 68/3 68/4 73/17 74/15 75/3 76/24 82/9 90/13 91/3 99/1 109/19 114/19 116/3 repeat [1] 52/6 reply [2] 36/7 124/14 report [23] 2/15 2/22 7/19 15/12 18/7 18/20 22/14 33/12 36/3 36/4 36/17 49/8 75/14 78/18 99/12 116/15 117/12 117/13 118/5 120/4 120/5 120/10 120/11 reporter [10] 1/25 11/13 96/19 98/8 98/10 105/22 106/2 140/1 140/8 140/23 reports [7] 33/22 35/14 35/16 56/22 106/17 114/3 123/22 represent [5] 11/25 14/5 31/12 75/24 81/6 representation [2] 12/9 131/3 represented [4] 4/8 4/21 12/17 136/4 reprimand [1] 44/12 reputation [1] 10/14 request [15] 13/25 14/21 15/4 19/23 45/9 72/24 81/17 82/11 116/11 122/22 123/2 123/7 123/16 123/25 124/1 requested [12] 45/11 45/12 45/12 108/10 110/7 110/10 110/23 118/18 119/1 123/13 129/25 130/3 requesting [2] 73/22 84/10 requests [8] 14/16 107/12 116/25 117/3 119/5 123/19 124/17 130/23 required [1] 112/6 resourceful [1] 51/25 respect [2] 114/21 114/25 respond [2] 7/11 8/19 responsibility [1] 69/16 rest [4] 85/15 85/17 85/21 122/9 restaurant [2] 106/18 106/21 result [1] 35/13 resulted [1] 110/19 return [2] 53/19 99/9 review [4] 16/5 56/9 119/14 119/19 reviewed [1] 93/2 reviewing [1] 122/10 Rhodes [2] 4/8 11/17 RICHLAND [6] 1/2 4/6 4/9 11/23 140/5 140/14 rid [5] 52/1 126/18 126/20 126/21 126/22 ride [1] 57/21 rides [1] 45/4 ridiculous [1] 31/5 rights [2] 71/10 91/25 risk [3] 6/24 135/11 137/20 road [2] 28/25 126/3 robbed [2] 32/6 86/14 robber [1] 126/11 robbery [61] 4/7 4/14 5/10 5/11 6/3 6/4 6/22 6/23 7/21 7/22 8/1 9/20 10/6 10/7 10/8 10/22 12/1 12/3 13/5 13/12 22/11 23/1 24/5 25/12 25/14 31/24 32/2 40/3 40/15 40/17 41/9 43/4 49/8 53/24 63/19 64/18 65/9 68/20 69/7 74/20 76/14 78/21 95/17 105/19 107/8 109/15 122/5
Q quantifying [1] 64/21 Quest [3] 63/18 91/5 127/17 question [27] 10/4 15/23 23/21 23/22 31/3 34/16 36/10 53/12 55/19 56/5 66/19 68/23 69/5 80/11 80/14 81/8 82/19 93/1 111/11 112/9 112/9 112/13 112/25 113/2 113/8 116/20 138/22 questioned [1] 138/10 questions [12] 14/20 24/25 30/13 43/20 72/13 72/18 92/6 94/14 113/12 119/22 119/24 124/9 quick [2] 102/10 124/22 quicker [1] 14/15 quickly [1] 15/18 quit [2] 69/1 85/2 quotation [1] 43/12 quote [1] 91/16 quote/unquote [1] 91/16 quoting [1] 132/22	R raise [1] 130/12	

R robbery... [14] 124/24 124/25 125/3 126/9 126/12 127/2 127/10 128/7 128/9 128/16 128/17 135/4 135/6 136/7 robbing [1] 23/10 ROBERT [2] 1/18 1/19 rock [2] 72/4 72/6 rock-solid [2] 72/4 72/6 rode [1] 18/22 role [1] 72/2 roll [3] 93/7 93/23 135/7 room [2] 51/14 98/12 roommates [1] 98/11 roughly [3] 10/21 64/17 126/8 roundabout [1] 127/25 route [5] 65/2 99/15 106/21 127/16 127/18 routine [1] 117/1 routinely [2] 123/12 123/21 RPR [2] 1/24 140/23 rule [6] 15/2 18/14 18/15 18/16 49/13 73/1 ruling [1] 138/25 run [4] 63/25 74/6 137/20 139/7 running [3] 98/16 114/24 132/8	search [10] 2/23 50/19 51/9 52/22 53/1 53/3 63/18 114/4 114/12 114/12 searched [2] 51/13 51/17 searching [1] 96/8 seat [1] 104/4 seated [1] 58/22 second [5] 22/4 53/15 81/12 82/14 97/3 secretary [1] 123/6 security [1] 20/13 seeing [1] 31/14 seem [4] 28/25 89/9 89/11 92/23 seemed [16] 22/23 23/3 24/14 24/22 26/13 26/13 26/16 26/18 29/1 69/17 71/24 72/9 72/10 83/2 92/18 93/13 seems [2] 55/2 136/8 seen [11] 30/18 30/18 30/19 30/20 63/22 77/19 99/18 102/15 109/12 118/22 120/18 self [1] 35/10 self-establishing [1] 35/10 sell [1] 99/25 selling [1] 26/5 send [9] 45/13 76/6 76/9 76/11 76/12 122/21 123/4 123/5 123/12 sending [1] 131/24 sends [1] 123/6 sense [4] 114/13 125/22 128/5 128/10 sent [8] 12/8 16/16 19/10 20/12 49/1 72/15 116/13 121/4 sentence [4] 4/25 26/21 29/2 85/3 sentence [4] 4/16 6/4 26/24 93/19 sentences [1] 89/21 separate [1] 73/11 September [6] 1/9 4/1 4/11 4/20 92/2 140/15 September 16th [1] 92/2 September 22nd [1] 4/11 September 23rd [1] 4/20 sequence [1] 98/19 serious [1] 104/21 seriously [1] 29/20 servants [1] 85/6 serve [4] 6/9 121/9 135/5 138/14 served [5] 26/25 71/8 78/3 79/2 120/23 service [1] 4/17 services' [1] 10/18 set [13] 4/24 13/11 27/12 32/2 32/3 32/6 32/9 66/8 131/15 132/2 132/5 132/15 133/18 set-up [1] 32/9 setting [3] 37/25 119/8 133/12 seven [9] 4/17 7/23 7/25 43/11 43/12 43/12 43/13 43/13 135/6 several [4] 5/18 19/11 67/24 136/25 severity [1] 125/24 shakes [1] 136/2 shape [1] 128/16 shared [3] 9/12 98/7 98/10 she [35] 34/12 40/10 59/8 59/10 78/12 78/19 81/7 81/8 81/9 96/2 96/5 96/6 96/7 96/8 96/9 96/9 98/15 98/16 98/17 99/25 100/2 100/4 100/4 100/4 100/6 100/8 100/13 101/8 101/12 117/2 117/6 117/6 117/10 117/10 117/12 she's [1] 37/24 sheet [1] 7/18 shifted [2] 24/23 26/8 shirt [2] 27/23 53/20 shoes [1] 122/12 Shop [1] 50/5 short [4] 6/10 36/6 37/16 126/8 shorter [1] 29/2	shortest [2] 99/14 99/15 shortly [1] 125/24 should [12] 15/16 36/8 65/24 68/24 70/17 72/7 78/14 81/15 88/3 112/17 129/22 129/23 shoved [1] 90/10 show [22] 20/18 25/16 27/18 28/7 28/11 29/4 29/10 29/12 29/17 31/5 35/3 62/7 70/17 81/23 86/8 103/18 108/22 118/7 120/3 129/11 134/8 136/12 show-up [11] 25/16 27/18 28/7 28/11 29/4 29/10 29/12 29/17 31/5 86/8 136/12 showed [4] 20/25 54/21 101/22 109/5 showing [1] 115/6 shows [5] 7/20 90/24 126/5 126/19 127/1 side [2] 120/22 126/2 sign [4] 75/23 88/6 92/8 118/21 signed [4] 92/2 121/5 139/8 139/9 significance [1] 16/19 simple [4] 12/20 77/17 104/18 104/19 simplistic [1] 56/7 simply [5] 10/15 36/12 44/23 68/18 129/6 since [6] 17/2 34/25 35/1 77/13 89/7 132/23 sisters [2] 100/17 101/2 sit [2] 64/13 84/3 sitting [4] 64/22 65/11 96/20 104/6 situation [8] 5/12 6/3 90/14 96/6 96/10 122/15 133/4 135/14 six [5] 21/14 28/18 137/7 137/12 138/15 Skip [1] 34/10 Skyler [1] 31/22 sleep [1] 99/11 small [1] 35/23 smart [1] 51/25 snitch [1] 68/2 soft [2] 96/22 106/1 soft-spoken [2] 96/22 106/1 sole [1] 94/11 Solicitor [13] 14/13 14/24 15/8 15/9 48/15 64/14 66/15 74/15 74/16 78/18 81/2 115/11 130/7 Solicitor's [12] 14/10 15/11 15/17 16/20 16/21 16/24 19/16 20/2 49/13 74/7 87/4 129/4 Solicitors [1] 45/14 solid [2] 72/4 72/6 solidifying [1] 56/24 somebody [4] 18/21 18/21 66/5 78/7 someone [9] 32/3 61/11 65/8 65/16 91/11 91/15 117/5 120/8 120/9 something [42] 15/9 15/14 15/22 18/3 24/3 31/1 31/18 33/7 35/3 45/2 49/1 49/10 50/24 52/4 54/9 55/16 62/6 62/18 68/9 69/17 72/24 76/25 78/7 84/7 84/14 85/9 89/13 90/5 90/11 90/13 99/21 104/14 104/21 117/20 119/14 121/7 123/9 123/11 123/12 123/16 123/24 128/11 sometimes [14] 16/13 19/20 19/20 19/21 28/17 68/2 71/14 74/7 74/9 74/10 76/11 76/12 89/16 89/17 somewhat [1] 24/16 somewhere [1] 21/11 soon [4] 12/3 12/10 12/16 105/1 sorry [16] 20/23 23/21 25/7 30/14 30/15 39/3 42/4 47/2 50/11 61/22 66/25 68/23 70/13 93/1 98/8 123/10 sort [1] 18/5
S safe [2] 76/3 76/5 said [68] 6/18 10/22 12/23 15/21 20/14 22/13 24/3 24/4 25/24 26/14 27/1 29/10 32/4 39/21 41/2 42/9 43/9 44/8 47/3 59/22 60/20 61/24 63/2 63/4 64/24 65/1 65/22 72/5 72/8 74/13 75/13 76/22 81/2 81/7 84/17 86/12 86/14 86/17 88/13 92/8 92/17 96/7 98/15 98/17 98/20 100/23 102/21 105/19 105/20 106/5 111/15 111/23 112/19 112/20 113/4 113/19 118/22 125/5 125/16 126/7 127/12 127/12 132/10 132/11 133/8 134/16 136/17 138/7 same [14] 10/21 46/1 46/16 60/10 64/1 66/7 66/17 80/13 93/19 99/20 119/17 127/3 132/8 132/8 sandbagged [2] 110/18 112/7 sandbagging [2] 108/7 108/7 sat [3] 64/15 104/8 107/15 satisfied [1] 138/11 save [5] 16/14 55/19 76/7 76/10 81/23 saved [1] 16/17 saw [7] 20/5 24/16 113/21 114/10 114/24 118/20 136/16 say [43] 6/18 6/20 19/15 24/14 25/19 26/2 27/1 28/2 28/20 32/12 35/17 35/22 39/24 43/7 46/5 46/5 52/5 52/20 54/2 55/2 55/12 56/16 62/4 63/2 63/7 68/12 71/6 71/15 77/8 80/18 83/15 88/3 97/11 105/3 106/3 108/17 111/21 112/6 126/11 132/17 133/13 138/5 138/8 saying [43] 7/2 7/14 21/5 21/10 21/23 23/2 23/2 32/17 41/8 41/9 44/12 50/13 54/16 63/10 65/3 75/16 77/3 77/4 77/20 81/3 81/10 83/16 84/11 84/18 93/10 104/14 104/18 105/14 105/21 106/17 106/23 107/2 107/11 110/21 111/2 112/3 112/10 114/4 114/23 128/18 129/11 135/8 135/9 SCDC [1] 7/18 scenario [1] 137/15 scene [11] 42/18 44/25 63/19 64/18 64/19 65/8 65/9 65/14 66/3 66/6 126/13 school [1] 96/16		

S		T	225
sought [1] 124/17	stressed [1] 136/13	Tab [1] 38/11	
sound [2] 6/23 39/20	stressful [1] 105/25	Tab 3 [1] 38/11	
sounds [3] 22/18 27/13 93/25	stretch [1] 58/19	tail [1] 110/17	
sources [2] 77/20 130/4	STRICKLAND [14] 1/18 2/3 2/6 2/10	taken [8] 9/23 9/24 13/24 21/15 51/14	
SOUTH [10] 1/1 1/7 1/9 18/14 95/20	4/21 5/2 37/11 53/5 87/13 131/14	55/20 88/1 127/18	
95/24 132/20 140/4 140/9 140/14	131/15 132/3 133/11 134/16	takes [3] 5/20 6/15 36/17	
span [2] 133/17 133/18	Strickland's [1] 37/8	taking [5] 40/19 47/17 66/5 127/2	
speak [1] 96/18	Strickler [2] 12/6 110/13	135/15	
speaking [2] 74/15 113/22	strict [1] 12/13	talk [22] 7/1 7/14 8/11 8/12 14/9 19/8	
speaks [4] 42/6 42/7 44/4 48/18	strike [2] 5/13 5/13	26/9 27/15 45/7 72/11 89/10 89/11	
specific [2] 70/25 107/6	strikes [1] 5/14	96/24 97/24 103/11 105/2 106/1 106/1	
specifically [7] 61/3 73/13 75/3 83/7	strong [9] 4/14 6/4 6/22 7/22 21/23	110/11 129/1 129/13 138/23	
107/3 123/11 123/16	21/25 25/14 28/5 135/6	talked [9] 7/5 20/10 25/2 27/14 59/15	
specifics [1] 64/20	strongest [1] 91/20	107/15 120/16 122/1 129/10	
specified [1] 75/6	strongly [3] 129/6 134/17 134/18	talking [13] 14/19 21/18 35/23 51/23	
speculative [1] 23/18	stuff [15] 21/9 29/23 35/14 45/12 45/13	59/2 63/3 64/23 81/19 89/10 97/21	
speculatively [1] 51/23	64/9 69/6 69/7 77/15 84/3 84/3 84/5	106/3 114/9 136/8	
speed [1] 21/2	85/9 86/5 105/13	talks [5] 61/16 61/17 83/3 83/8 83/9	
spent [3] 41/4 65/18 131/22	stuttering [1] 80/20	tangible [1] 136/5	
spoken [2] 96/22 106/1	subject [2] 41/15 59/7	tank [1] 102/19	
spot [2] 92/7 92/7	subjected [1] 6/21	tape [19] 37/5 37/13 39/22 44/14 73/13	
squad [2] 30/3 30/4	subjecting [1] 137/10	75/25 78/12 78/12 78/20 78/20 78/22	
Square [2] 104/11 104/22	submit [2] 131/20 139/5	84/13 86/15 87/11 87/15 120/17 120/20	
stack [4] 11/10 31/10 70/18 118/11	submitted [1] 74/1	121/8 134/8	
stage [1] 66/15	subpoena [6] 3/6 78/4 79/2 79/9 82/17	tapes [10] 74/2 82/18 83/1 84/17 88/7	
stalled [3] 110/19 110/20 112/6	89/19	88/9 129/13 133/22 133/24 134/5	
stamp [2] 31/23 41/9	subpoenaed [1] 20/12	task [1] 21/4	
stamped [1] 34/12	subpoenas [1] 14/17	technically [3] 35/6 105/19 108/13	
stance [1] 119/17	subsequent [1] 83/7	telephone [2] 50/5 106/20	
stand [6] 11/8 28/1 47/16 95/10 113/4	substantial [2] 25/13 26/15	telling [7] 67/2 67/3 67/4 100/22 114/2	
115/17	successful [1] 6/12	134/15 135/13	
standard [5] 117/7 120/13 122/21 123/2	such [6] 9/14 10/17 15/5 61/1 105/20	tells [3] 67/5 125/22 128/6	
131/1	128/22	ten [25] 5/11 5/12 8/1 8/2 8/6 21/1 25/12	
stands [3] 131/19 134/10 135/17	sudden [1] 72/7	34/21 34/24 35/1 35/22 40/7 40/7 40/9	
stapled [1] 70/20	Suds [46] 13/6 13/9 22/10 22/25 23/6	40/9 40/12 40/13 40/16 40/23 41/15	
start [3] 43/22 107/25 123/1	23/15 23/22 23/25 24/21 45/10 65/3	113/19 125/5 126/14 137/11 137/21	
starting [2] 5/7 80/19	73/14 76/1 78/20 78/22 83/14 83/15	term [1] 4/6	
starts [2] 49/23 122/24	83/18 85/6 85/12 88/20 90/1 91/2 97/21	Terrence [10] 18/6 18/8 18/21 18/22	
State's [2] 27/15 125/10	97/25 98/14 98/23 99/1 99/7 99/9 99/13	18/23 22/13 56/18 88/20 116/10 116/15	
stated [5] 8/20 60/19 65/25 94/18	99/16 99/16 100/3 101/22 101/23 102/3	terrible [3] 6/3 21/24 128/4	
112/24	118/16 118/17 121/3 121/16 125/9	test [3] 65/10 65/11 138/18	
statement [20] 25/24 54/23 55/15 57/25	126/14 127/15 127/19 128/1	testified [9] 11/18 95/13 101/21 111/20	
59/2 59/14 60/7 60/8 60/8 62/5 62/9	sufficient [1] 133/10	113/16 115/20 119/6 119/13 130/8	
70/21 72/14 84/25 86/12 89/9 90/5 90/8	suggestive [1] 28/21	testify [9] 11/6 35/21 41/11 86/22 87/10	
125/4 125/16	summaries [2] 59/22 60/1	90/15 95/8 101/24 115/15	
statements [28] 2/25 9/23 13/20 13/23	summary [2] 124/22 130/19	testifying [1] 42/5	
13/24 19/11 21/10 54/2 54/4 54/16 55/6	Sumter [1] 96/5	testimony [16] 10/2 20/2 26/6 62/24 86/9	
55/20 55/24 56/2 56/9 56/13 59/16	super [1] 80/22	87/18 89/5 97/2 102/2 115/25 117/15	
59/23 60/5 60/12 61/15 88/1 90/1	supplement [1] 7/19	120/18 126/19 131/19 133/8 135/22	
101/11 112/22 113/4 114/22 125/13	supports [1] 129/20	testing [1] 65/16	
states [2] 34/20 42/14	supposed [4] 54/7 54/8 118/7 134/11	thank [14] 57/11 58/17 80/19 94/15	
statistics [1] 52/12	Supreme [1] 132/21	115/4 115/23 118/4 124/7 124/10 131/9	
stay [1] 96/4	sure [42] 4/23 5/5 7/19 14/23 23/7 24/17	131/10 135/23 138/20 139/12	
step [3] 58/18 115/3 124/11	27/1 27/22 30/8 32/16 37/10 43/10 48/9	that [767]	
steps [4] 60/16 95/2 115/5 124/12	50/23 53/8 56/11 57/10 59/17 62/6 62/9	that's [31] 13/22 13/22 14/1 14/6 16/4	
stipulate [1] 18/13	66/24 67/23 72/18 74/5 74/12 74/19	19/13 26/23 34/2 34/13 46/8 48/14	
stipulated [3] 17/24 17/25 52/25	75/9 82/25 85/13 86/16 87/18 87/25	48/17 48/21 57/25 62/13 74/22 78/5	
stipulation [3] 37/25 46/1 46/17	88/14 88/18 94/19 96/19 107/9 116/9	78/5 81/20 85/24 86/14 86/19 86/21	
stipulations [1] 9/13	125/17 129/2 135/10 139/11	87/16 89/1 94/14 101/24 111/9 113/12	
stone [2] 133/19 136/3	surprised [2] 89/6 89/21	115/7 124/6	
stood [3] 30/6 107/16 130/25	surveillance [2] 82/17 83/9	their [6] 15/13 15/15 51/22 60/11 71/16	
stop [4] 100/1 105/22 107/9 113/8	suspect [10] 29/11 29/12 41/19 42/15	90/5	
stopped [1] 85/2	51/18 52/11 53/23 122/5 127/15 127/21	themselves [1] 90/22	
stopwatch [1] 66/7	suspect's [1] 130/18	theory [3] 50/13 50/15 112/10	
street [12] 14/12 24/21 43/1 43/4 97/20	suspended [1] 4/17	there [146]	
97/23 98/13 99/10 109/18 109/19	suspicion [1] 128/9	thereafter [1] 128/8	
109/20 110/5	swear [3] 11/5 95/7 115/14	therefore [1] 76/3	
streets [1] 42/21	swell [1] 103/5	they [137] 5/19 6/1 6/19 6/20 6/20 6/21	
strength [2] 21/22 56/8	swing [2] 103/4 103/4	9/16 11/13 14/15 14/24 15/6 15/14	
strengths [3] 25/6 62/22 109/8	sworn [3] 11/18 95/13 115/20	15/14 15/19 15/23 15/24 15/25 16/2	
	swung [1] 59/11		
	system [4] 17/21 29/4 31/7 35/15		

T they... [119] 18/24 20/4 22/15 22/16 28/9 28/9 28/17 29/15 29/19 31/7 31/7 33/23 34/8 34/17 35/22 36/11 37/7 40/22 41/25 42/3 42/23 43/21 46/3 46/5 46/5 50/16 51/9 51/13 51/16 51/19 51/24 52/1 52/9 52/9 52/15 53/3 53/7 53/12 55/16 56/4 56/5 59/10 60/1 60/9 60/11 64/25 70/20 71/6 71/15 71/16 73/11 73/11 74/5 74/10 74/13 74/13 75/1 76/6 76/9 76/11 76/12 77/14 78/10 87/3 88/17 89/25 89/25 93/8 98/12 99/21 100/22 100/23 100/25 103/7 103/7 104/2 104/3 104/3 104/5 105/13 105/17 107/2 113/16 113/19 113/21 113/22 113/23 114/3 114/4 114/5 114/6 114/7 114/10 114/11 114/12 121/23 122/19 123/5 123/9 123/12 123/22 123/23 124/3 126/2 129/5 129/11 129/16 129/25 130/2 130/4 132/7 133/19 133/20 133/24 134/6 134/7 134/11 134/13 137/22 thing [18] 24/23 25/14 25/15 27/25 39/23 55/1 63/12 68/6 71/15 72/5 76/10 78/16 82/1 103/8 104/10 122/24 125/14 134/15 things [36] 14/17 15/5 25/20 26/18 28/14 34/3 37/23 38/19 41/10 49/12 55/3 61/8 61/14 66/20 69/1 72/25 77/1 78/10 84/1 84/9 84/21 87/6 87/25 88/18 97/3 107/10 108/10 109/16 111/25 112/4 112/4 112/5 128/4 132/7 133/13 135/16 think [107] 15/10 15/19 17/11 19/1 21/23 21/24 22/20 22/22 23/7 23/16 23/16 23/19 23/24 24/7 24/23 27/9 28/18 28/21 29/5 29/12 29/15 30/6 30/8 30/15 31/4 31/8 32/11 32/17 34/16 35/9 35/9 35/16 36/2 37/7 39/17 40/18 41/25 42/10 44/3 47/12 49/2 52/3 52/7 52/8 54/21 56/4 56/5 56/6 56/15 56/23 61/3 62/10 63/2 63/4 63/6 63/8 63/21 64/7 65/15 67/6 68/3 68/4 69/25 71/23 72/4 72/5 72/16 74/18 74/25 75/4 75/9 75/22 76/5 78/18 78/22 80/22 81/6 81/7 81/11 82/3 86/5 86/15 89/24 90/17 92/21 92/22 93/15 93/22 93/24 94/3 96/15 99/4 102/25 110/13 114/19 117/14 117/20 119/19 120/19 120/24 132/2 132/15 134/15 134/25 135/9 135/13 135/19 thinking [2] 75/22 104/13 third [1] 46/23 this [212] Thomas [13] 1/4 4/3 11/25 22/10 24/13 57/18 59/16 62/19 72/6 92/17 95/4 95/12 116/3 Thompson [15] 18/7 18/8 18/21 18/23 18/23 56/19 56/25 57/17 60/16 62/5 88/20 89/3 90/10 116/10 116/16 Thompson's [2] 62/8 62/8 thorough [1] 131/21 though [4] 26/6 57/9 68/5 108/16 thought [14] 9/6 22/13 25/5 25/6 36/23 56/17 66/10 68/13 69/25 77/23 84/12 84/13 90/17 105/9 thoughts [1] 106/9 three [9] 4/17 12/13 44/21 89/21 98/7 98/12 103/6 133/25 134/1 through [21] 9/4 11/11 12/7 14/17 16/6 21/13 56/15 57/4 58/13 60/5 65/3 70/19	81/24 92/5 94/17 106/16 108/19 110/8 130/3 132/3 138/1 thrown [4] 30/17 30/20 31/4 31/6 timeframe [5] 22/8 40/6 126/25 128/3 133/14 timeline [21] 20/24 22/23 50/12 64/14 64/16 67/12 67/15 68/13 108/22 113/6 113/7 119/8 119/19 124/22 126/8 126/10 127/23 131/23 132/2 132/5 132/5 timelines [3] 16/25 16/25 136/3 timely [1] 4/20 times [16] 7/9 32/13 32/20 32/21 34/11 34/11 34/14 41/11 44/21 54/15 67/25 74/1 132/8 132/15 133/18 136/25 today [23] 4/21 7/16 10/2 10/24 20/2 38/22 63/2 65/11 77/10 78/13 79/4 92/25 105/20 112/17 112/18 112/20 115/24 118/21 118/22 122/10 128/24 131/11 139/1 together [5] 60/4 70/20 73/12 83/8 119/7 told [31] 12/24 13/8 24/24 25/5 26/6 26/20 27/9 27/10 68/5 68/15 69/16 83/6 93/5 99/23 99/24 100/13 105/13 106/6 106/8 107/3 107/16 107/21 108/5 111/14 111/18 111/22 111/24 112/14 113/10 129/24 131/4 Tom [1] 4/21 too [11] 5/8 15/3 35/7 42/11 74/2 98/17 99/24 100/14 104/17 126/23 135/10 took [23] 9/19 9/20 10/3 10/7 10/9 21/18 32/5 41/8 41/10 43/4 44/25 61/16 85/14 97/7 102/8 119/13 124/25 125/12 126/6 132/11 135/3 135/6 136/7 top [3] 39/11 102/19 122/11 tossed [4] 29/18 29/20 29/24 133/19 touch [1] 131/16 touched [1] 86/5 tough [1] 137/7 track [3] 66/2 66/17 125/20 tracked [1] 66/9 transcript [27] 1/6 2/17 2/19 5/23 27/5 28/13 37/6 37/7 37/12 38/8 38/10 38/20 39/17 39/21 40/4 41/1 43/23 44/20 44/23 46/16 80/5 111/22 122/2 136/17 138/3 139/25 140/11 transit [1] 126/18 transmitted [2] 120/3 130/8 transportation [1] 10/18 transported [1] 125/25 Trapp [2] 117/2 117/9 travel [1] 127/15 trial [43] 24/1 25/4 25/18 29/5 29/24 29/25 31/2 65/21 66/1 66/2 66/8 66/10 66/17 66/21 67/9 67/11 68/11 68/16 78/15 83/21 86/22 87/19 88/4 89/5 90/15 90/23 92/20 92/24 94/6 94/12 106/12 107/23 109/2 109/4 109/9 111/1 134/1 134/2 134/6 134/7 135/11 136/22 140/12 trials [1] 35/21 tried [7] 20/12 20/15 20/17 29/3 30/15 89/18 132/3 trouble [1] 96/21 true [5] 4/5 35/4 83/25 91/9 140/11 true-bill [1] 4/5 trump [1] 107/4 truth [3] 18/18 57/7 129/16 truthfully [3] 11/6 95/8 115/15 try [6] 14/17 86/4 99/11 119/3 128/22 137/25 trying [24] 7/1 7/14 8/12 29/8 44/9 44/13	55/11 55/19 62/12 62/15 62/17 67/1 72/11 75/21 77/17 81/4 96/11 98/19 99/7 101/19 103/8 109/2 120/20 131/23 turn [10] 15/14 15/24 16/3 53/18 70/23 73/9 80/9 81/18 90/23 118/18 turned [10] 15/12 43/7 43/15 77/5 77/8 78/18 78/19 116/12 116/23 127/13 turns [3] 40/10 43/17 117/3 twice [1] 85/15 two-prong [1] 138/18 type [1] 76/10 typed [1] 36/23 types [5] 26/18 30/9 33/23 87/5 131/2 typewritten [1] 130/1 typical [1] 52/13 typically [1] 25/21 typing [1] 34/12 U ultimately [1] 21/21 uncovered [1] 112/1 under [18] 5/23 7/25 14/21 16/3 18/14 27/8 30/1 31/6 46/1 69/11 92/15 93/11 93/20 102/19 132/19 134/20 137/13 137/14 underlined [2] 82/16 83/13 understand [26] 41/3 41/4 44/3 45/3 46/2 50/19 54/9 59/24 61/22 61/22 66/24 66/25 67/1 67/14 69/10 69/11 75/17 78/6 78/6 93/13 96/9 106/5 107/10 108/16 122/23 125/10 understanding [17] 4/24 32/12 33/21 34/2 34/13 77/24 86/23 86/24 87/2 87/7 88/23 89/3 89/10 103/22 103/22 106/16 107/20 understood [5] 41/13 44/11 87/18 92/21 92/22 undertake [1] 14/2 undertook [1] 131/21 unfortunately [1] 30/12 unknown [1] 50/4 unless [5] 15/7 15/8 15/12 15/21 85/19 unquote [1] 91/16 unreliable [1] 56/3 until [4] 26/22 88/2 106/8 121/3 upon [1] 36/9 ups [1] 28/16 use [4] 66/6 82/3 93/25 120/14 used [6] 17/21 51/24 62/10 73/6 93/24 134/6 uses [1] 73/8 using [2] 105/17 125/21 usually [5] 14/15 49/12 51/22 51/25 124/1 utilize [1] 9/7 V vague [1] 83/2 valid [1] 29/16 variety [2] 55/2 55/3 various [1] 77/20 vehemently [1] 93/17 versus [5] 5/24 13/2 44/25 80/23 80/24 very [24] 8/19 30/21 36/6 44/15 44/22 73/15 89/7 91/2 91/10 93/8 105/24 115/11 115/11 117/25 126/7 126/8 126/25 129/6 131/21 132/22 132/22 135/13 138/20 139/12 via [1] 50/5 vicious [1] 61/17 victim's [2] 86/7 125/4 victims [1] 87/5
--	--	---

V	whole [8] 5/23 29/4 77/11 94/3 109/4 109/10 109/10 109/24
view [1] 110/9	whom [1] 14/4
viewing [1] 137/15	why [16] 10/12 37/1 53/8 62/19 77/22 78/1 84/22 85/5 88/5 88/6 101/20 120/10 134/20 135/2 137/13 137/13
viewpoint [1] 69/3	will [38] 5/1 6/8 6/11 9/15 10/2 10/5 11/12 11/15 28/17 28/17 33/11 54/5 58/12 58/19 68/1 71/15 71/16 72/8 72/18 72/18 74/9 75/24 79/9 80/18 94/21 95/3 111/18 117/24 118/10 123/14 131/16 132/21 138/1 138/15 138/21 139/3 139/4 139/7
violent [1] 5/15	willing [1] 89/4
visit [1] 71/17	win [3] 29/5 137/19 137/19
voluntarily [1] 69/13	windows [1] 35/23
voluntary [2] 5/5 94/5	winning [1] 7/15
volunteer [1] 100/20	wipe [1] 78/10
W	wise [1] 138/23
wait [3] 14/19 61/12 74/2	wish [2] 8/16 71/9
waive [2] 91/22 94/6	withheld [1] 76/19
wake [1] 99/11	within [9] 12/5 12/6 12/13 12/14 63/9 91/4 105/3 133/16 133/17
walk [8] 35/19 41/16 64/18 64/22 65/8 65/13 108/19 136/6	without [7] 4/14 5/17 5/19 18/6 18/8 18/25 111/2
walked [1] 66/4	witnesses [9] 2/1 14/10 25/19 68/15 89/25 115/8 124/13 129/14 129/14
Walker [1] 133/6	women [1] 90/21
walking [1] 64/2	won [1] 6/18
wanted [31] 10/22 24/17 25/11 28/25 44/24 65/20 65/22 65/22 67/16 67/17 68/9 74/4 74/12 74/20 74/23 75/7 75/13 83/16 84/21 88/13 89/12 96/6 100/11 102/24 102/25 106/19 111/17 116/8 119/3 137/9 139/11	won't [2] 21/8 92/10
wanting [1] 51/21	word [5] 58/6 62/10 112/11 112/12 130/9
wants [1] 138/24	words [4] 43/22 59/10 93/24 93/25
warrant [8] 2/23 50/19 51/9 52/22 53/1 53/3 114/4 114/12	work [10] 20/17 28/16 35/15 96/25 97/1 99/12 116/24 123/4 129/2 131/23
was [303]	worked [4] 17/25 77/12 103/1 109/16
Washington [3] 131/14 131/15 133/11	working [4] 20/16 90/21 100/4 131/22
wasn't [13] 35/18 53/25 53/25 72/11 75/10 75/10 92/7 96/7 99/25 109/24 113/19 126/20 133/25	works [7] 78/1 78/9 85/7 100/4 100/5 100/6 121/6
watch [2] 102/8 125/21	world [2] 67/21 128/6
Wave [1] 76/10	worn [2] 51/18 80/13
way [22] 18/9 19/1 22/22 25/2 37/13 40/23 57/2 60/10 66/18 76/25 94/8 113/8 114/6 114/13 116/21 119/1 121/6 124/21 127/14 127/25 128/6 128/23	worth [1] 6/24
we [189]	worthy [1] 128/20
we'll [8] 9/16 11/11 19/14 37/15 54/4 69/8 98/18 118/9	wouldn't [17] 6/2 15/10 23/9 59/10 61/8 71/3 79/15 87/8 87/9 87/9 98/17 108/4 108/5 108/8 121/17 124/1 137/22
we're [3] 16/15 51/22 131/12	write [3] 24/16 47/10 59/22
weakness [2] 109/8 109/9	write-up [1] 59/22
weaknesses [4] 22/1 25/6 62/22 92/21	written [4] 18/19 139/1 139/3 139/8
weapon [1] 51/23	wrong [4] 75/25 76/17 84/21 103/8
wearing [18] 41/20 52/1 52/11 53/13 53/23 53/23 53/25 54/1 54/3 54/17 54/23 55/3 86/18 122/4 122/6 126/20 130/16 130/17	wrote [5] 24/13 24/14 24/14 69/19 75/13
Wednesday [1] 79/7	Y
week [4] 5/18 12/6 12/14 105/3	yeah [7] 28/24 28/24 75/15 87/16 91/25 93/4 104/13
weekends [1] 99/19	year [14] 4/25 5/1 6/16 8/3 22/3 71/22 72/16 85/14 109/23 109/24 109/25 133/7 134/2 134/2
welding [1] 96/16	years [15] 4/17 4/18 17/10 17/11 22/4 27/3 27/12 30/16 56/18 75/2 76/24 78/8 96/9 135/6 137/11
weren't [1] 134/11	years' [1] 4/16
what [181]	yellow [2] 37/23 70/5
whatever [8] 8/11 18/15 27/6 42/1 66/7 74/13 90/24 104/16	yesterday [1] 78/4
whenever [1] 28/18	yet [3] 77/8 127/20 129/24
whereas [3] 107/5 108/13 110/10	York [1] 50/5
WHEREUPON [17] 19/4 21/15 33/2 33/17 38/3 38/14 46/9 46/19 49/3 49/18 51/5 57/13 79/10 79/18 80/1 118/12 139/13	you [833]
whether [15] 18/9 18/23 24/20 27/23 29/15 29/22 29/22 56/5 67/16 67/17 94/5 94/11 116/11 136/25 138/24	You'd [1] 53/4
while [11] 6/8 6/15 7/21 26/11 27/19 37/24 55/11 58/6 122/1 135/8 138/14	you'll [3] 6/10 9/18 27/22
white [3] 70/4 70/5 70/7	you're [2] 5/14 5/14
	you've [6] 25/22 25/22 28/6 30/10 66/4 137/1

yours [2] 81/23 97/10
yourself [2] 137/10 139/5

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Thomas Brooks, #295842,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-07395

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2013 JAN -7 PM 12:12
JEANETTE W. McBRIDE
C.C.P. & G.S. CLERK

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 23, 2011, and amended August 23, 2012. An evidentiary hearing into the matter was convened on Friday, September 14, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Robert T. Strickland, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former plea counsel, J. Rhodes Bailey, Esquire (hereafter "counsel"), and the prosecuting solicitor in the matter, Dolly Justice Garfield, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the May 2009 term of the Richland County Grand Jury for Armed Robbery (2009-GS-40-01154). On September 22, 2010, Applicant

appeared with counsel before the Honorable R. Lawton McIntosh where he pled guilty pursuant to North Carolina v. Alford¹ to the lesser included Strong Arm Robbery and was sentenced to twelve (12) years imprisonment, suspended to service of seven (7) years imprisonment and three (3) years probation. No direct appeal was filed.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) 1st Amendment
 - (b) 14th Amendment
 - (c) Involuntary guilty plea
 - (d) Ineffective assistance of counsel
 - (e) Prosecutorial misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) Counsel failed to investigate adequately
 - (b) Counsel failed to properly challenge unduly suggestive identification
 - (c) Counsel failed to properly investigate and establish Petitioner's alibi
 - (d) Counsel failed to properly advise Petitioner as to the weaknesses of the case against him. Had Petitioner been properly advised, he would not have agreed to the plea.
 - (e) In her Order dated April 15, 2009, Judge Michelle Childs ordered that the 911 tapes regarding the arrest of the Petitioner by the Richland County Sheriff's Department and all 911 calls made in reference to the case on February 6, 2009 be preserved and placed into evidence. The Petitioner maintains the State violated this Order by only preserving the 911 call for the robbery for which he was charged and not the 911 calls for the altercation that is the basis for his alibi.
 - (f) The file of the Richland County Solicitor's Office included a medical record of a T. Thompson, the individual involved in the altercation with the Petitioner that is the basis for Petitioner's alibi. This medical record establishes the time of the altercation between the Petitioner and T. Thompson and supports the Petitioner's alibi. On information and belief, this exculpatory evidence was not made available to the Public Defender after the Defendant's request that the Solicitor produce all evidence potentially favorable to the Defendant under Brady v. Maryland, 373 U.S. 83 (1963).

¹ North Carolina v. Alford, 400 U.S. 91, S.Ct. 160, 27 L.Ed.2d 162 (1970).

- (g) At the plea hearing, the Assistant Solicitor responded to a question posed by the court as follows:

Question: But was the ID – was the description of the clothing worn by the defendant the same as what he had on the night in question?

Answer: Yes, sir. Yes, sir.

According to the victim's statement, the suspect was reportedly wearing a black hoodie and dark pants. At the time of his arrest, the Petitioner was wearing a grey t-shirt and blue jeans.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Investigate and Establish Alibi Defense

Applicant alleges counsel was ineffective for failing to sufficiently investigate and establish an alibi for the armed robbery charge which Applicant contends would have shown he could not have been the robbery suspect.

Factual Background

As a brief background, the current robbery charge challenged stems from the February 5, 2009, robbery of a Pop's Pizza delivery driver in downtown Columbia.² While attempting to deliver a pizza to [REDACTED] off of Millwood Avenue, James Franklin League (hereafter "victim") was robbed of thirty-nine (\$39) dollars in cash at gun point by a suspect he would later

² The times set forth in this factual summary are taken from the record before this Court, but do not represent a factual determination or specific finding as to the accuracy of the times set forth therein or the harmonization of the times set forth therein. This Court would specifically note that many of the times listed in the record are either vague estimations from witnesses, or otherwise come from various agencies which have in no way been shown to operate under a uniform, synchronized clock.

describe to police as a six-foot three-inch (6'3") or six-foot four-inch (6'4") black male wearing a black "hoodie" sweatshirt and dark jeans. After the suspect fled the scene, victim drove roughly one and a third (1.38) miles back to the Pop's Pizza restaurant where a co-worker was able to call the police to report the robbery. According to the records and audiotape introduced at the evidentiary hearing, that phone call was placed at roughly 10:54 pm; during the call, victim's coworker relayed to the dispatcher the robbery had occurred "probably" ten to fifteen minutes prior.

At 10:59 or 11:00 pm, a 911 phone call was placed from Suds Laundromat at [REDACTED], alleging a black male wearing a gray tank top was involved in a physical altercation in the parking lot. Upon their arrival at the laundromat at roughly 11:05 pm, officers observed Applicant run into his home directly across the street from Suds [REDACTED] [REDACTED]. Applicant was detained by officers at that time. Because Applicant fit the description of the suspect in the earlier armed robbery and was detailed in such close proximity to the robbery, victim was driven to the arrest location by investigators. Upon viewing Applicant, victim identified Applicant as the man who had robbed him, specifically saying "after seeing [Applicant's] face, [he] was 100% sure [Applicant] was the guy".

Specific Findings of Fact and Conclusions of Law

At the PCR hearing, Applicant testified he was at his house on Millwood Avenue directly across the street from Suds on the night in question, where he drank nine (9) beers. He stated he walked across the street to Suds at "about 10:50" pm that night, but was unable to purchase a beer from the bartender because of his intoxication. He went on to say he gave some cash to a girl outside of Suds to have her purchase a beer for him, and after doing so she failed to return Applicant's change to him. After exchanging words with her, Applicant said, he and a man she

was with named Terrance Thompson got into a physical altercation. Applicant testified the fight occurred at about 10:55 pm. Applicant stated he relayed all of this information to counsel during their pretrial meetings and asked counsel to prepare an alibi defense for trial based on this series of events at Suds. Applicant said counsel ultimately told him the alibi did not "check out". Applicant conceded he told the judge at the plea hearing under oath he was entering the plea freely and voluntarily, and counsel had done everything necessary to prepare the case, but testified it was counsel's "continued coercion" and failure to properly prepare the alibi defense that made him enter the plea rather than proceed to trial.

Counsel testified he was appointed to represent Applicant on February 11, 2009, when he was assigned to Applicant's representation by Chief Public Defender Doug Strickler. He s met with Applicant for the first time "within three to five days" of his appointment, at which time Applicant told counsel he was not guilty of the crime. Counsel recalled Applicant saying he had been involved in a fight at Suds on the night of the robbery, which counsel said he then undertook an extensive investigation into. Counsel said his private investigator (McNeily) spoke with several potential witnesses of the Suds fight in an effort to help create a timeline of the night. Several of those witness statements were introduced into the record by Applicant at the PCR hearing for this Court's review. Counsel also noted he had law enforcement's incident reports from the robbery and the subsequent Suds fight, as well as the audio tape of the 911 phone call placed by victim from Pop's Pizza. Counsel obtained a copy of Terrance Thompson's EMS report showing Thompson was transported to the hospital after being injured in a fight with Applicant at Suds. Counsel said he was able to review all of these items and the entirety of the discovery file, which included victim's written statement to law enforcement, with Applicant during their meetings.

Counsel said he reviewed and noted the discrepancies in the clothing worn by the suspect of the robbery as detailed by victim and the clothes in which Applicant was arrested later that night. He also testified he was well aware of law enforcement's failure to obtain any evidence linking Applicant to the robbery from Applicant's house upon execution of the search warrant. These issues would have helped in "driving home" the existence of reasonable doubt at trial, counsel said, but were not insurmountable for the prosecution as robbers generally "get rid" of evidence linking them to a robbery after it is complete. Counsel said he was very familiar with the area in which the robbery and subsequent fight occurred, and said he mapped the locations of each incident to help further develop an accurate timeline. Counsel also said he filed a notice of alibi with the state in anticipation of potentially using the defense at trial.

Counsel went on to say after reviewing the EMS report, statements from multiple witnesses, Applicant's work/job application records, 911 audio tape, incident reports, victim's statement to police and other relevant evidence, he was able to produce a detailed timeline of the evening to help evaluate the strength of Applicant's alibi. He said he and the prosecuting solicitor were in frequent contact during the development of the case, during which they "debated the timeline" constantly as to whether Applicant could have committed the robbery and been in the subsequent fight at Suds. Counsel explicitly testified that after conducting the aforementioned investigation, he did not believe the fight with Thompson at Suds served as a "particularly strong" alibi for Applicant. While the timeline was "very close", counsel said, Applicant lived directly across the street from Suds and one-half (1/2) of a mile from the scene of the robbery making it entirely possible for Applicant to have been in both places at the times alleged by the state. He also noted repeated inconsistencies and unreliability in the timeline with

the witnesses statements, and stated even Applicant initially said he was at Suds at 8:00 pm and only changed his timing later once more information was uncovered during their investigation.

Ultimately, counsel said, there were enough discrepancies in the facts and timeline for the state to make a "convincing case" Applicant had committed the robbery *and* been in the fight at Suds, thereby rendering the alibi defense less than airtight. He also noted it would not have been ideal for the jury to hear Applicant's alibi was based on him having assaulted a female and seriously injured Thompson during a fight, but said he would have gladly gone to trial to present the alibi defense if Applicant had wished to do so. However, counsel said, as the investigation continued, Applicant's conversations slowly shifted from creating an alibi defense to inquiring about potential plea options. In fact, counsel said by the time the plea hearing occurred, Applicant was "pretty adamant" he wanted to enter a guilty plea. Counsel specifically noted he did advise Applicant that by pleading guilty he would be waiving his right to present any alleged alibi defense, which Applicant said he wanted to do.

Based on a thorough review of the record and the testimony presented at the PCR hearing, this Court finds counsel was not ineffective in this regard. First, this Court finds Applicant's testimony as to his whereabouts on the night in question to be not credible. Further, this Court finds counsel's testimony to be very credible. It is clear counsel undertook a diligent, thorough and objectively reasonable investigation into Applicant's alleged alibi defense throughout the course of his representation. Counsel's inability to establish a complete alibi for Applicant was not based on any failure to conduct a meticulous investigation; rather, the existing evidence does not provide a timeline sufficient to cover Applicant's whereabouts at the time of the robbery. Counsel informed Applicant of the inability to create an absolute alibi, but advised Applicant the evidence could still be used to call reasonable doubt into question at trial.

Applicant, having full knowledge of the strengths and weaknesses of his case and having personally reviewed the entirety of the evidence, made the informed and voluntary decision to enter a beneficial guilty plea to a lesser included offense in an effort to avoid a much harsher potential sentence at trial. Applicant readily admitted he believed the state would be able to prove his guilt beyond a reasonable doubt, but was able to maintain his innocence by entering his plea under the standards set forth in North Carolina v. Alford. Applicant has failed to show how counsel's conduct was deficient or otherwise objectively unreasonable in this regard.

Further, this Court finds Applicant has failed to establish resulting prejudice from counsel's alleged deficient performance. Applicant has failed to prove, but for counsel's alleged deficient investigation, a complete alibi defense could have been developed with which Applicant would have insisted on proceeding to trial.

"[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Robbins, 275 S.C. 373, 377, 271 S.E.2d 319, 321 (1980). Further, an alibi which makes it only *less likely* the accused is the guilty party is no alibi. See Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012). Applicant has failed to provide this Court with sufficient evidence to establish a *physical impossibility* that he both committed the robbery *and* was involved in a fight with Terrance Thompson.

First, this Court would note the method through which Applicant sets forth the so-called alibi is entirely unreliable and subject to this Court's skeptical scrutiny. Applicant has attempted to create one, all-inclusive timeline based on the inconsistent temporal approximations of

witnesses/victim as set forth in their statements to law enforcement and a private investigator³, the computer automated records of several state agencies, the incident reports of several different law enforcement officers conducting investigations at differing crime scenes, and the estimated commuting time between two points when traveled by paved road and calculated using an undisclosed "average" walking pace. The times set forth in each of the documents have not been shown to be synchronized with each other in any way to provide a cohesive minute-by-minute timeline. Therefore, the evidence obviously establishes only an approximation of Applicant's alleged movements on the night in question and have been analyzed by this Court accordingly.

Regardless, even if taken as entirely accurate and consistent, Applicant has failed to prove a complete alibi defense existed. According to the recorded 911 phone call from victim placed at 10:54 pm from Pop's Pizza, the robbery occurred "probably ten or fifteen minutes" prior thereto. Interpreting that evidence in the light most favorable to Applicant, the robbery occurred at 10:44 pm. At 10:59 pm, the first 911 phone call is made from Suds alleging a physical altercation is on-going. With this timeline in mind, it is clear Applicant cannot prove physical impossibility of committing both offenses. Even assuming the accuracy of the evidence in the most favorable light to Applicant, there was at least a fifteen (15) minute window for Applicant to commute one-half (½) mile on foot from the robbery location to Suds, discard his sweatshirt and the gun, and enter into an altercation with Thompson's crowd of friends standing in the Suds parking lot. Accordingly, Applicant cannot prove resulting prejudice as there is no complete alibi defense which counsel could have developed based on the evidence.

³ Respondent timely objected to the introduction of the witness statements on grounds of hearsay; therefore, the documents were introduced for the purpose of this Court analyzing the reasonableness of counsel's actions resulting from his review of the statements and not for the truth of the matter asserted in the statements.

Failure to Challenge Unduly Suggestive Identification by Victim

Applicant also alleges counsel was ineffective for failing to challenge victim's identification of him as it was obtained by an unduly suggestive show-up procedure. Upon Applicant's arrest for the Suds fight, victim was driven by Officer Myers to Applicant's location where victim was able to see Applicant sitting in a police car. Victim, upon seeing Applicant's face, identified him as the robbery suspect, saying he was "100% sure" Applicant was the robber.

Counsel testified at the PCR the show-up identification by victim was conducted while Applicant was handcuffed in the back of a police car. Counsel noted such an identification, in his opinion, was "not good" and he would have argued a motion to suppress any identifications "vigorously" at trial had Applicant decided to proceed. Counsel went on to say based on his experience as a public defender in Richland County, it is doubtful such a motion would have been successful at trial as it is rare to suppress such a certain identification, especially in the Richland County circuit courts. He also noted he discussed the potential suppression with Applicant, but said Applicant "did not seem like he wanted to go down that road" because he was more interested in getting a plea offer for a lesser charge carrying a lesser sentence.

This Court finds counsel was not ineffective in this regard. Applicant was fully aware of the ability to challenge the show-up identification through pretrial motion and that he would waive that challenge by pleading guilty. Applicant made the voluntary and informed decision to forego that pretrial challenge in order to enter an advantageous guilty plea to a lesser offense. It was that decision that foreclosed counsel's ability to present such a motion to the court. Therefore, counsel's performance in failing to challenge the identification was not objectively unreasonable.

Further, this Court finds no resulting prejudice as there is no reasonable probability that had such a motion been presented, it would have been successful in suppressing victim's identification. "Notwithstanding the inherent suggestiveness and general disfavoring of one-on-one show-up identifications, they may be proper where they occur shortly after the alleged crime, near the scene of the crime, as the witness's memory is still fresh, where the suspect has not had time to alter his looks or dispose of evidence, and the show-up may expedite the release of innocent suspects and enable the police to determine whether to continue searching." State v. Govan, 372 S.C. 552, 558 – 559, 643 S.E.2d 92, 95 (Ct. App. 2007). "The closer in time and place to the scene of the crime, the less objectionable a showup is." State v. Mansfield, 343 S.C. 66, 78, 538 S.E.2d 257, 263 (Ct. App. 2000). Additionally, a "showup may be proper even though the police refer to the suspect as a suspect, and even though the suspect is handcuffed or is in the presence of police." Id.

Victim's identification of Applicant occurred within forty-five minutes of the robbery and roughly half (½) of a mile from the location it occurred. During the robbery, victim spent several minutes within just a few feet of Applicant and was able to observe Applicant's fully exposed face without any mask or covering. Victim provided a brief physical description of the suspect saying he was a 6'3" or 6'4" black male wearing a black "hoodie" sweatshirt and jeans. At the time of his arrest, Applicant was wearing jeans and a tank top, and he is listed in the booking report as 6'3" tall. Further, victim explicitly told officers in his written statement "after seeing [Applicant's] face" at the show-up, he "was 100% sure it was the guy who held [him] up." Based on the above, this Court can find no reasonable probability that, had counsel presented a pretrial motion to suppress the out-of-court identification of Applicant based on an unduly suggestive show-up procedure, the motion would have been successful.

Finally, even if the motion were successful in suppressing victim's out-of-court identification of Applicant, there is still a high likelihood victim would have been able to make an in-court identification of Applicant during the course of his testimony at trial. An "in-court identification is admissible if the state can prove by clear and convincing evidence that the identification is reliable based on information independent of the out-of-court procedure." Govan, *supra* at 559, 643 S.E.2d at 95 – 96. Therefore, if the trial court were to find victim's identification reliable based on the several factors set forth in State v. Brown⁴, victim would still have been allowed to identify Applicant at trial before the jury.

For the foregoing reasons, this Court finds Applicant has failed to prove counsel was ineffective in this regard. Therefore, this allegation is denied.

Brady Violation

Applicant asserts the state committed a Brady violation in failing to disclose a copy of the EMS report for Terrance Thompson issued hours after the robbery took place. Applicant contends the report is not contained in counsel's paper file from the public defender's office and, therefore, it must not have been turned over. He alleges the report goes to bolster his alibi defense as it proves Thompson was taken to the hospital following a fight at Suds Laundromat on the night in question, which Applicant alleges he was involved in.

Counsel testified that in his investigation and preparation of the alibi defense for Applicant, he sought to obtain Thompson's EMS records and contacted the prosecuting solicitor about them. Counsel noted under Brady, only evidence "in the possession of or known by the prosecution" must be turned over, and in this particular case the solicitor likely didn't have any reason to know Terrance Thompson was involved in any way in Applicant's case. Counsel went on to say after their discussion about the report, the solicitor was able to obtain a copy of the

⁴ State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (Cl. App. 2003).

report from EMS, which she promptly turned over to counsel. Counsel said while there may not currently be a hard copy of the report in his old paper file from the public defender's office, he often saved documents that were e-mailed to him on the hard drive of his computer, which was what he did with this report.

The prosecuting solicitor, Dolly Justice Garfield (hereafter "solicitor"), testified at the PCR hearing that she remembered discussing the EMS report with counsel and turning a copy of it over to the defense via e-mail once she received it. The solicitor said the same was noted on the "discovery request list" kept in her file, which explicitly showed the report was e-mailed to counsel on May 25, 2009. A copy of that list was made part of the record in this case.

This Court finds Applicant has failed to demonstrate any alleged Brady violation on the part of the state as the credible testimonies of counsel and the solicitor indicate the report was turned over to counsel as soon as it was received by the state. In fact, this Court would not the solicitor acted in an extremely professional and admirable fashion by readily assisting counsel's efforts to obtain the report upon the matter being brought to her attention. "An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching." Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (S.C. 2006), citing Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995). Applicant has failed to establish each of the four criteria set forth above, most notably that the State suppressed the evidence. Accordingly, this allegation is denied and dismissed.

Failure to Preserve Audio of 911 Phone Calls

Applicant alleges the state impermissibly violated the terms of Judge Childs's order by allowing the audio tape of the 911 phone calls to be destroyed prior to the PCR hearing.

Specifically, Applicant contends despite an order to preserve audio tapes having been issued, the tape related to the Suds Laundromat incident is not contained in counsel's defense file and is no longer available through the City of Columbia's Central Dispatch. Therefore, Applicant contends, the state violated the terms of the order.

Counsel testified that prior to his involvement on Applicant's case, he had run into situations where he was unable to obtain tapes of 911 phone calls when requested as they had already been destroyed by Central Dispatch. He noted it is Central Dispatch's policy to destroy their audio tapes from 911 calls sixty (60) days after their recording of not otherwise ordered to be preserved. Because of this experience, counsel said, he filed an *ex parte* motion on Applicant's behalf to preserve the tapes past the sixty (60) day time limit to ensure their availability at trial if need be. According to the records before this Court, the Honorable J. Michelle Childs issued an *ex parte* order on April 15, 2009, granting that motion. Counsel said he didn't recall requesting the 911 audio from the Suds fight in that motion, but likely didn't know enough about that incident at the time he filed the motion to have intended to preserve those tapes. Counsel noted, however, that if he had wanted the Suds tape preserved in addition to the Pop's Pizza 911 call, he would have specifically noted such in his motion. Counsel agreed the Suds 911 tape did not appear to be in his old paper file, but again said he saved many items he received in discovery to the hard drive of his computer during his time with the public defender's office, which potentially could explain their absence had he ever received them.

On cross-examination, counsel noted his intention in filing the motion was only to preserve the audio tapes of the 911 call for the robbery to assist in his preparation for trial and for their potential use at trial, but said he never intended to have the tapes preserved indefinitely for Applicant's use on direct appeal or collateral attack years later.

The solicitor testified she was never asked to produce the 911 audio tape from the Suds altercation prior to trial and noted she had, in fact, never seen Judge Childs's April 2009 order to preserve the robbery tape until reviewing it at the PCR hearing, as it was issued *ex parte*. She went on to say it is the City of Columbia's duty to ensure such tapes are preserved and the solicitor's office plays no part in those issues. In fact, the solicitor said, 911 audio tapes are rarely part of the discovery materials the solicitor's office receives from law enforcement so she likely never had possession of any audio tapes in this case until counsel obtained them.

This Court finds this allegation to be without merit. First, it is clear counsel's intention in filing the motion for preservation, as well as Judge Childs's intention in issuing the order to preserve the tapes, was limited in scope to Applicant's pending criminal prosecution. Applicant's contention that the audio tapes should have been indefinitely preserved by Central Dispatch for his use in the current collateral action is erroneous. The order issued by Judge Childs specifically found the tapes were to be preserved because they were "material and necessary to the Defense" in the criminal case. Counsel credibly testified he filed the motion to preserve the tapes to assist in the preparation of Applicant's defense and to be available for use at trial. Upon Applicant's entry of the guilty plea and conclusion of the matter in General Sessions court, preservation of the tapes was no longer necessary, nor required. Therefore, this court finds no impropriety in the City of Columbia's destruction of the tapes.

Further, and perhaps more importantly, Applicant is in *actual possession* of a copy of the tape ordered to be preserved. Applicant was able to uncover a copy of a tape in counsel's defense file containing victim's 911 phone call from Pop's Pizza following the robbery. It is the audio from the calls placed later that night from Suds which Applicant seeks to obtain, which were not the basis of the order issued by Judge Childs. Counsel credibly testified he had no reason to

request those tapes be preserved at the time he filed the motion; further, Judge Childs's order makes no mention of the Suds phone calls or otherwise signifies those tapes were to be preserved. In fact, the order simply mandated "911 tapes regarding the arrest of [Applicant] by the Richland County Sheriff's Department and all 911 calls made in reference to the aforementioned case...be preserved". The phone calls from Suds were made in reference to an on-going physical altercation in the parking lot and in no way were made "in reference" to the robbery which served as the exclusive basis of Applicant's 2009 criminal case. Accordingly, the audio tapes from the 911 calls placed from Suds were not part of the order to preserve and their current unavailability is no violation of Judge Childs order. Additionally, this Court finds Applicant failed to prove that the state acted improperly in any way. Accordingly, this contention must be denied.

Failure to Object to Solicitor's Remarks During Plea

Finally, Applicant contends counsel was ineffective for failing to object or otherwise correct a statement during the plea hearing regarding the accuracy of victim's description of the suspect to Applicant's appearance.

Specifically, during the plea hearing, Judge McIntosh inquired whether "the description of the clothing worn by [Applicant] the same as what he had on the night in question", to which the solicitor responded, "[y]es, sir". Immediately thereafter, counsel was given the opportunity to speak to the court at which time he challenged those statements from the solicitor, saying he "would disagree a little bit" as "there might have been some discrepancies" in the clothing described and the clothing worn by Applicant upon his arrest.

Based on the record, this Court finds counsel was objectively reasonable in correcting the solicitor's alleged misstatement as he did. Therefore, counsel was not deficient in his

performance in this regard. Further, this Court finds Applicant cannot prove resulting prejudice under Strickland v. Washington based on the alleged misstatement. Applicant entered his guilty plea under the mandates of North Carolina v. Alford, thereby maintaining his ability to contest the state's version of facts and his actual innocence on the charges. Whether his clothing matched that of the suspect was of little consequence to his decision to plead guilty; rather, Applicant accepted the benefit of the state's plea offer to avoid encountering a much harsher sentence on an Armed Robbery charge. Therefore, it cannot be said that but-for counsel's failure to object to this discrepancy, Applicant would not have pled but rather would have insisted on proceeding to trial. Additionally, Applicant has failed to prove that but-for the solicitor's alleged misstatement, there is a reasonable likelihood the sentence imposed would have been lighter. Accordingly, this allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The

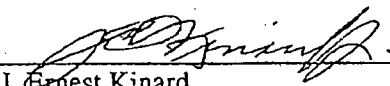
Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant 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 (1991), an 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 the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed **with prejudice**; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of Dec, 2012.


J. Ernest Kinard
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)

)

2

IN THE COURT OF COMMON PLEAS

Thomas Reginald Brooks
(Inmate No. 295842),

Applicant,

vs.

State of South Carolina,

Respondent.

3

3

;

3

2

2

—

—

3

;

1

MOTION TO ALTER
OR AMEND JUDGMENT

JEANETTE W. H. MCBRIDE
D.C.P. & G.S.

2013 JAN 17 PM 4:10

RICHLAND COUNTY
FILED

TO: THE DEFENDANT AND ITS ATTORNEY, ROBERT D. CORNEY, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the Applicant, Thomas Reginald Brooks, by and through his undersigned counsel, moves before the Honorable J. Ernest Kinard, Jr., presiding judge of the Richland County Court of Common Pleas, for an Order altering or amending the judgment entered on January 7, 2013 denying his Application for Post-Conviction Relief. This motion is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and on the grounds set forth below. This motion will be heard at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, on a date and at a time to be set by the court.

BACKGROUND

Thomas Reginald Brooks was true bill indicted at the May 2009 term of the Richland County Grand Jury for Armed Robbery (2009-GS-40-01154). On September 22, 2010, he appeared with his appointed counsel before the Honorable R. Lawton McIntosh, where he

entered a plea pursuant to North Carolina v. Alford¹ to Strong Arm Robbery. He was sentenced to twelve (12) years imprisonment, suspended to service of seven (7) years imprisonment and three (3) years probation.

Applicant timely filed an Application for Post-Conviction Relief. His Petition was last amended on August 23, 2012. Applicant asserted several grounds for post-conviction relief, including ineffective assistance of counsel and prosecutorial misconduct.

A hearing was held on September 14, 2012, with the Honorable J. Ernest Kinard, Jr. presiding. An Order dismissing the PCR petition was filed on January 7, 2013. The Applicant respectfully seeks alteration or amendment of the court's ruling and Order.

I. Applicant Respectfully Submits that the Court Did Not Rule on the Issue of the Solicitor's Statements at the Plea Hearing.

"Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." Elam v. S. Carolina Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004). South Carolina courts have stated that

[o]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam, 361 S.C. at 24, 602 S.E.2d at 780 (emphasis in original).

The Application for Post-Conviction Relief cites various grounds upon which the Applicant believed he was entitled to relief, as well as the facts supporting these grounds:

¹ 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (U.S.N.C. 1970).

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

- (a) 1st Amendment
- (b) 14th Amendment
- (c) Involuntary guilty plea
- (d) Ineffective assistance of counsel
- (e) Prosecutorial misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Counsel failed to investigate adequately
- (b) Counsel failed to properly challenge unduly suggestive identification
- (c) Counsel failed to properly investigate and establish Petitioner's alibi
- (d) Counsel failed to properly advise Petitioner as to the weaknesses of the case against him. Had Petitioner been properly advised, he would not have agreed to the plea.
- (e) In her Order dated April 15, 2009, Judge Michelle Childs ordered that the 911 tapes regarding the arrest of the Petitioner by the Richland County Sheriff's Department and all 911 calls made in reference to the case on February 6, 2009 be preserved and placed into evidence. The Petitioner maintains the State violated this Order by only preserving the 911 call for the robbery for which he was charged and not the 911 calls for the altercation that is the basis for his alibi.
- (f) The file of the Richland County Solicitor's Office included a medical record of a T. Thompson, the individual involved in the altercation with the Petitioner that is the basis for Petitioner's alibi. This medical record establishes the time of the altercation between the Petitioner and T. Thompson and supports the Petitioner's alibi. On information and belief, this exculpatory evidence was not made available to the Public Defender after the Defendant's request that the Solicitor produce all evidence potentially favorable to the Defendant under Brady v. Maryland, 373 U.S. 83 (1963).

One issue that was addressed both in the Application and at the hearing was not ruled upon in the court's Order. In his Application, the Applicant stated the following:

- (g) At the plea hearing, the Assistant Solicitor responded to a question posed by the court as follows:

Question: But was the ID – was the description of the clothing worn by the defendant the same as what he had on the night in question?

Answer: Yes, sir. Yes, sir.

According to the victim's statement, the suspect was reportedly wearing a black hoodie and dark pants. At the time of his arrest, the Petitioner was wearing a grey t-shirt and blue jeans.

The Order of Dismissal does not address this issue, and therefore it has not been preserved.

"[A]ll parties should raise all necessary issues and arguments to the lower court and attempt to obtain a ruling." Ion, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000). Appellate courts in this state do not recognize the "plain error rule," under which a court in certain circumstances may consider and rectify an error not raised below by the party. Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002). "If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review." Elam, 361 S.C. at 25, 602 S.E.2d at 780.

Even though an order may appear to resolve a case and all of the issues it encompasses, it must address the disputed issue specifically. Flavor-Inn, Inc. v. NCNB Nat. Bank of S. Carolina, 309 S.C. 508, 511, 424 S.E.2d 534, 536 (Ct. App. 1992). Though the Order discusses the discrepancies in the clothing identification, it does so only in the context of Applicant's counsel failing to object or otherwise correct the Prosecuting Solicitor's statement. The Order also

addresses prosecutorial misconduct by the Prosecuting Solicitor, but only in the context of a Brady violation, and the State's failure to preserve 911 tapes. Neither of these conclusively serves as a ruling on the specific issue presented – the statements made at the plea hearing by the Prosecuting Solicitor relating to the description of clothing the suspect wore, which contradict statements made by the witness and other evidence in the record. As such, the Applicant respectfully requests a ruling on this issue.

II. Applicant Respectfully Submits that the Court Did Not Address Several Key Fact Questions Relating to His Alibi.

The Order also does not address several key facts established by the Applicant during the hearing and their significance to his alibi.

- A. The suspect in the robbery of the pizza deliveryman fled the scene in the opposite direction of "Suds", the location of the fight that is the Applicant's alibi. This fact further reduces the window of time for an individual to commit the robbery and be involved in the altercation at Suds.
- B. The Order does not address all of the discrepancies as to the description of the pants worn by the robbery suspect prior to the show-up ID of the Applicant (pants vs. jeans; black vs. blue). These discrepancies further reduce the window of time for an individual to commit the robbery and be involved in the altercation at Suds. If the same individual was involved in both, he would not only have been required to dispose of the hoodie the robbery suspect was wearing, but also change and dispose of his pants.

III. Applicant Respectfully Submits that the Order Contains An Error of Law.

The Applicant also respectfully submits that the Order contains an error of law. The Order states in footnote 3 on page 10 that witness statements were not considered for the truth of the matters asserted and only for the limited purpose of analyzing the reasonableness of counsel's actions. This footnote suggests the Respondent's hearsay objection as to the admissibility of those records and statements was sustained. However, the testimony at the

hearing established that the statements fell within one or more exceptions to the hearsay rule established by Rule 803 of the South Carolina Rules of Evidence, including statements for the purpose of medical diagnosis and records of a regularly conducted activity.

CONCLUSION

Based on the foregoing cited evidence before the court, the pleadings in this action, all applicable statutes and case authority, the applicable Rules of Civil Procedure, any such other evidence and authority as the court may find acceptable, and viewing the evidence and all reasonable inferences to be drawn therefrom, the Applicant respectfully requests this court's Order altering and amending its previous Order to specifically consider the questions, issues, arguments, and grounds presented by the Applicant and make a ruling thereon, and in the alternative, for such other and further relief as this court deems reasonable and proper.

This motion addresses only matters appropriate for consideration under Rule 59(e) of the South Carolina Rules of Civil Procedure; namely, issues that may have been misunderstood, not fully considered, or not ruled upon by the court. This motion does not address the specific grounds for an appeal of the Order. All such grounds are expressly reserved.

The undersigned counsel certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that upon information and belief there is no duty of consultation for a Motion to Alter or Amend Judgment, and if required a consultation would serve no useful purpose. A consultation with opposing counsel was nevertheless attempted but could not be timely held.

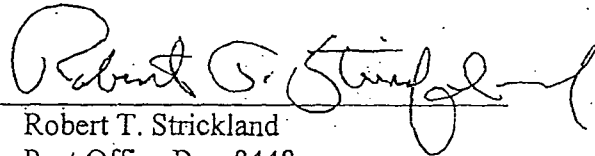
SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE TO MOTION TO ALTER OR AMEND JUDGMENT

Thomas R. Brooks vs. State of South Carolina

BARNES, ALFORD, STORK & JOHNSON, LLP

By:



Robert T. Strickland
Post Office Box 8448
Columbia, SC 29202
(803)799-1111

Attorneys for the Applicant

January 17, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Gretta M. Bettinger, an employee of Barnes, Alford, Stork & Johnson, LLP, certify that on January 17, 2013, I served a copy of the below document(s) upon the below person(s) via first class mail, sufficient postage prepaid, with the return address clearly noted.

DOCUMENT(S) SERVED:

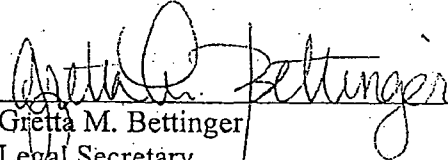
Motion to Alter or Amend Judgment

PERSON(S) SERVED:

Robert D. Corney, Esquire
 Assistant Attorney General
 Post Conviction Relief Section
 S.C. Attorney General's Office
 Post Office Box 11549
 Columbia, SC 29211-1549

The Honorable J. Ernest Kinard, Jr.
 1121 Broad Street—County Courthouse
 Post Office Drawer 1707
 Camden, SC 29021-1707

RICHLAND COUNTY
 FILED
 2013 JAN 17 PM 4:10
 JEANETTE W. McBRIDE
 C.C.P. & G.S.


 Gretta M. Bettinger
 Legal Secretary
 Barnes, Alford, Stork & Johnson, L.L.P.
 Post Office Box 8448
 Columbia, SC 29202-8448

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Thomas Reginald Brooks, #295842,

Applicant,

vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

2011-CP-40-07395

) ORDER DENYING RULE 59(e) SCRC
) MOTION TO ALTER OR AMEND
)

MAY 19 2013

SC Court of Appeals

This matter comes before this Court by way of Rule 59(e), SCRC, Motion to Alter or Amend Judgment filed January 17, 2013. An evidentiary hearing was convened before this Court on September 14, 2012, at the Richland County Courthouse, at which Applicant was present with counsel, Robert T. Strickland, Esquire. The state was represented by Robert D. Corney of the South Carolina Attorney General's Office. By order filed January 7, 2013, this Court denied Applicant's request for relief with prejudice. The current post-hearing motion followed.

After a thorough review of the record and Applicant's contentions, this Court finds the current motion to alter or amend must be denied as the January 7, 2013, order of dismissal previously entered by this Court contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Further, the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Applicant's Rule 59(e), SCRC, motion to alter or amend must be denied.

Therefore, based upon a careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original

BROOKS Thomas #295842 – ORDER DENYING RULE 59(e) (2011-CP-40-07395)

Page 1 of 2

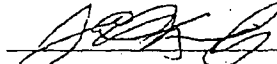
judgment.

It is further noted that this application is from a plea, not a trial, and any alleged discrepancies in identification of clothing, timelines, etc. were minor and did not impact the voluntariness of the plea or demonstrate lawyer incompetence.

IT IS THEREFORE ORDERED:

1. That the Applicant's Rule 59(e) Motion to Alter or Amend is DENIED and
DISMISSED.

AND IT IS SO ORDERED this 11 day of Feb, 2013.


J. ERNEST KINARD, JR.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina

WITNESSES

V(s) DOW - CPD

ARREST WARRANT NUMBER

K373469

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury MAY 14 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-1154

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2009

87

THE STATE
VS.

THOMAS BROOKS

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant: *Thomas Brooks*

I, *Thomas Brooks*, hereby appear in my own proper person and plead guilty to the within indictment dated *May 14, 2009*.

Defendant: *Thomas Brooks*

Witness:
C.C.C. P.S. AND G.S.

[Signature]

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
CLERK OF COURT,
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Thomas Brooks did in Richland County on or about February 5, 2009, commit a robbery by feloniously taking from the person or presence of James League, by means of force or intimidation goods or monies belonging to Pops New York Pizza, being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

W. Bay

WARREN B. GIESE, SOLICITOR