

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Spartanburg County
Honorable Heath P. Taylor, Post-Conviction Relief Judge
Honorable Roger Couch, Trial Judge

Appellate Case No. 2025-000338

DARIUS T. CATHCART, #303063,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

SARAH E. SHIPE
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General
S.C. Bar No. 105228

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3737
ATTORNEYS FOR PETITIONER

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1. them cause he say he waited, it's too -- he waited too late
2 to charge him.

3 He knew about this in 2009. Both -- I done met with
4 Mr. Gray, and I done met with Mr. Lorin Williams, and
5 Derrick Bulsa cause Derrick Bulsa was my, I mean my current
6 prosecutor and it went down to Able Gray. These guys asked
7 me where I get the other guy to incriminate himself by me
8 putting on a, a wire, but my life on the line. I'm not
9 about to sit up here and do that.

10 So, they tell me that's my problem. I mean I don't
11 think I should be wrong -- I mean, I mean I just think that
12 ain't, that ain't fair.

13 THE COURT: Mr. Gray.

14 SOLICITOR GRAY: 2003, public disorderly conduct.

15 2004, obtaining property by false pretenses, possession
16 of Scheduled II illegal substances, receiving stolen goods,
17 breaking into motor vehicles, and petty larceny.

18 2005, two counts of false info, driving under
19 suspension, failure to stop, the third property offense, FTC
20 theft, resisting arrest, habitual traffic offender.

21 2006, unlawful carrying of a weapon.

22 2008, driving under suspension and speeding.

23 THE COURT: The victims wish to be heard?

24 SOLICITOR GRAY: No, sir, Your Honor.

25 THE COURT: All right.

1 All right. Mr. Cathcart, if you'll have a seat.

2 Mr. Brown.

3 MR. BROWN: Your Honor, for the purposes of the record,
4 if I could, again, renew my previous motion to set aside
5 this verdict, ask for a new trial especially in light of
6 what I've now heard today in this courtroom. Mr. Reeder has
7 maintained his innocence from the outset, and apparently
8 there was a question of any third party involvement, and if,
9 unbeknownst to either one of us, Mr. Reeder and myself, if
10 this information was shared at different phases with other
11 elements, with either prior negotiations, or prior
12 information that was shared, that was not shared with us,
13 and I suppose the Court was not, then I think it would be an
14 unfair advantage, number one, in light of the charges that
15 have been laid out for Mr. Reeder as well as Mr. Cathcart.

16 And, of course, to have to go through a trial without
17 all the information being disclosed to us, and I understand
18 if the Court takes a certain position, and, of course, I'll
19 advise Mr. Reeder appropriately in light of that.

20 THE COURT: Well, do you wish to respond to the motion,
21 Mr. Gray?

22 SOLICITOR GRAY: I think it's a false motion. I have
23 been involved with no negotiations with Mr. Cathcart or
24 Mr. Reeder whatsoever. I'm a little disappointed right now
25 of the accusation. But be that as it may, it's a little

1 too, too little too late, Your Honor.

2 THE COURT: All right. Motion denied.

3 MR. BROWN: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. BROWN: Mr. Reeder is 21 years old. He doesn't
6 have any children. He is maintained his high school
7 equivalency, and, in fact, he's attending Spartanburg
8 Community College pursuing a Associates in Business. His
9 mother is here today in support of him. His father has been
10 here. From what I understand he has a very serious
11 breathing situation, and, of course, in light of this
12 verdict, he can not present himself or maintain himself in
13 front of this Court.

14 THE COURT: I understand.

15 MR. BROWN: Your Honor, Mr. Reeder, from the outset,
16 has maintained his innocence. If there was information that
17 was, again, known about a third person, that was rumored to
18 have floated around. However, we never saw any concrete
19 information in that regard, and, in fact, the individual,
20 the individual that he was named, that was also floated
21 around. I think that was known in several corners in this
22 community, and this is just so unfortunate that
23 Mr., Mr. Reeder is standing before this Court facing
24 something that he will admit to the Court that he was simply
25 a victim of based upon the shooting.

1 We understand the jury's verdict, Your Honor. But we'd
2 ask the Court take this factor into consideration.

3 In talking with Mr. Reeder throughout Mr. Reeder being
4 charged, he is maintained his innocence, maintains he didn't
5 have, possess any firearm that evening, and the Court is
6 heard what has been presented in this very courtroom with
7 the lack of any direct testimony implicating Mr. Reeder.

8 In, in addition, Your Honor, understanding what
9 Mr., Mr. Reeder is facing, he would, would ask, have me ask
10 the Court if the Court would consider the minimum type of
11 sentence that could possibly be given in light of all the
12 questionable circumstances behind this. He is, throughout
13 this, stated to me that it was something that he did not
14 participate in. He has no direct knowledge of any ongoing
15 situation with anyone involved in this, and he simply was
16 shot on that evening, and, of course, there's the physical
17 evidence that he was expressing to the Court for purposes of
18 the record to show what occurred, Your Honor.

19 It is indeed a tragic loss of life because, as a young
20 black man myself, to stand here time and time again, this is
21 one of the first times I've ever had to face this during a
22 trial, and on this end of the sentence, to know that there's
23 really a loss of life all the way around. And, of course,
24 we extend our apologies to anything that's happened with the
25 family involving any issue with these young men, and we

1 extend our sincere sympathy to the Geter family.

2 Your Honor, I would ask that you can take these factors
3 into consideration, and, of course, I've advised Mr. Reeder
4 of any additional matters that he would want to take up at
5 some subsequent moment to this.

6 THE COURT: Mr. Reeder, your opportunity to speak to
7 the Court.

8 Is there anything you'd like to say to me?

9 DEFENDANT REEDER: Continue to hold, plead the Fifth,
10 exercise my Fifth Amendment.

11 THE COURT: Okay, sir. Anybody in his family wish to
12 be heard?

13 You just mentioned his mother was here.

14 MR. BROWN: Yes, sir, Your Honor.

15 THE COURT: She can come forward.

16 Ma'am, your name is?

17 MRS. REEDER: Ruth Reeder.

18 THE COURT: Yes, ma'am.

19 MRS. REEDER: This is my son, Rashawn Reeder. He's
20 my -- he's my only child, and I hope, I hope that you don't
21 hold him leaving home detention. I believe him because I
22 have -- our home was shot up twice.

23 THE COURT: Ma'am, I'm not understanding what you're
24 saying. If you'll take a moment. I'd like to hear what you
25 have to say.

1 MRS. REEDER: I said I hope that you don't hold him
2 leaving the home detention against him because our home was
3 shot up twice, and I believe that's the only reason why he
4 left. Because he was going to school and he was really
5 trying. And I'm sorry.

6 THE COURT: Ma'am, I can, I can assure you that has
7 nothing to do with this sentence.

8 MRS. REEDER: And I'm sorry that that Geter boy has
9 lost his life, but he's just my only son, and I just hope
10 you have mercy on him please. That's all I have to say.

11 THE COURT: Mr. Reeder, you indicated to me you wished
12 to exercise your Fifth Amendment rights. You have every
13 right to do so. But I do want to explain to you that the
14 issue before the Court right now is the sentencing that's
15 involved. You have every right to speak with me about that.
16 But, again, if you wish to exercise your Fifth Amendment
17 rights, you have every right to do so. But this is not
18 concerning the merits of the case necessarily. It's more
19 concerning the appropriateness of the sentence.

20 DEFENDANT REEDER: Excuse me, sir. I just wanted to
21 tell my mom to don't cry. That's it. I apologize.

22 THE COURT: Mr. Gray.

23 SOLICITOR GRAY: Thank you, Your Honor.

24 He has one violent offense from 2006, assault and
25 battery with intent to kill.

1 THE COURT: What year was that?

2 SOLICITOR GRAY: 2006.

3 THE COURT: All right. All right. Court's going to be
4 in recess for about ten to fifteen minutes. I'll consider
5 the sentence.

6 Court's in recess.

7 (WHEREUPON, a short recess was taken at this time.)

8 THE COURT: All right. I couldn't agree more with
9 Mr. Brown in that this case, I think, involves loss of life.
10 Certainly the victim's experienced loss of someone's life.
11 And, in this case, we've got two young men, both of whom are
12 in the prime of their life, and they're about to lose a good
13 portion of that life as far as their freedom is concerned.

14 However, the Court is also mindful of the fact that
15 every weekend it seems on the streets of our community these
16 types of dramas are played out for some reason. We have
17 young people with guns settling issues. Sometimes
18 apparently minor or trivial issues. Sometimes matters
19 involving other criminal activity with guns, and they solve
20 it by hurting people. They're destroying lives and
21 property.

22 So, the Court's not unmindful that that occurs in our
23 community as well. It's something that I would hope that
24 our community, at some point in time, would stop and, at
25 some point in time, people who live in the community would

1 reject that, that type of behavior.

2 I'm only dealing, however, with the cases that are in
3 front of me, and the ones that are brought before me. And
4 in this case, a review of the facts and the evidence, I have
5 sat through the trial, I've listened to the matters
6 involved.

7 Mr. Cathcart, I'm aware that you have been involved in
8 the past with criminal activity. Nothing that rose to this
9 level. But certainly involved in matters that did involve
10 the law and the laws involvement. I've tried to take that
11 into consideration as well as consideration concerning your
12 station in life.

13 It's a difficult decision, but the sentence in this
14 case, as to assault and battery with intent to kill, 20
15 years run down concurrently. As to assault with intent to
16 kill, ten years run concurrently. As to murder, the
17 sentence is 45 years run concurrently.

18 Good luck to you, sir.

19 (WHEREUPON, Defendant Cathcart and one of the victims
20 began to argue with each other.)

21 THE COURT: Mr. Gray, if you'll instruct your victim if
22 he wants to stay in the courtroom he'll keep his mouth
23 closed.

24 SOLICITOR GRAY: Yes, sir, Your Honor.

25 THE COURT: Another outburst will be considered as

1 contempt of Court and I'll sentence him as such.

2 Can he stay in the courtroom, Mr. Gray?

3 SOLICITOR GRAY: He says he can.

4 THE COURT: All right. Let's bring in Mr. Reeder.

5 (Defendant Reeder enters the courtroom at this time.)

6 THE COURT: Mr. Reeder, you weren't present for the
7 comments that I had during Mr. Cathcart's sentencing.

8 However, I do want you to know that the Court expressed deep
9 concern over the fact that situations like this seem to
10 happen on a regular basis in our community. It's
11 unfortunate that these things do occur, but it seems almost
12 on a weekly basis that these type of things are going on,
13 and, unfortunately, it appears that, for some, it's become a
14 way of life for some reason.

15 My concern concerning your case centers primarily
16 around your previous conviction for a crime not unlike what
17 you're in front of the Court again on. You're 21 years of
18 age. We're looking at two very serious situations. One
19 that resulted in a previous conviction, and, of course, this
20 is resulted in a conviction of three crimes that are
21 considered to be, at least, two of which are considered to
22 be violent, serious, and most serious offenses. The Court's
23 not unmindful of that, and, of course, has taken that into
24 consideration in your sentencing, and that's probably my
25 primary concern concerning your case.

1 In this case, the Sentence for assault and battery with
2 intent to kill is 20 years run concurrently.

3 The Sentence for assault with intent to kill is ten
4 years run concurrently.

5 The Sentence is imprisonment for murder is imprisonment
6 for your natural life.

7 Good luck to you, sir.

8 The Court is adjourned.

9

10 (WHEREUPON, Court was in recess.)

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C E R T I F I C A T E

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th, 11th, and 12th day of May, 2011.

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

August 1st, 2011



PAMELA E. GREEN, Court Reporter

WITNESSES

Spartanburg County Sheriff's Office

T.K. Tillotson

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE M086590

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Computer

Computer

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: *5-6-10*

VERDICT

Guilty

Foreperson of Petit Jury
Date:

5/12/11

DOCKET NO. -

10-GS-42-2874

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE
vs.

Darius Tavares Cathcart

Indictment for

ASSAULT W/ INTENT TO KILL

SC Code: 17-25-0030

CDR Code: 768

Class MIS-UNC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 10 PM 2:14

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

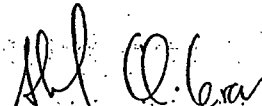
At a Court of General Sessions, convened on MAY 06 2010, the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT WITH INTENT TO KILL

That Darius Tavares Cathcart did in Spartanburg County on or about March 14, 2009, unlawfully attempt to commit a violent injury to the person of another with malice aforethought accompanied by a present ability to complete the act to wit: by shooting into the victim, Dwight Jamar Geter's vehicle, with a gun, all in violation of the common law of the State of South Carolina and §17-25-30 (CL), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Department

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. FINE CARD

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

1086591 7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 10-GS-42-2876

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE
VS.

Darius Tavares Cathcart

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 014
Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 10 PM 2:14

Computer

Computer

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 06 2010

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Darius Tavares Cathcart did in Spartanburg County on or about March 14, 2009 with malice aforethought, commit an unlawful act of violent injury upon the victim, Bryant Miller, by shooting the victim in the neck, causing the victim to require medical attention, all in violation of the laws of the State of South Carolina and Section 16-3-620 of the *Code of Laws of South Carolina*, 1976, as amended.

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



ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Department

*T. R. Tillotson*1. SENTENCE MADE ☒2. REPORT ENDED ☒3. CARD PULLED ☒4. INDEXED ☒

ARREST WARRANT NUMBER

5. CHECKED WARRANTS ☒V086589 6. CHECKED SIGNATURE ☒7. ASSESSMENT AND
FINE CARD MADE ☒8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

*True Bill*Foreperson of Grand Jury
Date: *5/10/10*

VERDICT

*Guilty*Foreperson of Petit Jury
Date: *5/12/11*

DOCKET NO.

10-GS-42-2875

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor***Computer**

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE

v

Darius Tavares Cathcart

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 MAY 10 PM 2:14

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 06 2010, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Darius Tavares Cathcart did in Spartanburg County on or about March 14, 2009, feloniously, willfully, and with malice aforethought, kill Duncan Geter by shooting him with a gun, and he died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

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


ASSISTANT SOLICITOR

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 11th, 2012


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED
JUL 11 2012
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARIUS CATHCART,

APPELLANT

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

<u>State v. Belcher</u> , 385 S.C. 597, 685 S.E.2d 802 (2009)	6
<u>State v. Miller</u> , 397 S.C. 630, 725 S.E.2d 724 (Ct. App. 2012).....	6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in charging the jury that malice may be inferred from the use of a deadly weapon when the judge charged the jury on the law of self defense?

STATEMENT OF THE CASE

In May 2010, the Spartanburg County Grand Jury indicted Cathcart for murder, assault and battery with intent to kill and assault with intent to kill, indictments #2010-GS-42-2874, 2875, 2876. On May 9, 2011, Cathcart, along with his co-defendant, Rashawn Reeder, proceeded to jury trial before the Honorable Roger L. Couch. Attorney Roger Poole represented Cathcart at trial. The jury returned verdicts of guilty as charged. Judge Couch sentenced Cathcart to an aggregate sentence of 45 years. A timely notice of intent to appeal was filed on May 17, 2011. This appeal follows.

ARGUMENT

The trial judge erred in charging the jury that malice may be inferred from the use of a deadly weapon when the judge charged the jury on the law of self defense.

The charges against Cathcart and co-defendant Reeder were the result of a shoot out between Cathcart, Reeder and “Black” in one car and Duncan Geter, Dwight Geter and Bryant Miller in another car. According to Miller, the Geter brothers and an individual named Marty¹ were involved in a fight with Cathcart earlier at Club Dreams. (R. pp. 200-201). According to Miller, after the Geter brothers and Marty were asked to leave Club Dreams they all went to the Waffle House and then to Miller’s house in Lakeview Manor. (R. pp. 201-202). The four then left Lakeview Manor to take Duncan Geter home. (Tr. p. 89, lines 12-24). Miller testified that as they were leaving the neighborhood a car pulled up and started shooting. (R. p. 204, lines 2 – p. 205, lines 1-17). Miller admitted that he had a .40 caliber weapon and returned fire. (R. p. 205, lines 18-23). Appellant Cathcart, co-defendant Reeder, Miller and Duncan Geter were all shot during the incident. Duncan Geter died as a result of his injuries. Dwight Geter initially told police that he also returned fire but at trial he denied having a gun. (R. p. 312, lines 10 – p. 313, 314, lines 1-10).

Cathcart told the police that he, Reeder and their friend Black left Club Dreams, went to the Waffle House, then to the Sonoco and then, as they were getting on I-85, a car started shooting at them on the on ramp. (R. p. 272, lines 17 – p. 273, lines 1-14). A firearms expert testified at trial that, based on the evidence collected, there were at least three guns involved in the incident including two different .40 caliber guns and a 9 mm gun. (R. p. 468, lines 12 – p. 469, lines 1-11).

¹ Dwight Geter testified that they dropped Marty off at the Geter home before the shooting incident took place. (R. p. 293, lines 6-20).

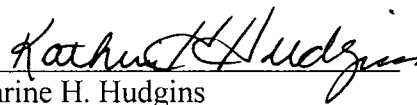
During the charge conference Cathcart and Reeder both requested an instruction on self-defense. (R. p. 506, lines 22 – p. 507, 508; lines 1-25). The State objected. (R. pp. 509-513). The judge charged the jury on the law of self defense. (R. pp. 565-569). In defining malice the judge instructed the jury, “Inferred malice may arise when a deed is done by a person using a deadly weapon.” The judge erred.

In State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009), the South Carolina Supreme Court wrote, “Today we return to the rationale underlying Hopkins, Levelle and Jackson and hold that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon.” In the present case the judge erred in instructing the jury that malice could be inferred from the use of a deadly weapon. The error was not harmless. See State v. Miller, 397 S.C. 630, 725 S.E.2d 724 (Ct. App. 2012).

CONCLUSION

Based on the above argument, the convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of July, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg CountyRoger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARIUS CATHCART,

APPELLANT

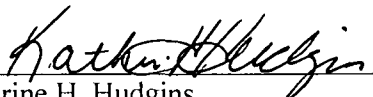
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darius Cathcart states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on May 12, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Darius Cathcart.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

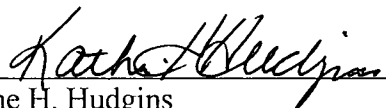
ATTORNEY FOR APPELLANT

This 11th day of July, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 11, 2012


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

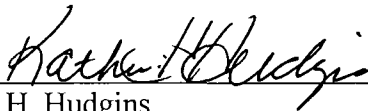
V.

DARIUS CATHCART,

APPELLANT

CERTIFICATE OF SERVICE

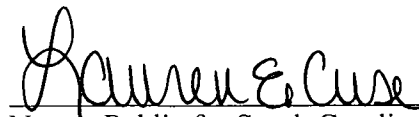
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Record on Appeal has been served on Darius Cathcart, # 303063 at Perry Correctional Institution, this 11th day of July, 2012.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of July, 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Darius Cathcart, Appellant.

Appellate Case No. 2011-192329

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2013-UP-052
Submitted January 2, 2013 – Filed January 30, 2013

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Attorney General Donald J. Zelenka, all of
Columbia; and Solicitor Barry J. Barnette, of
Spartanburg, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

February 21, 2013

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Cathcart, Darius
Lower Court Case No. 2010GS4202874, 2010GS4202875, 2010GS4202876
Appellate Case No. 2011-192329

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Kathrine Haggard Hudgins
Donald J. Zelenka

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

DARIUS CATHCART(#303063))

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-42-3695

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correction Institution
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Rashawn Reeder
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-42-2874
 - (b) 2010-GS-42-2876
 - (c) 2010-GS-42-2875
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 9th, 11th

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Unknkown
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

CLERK OF COURT
SPARTANBURG COUNTY
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custody unlawfully:

- (a) Newly discovered evidence.
- (b) Conflict of interest
- (c) S.C. Code Ann 17-27-45(C)

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

- (a) See attached Memordanum of Law in Suport of Post Conviction Relief

Application

(b) _____

(c) _____

(d) _____

(e) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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CHARLOTTE COUNTY
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CHARLOTTE COUNTY
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M. HOPE BLACKLEY

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No.

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) See attached Memorandum of Law.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

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

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. Roger Poole, Esq. Public Defender's Office.

ii. Kathrine H. Hudings, Appellate Defense

iii. _____

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

i. Trial counsel - Roger Pool, Esq.

ii. Direct Appeal - Kathrine H. Hudings, Esq.

iii. _____

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

I am seeking a new trial or vacate sentences

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

No.

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

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CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 24 AM 10:05
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of SPARTANBURG

VERIFICATION

I, D.C., 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.



SWORN to and subscribed before me this 21
day of August, 2014.

Franklin

(L.S.)

Notary Public

My Commission Expires: 12-16-2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 31 AM 9:42
M. HOPE BLACKLEY

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CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 21 AM 10:05
M. HOPE BLACKLEY

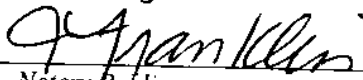
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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


Applicant

SWORN or affirmed to and subscribed before me this
21 day of August, 2014.


Notary Public

My Commission Expires: 12-16-2019

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2015 AUG 31 AM 9:42
M. HOPE BLACKLEY

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CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 24 AM 10:50
M. HOPE BLACKLEY

**IN THE STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS FOR SPARTANBURG COUNTY**

DARIUS CATHCART,	)	Civil No.
	)	
Defendant-Petitioner,	)	
	)	
v.	)	Orig. Crim. No. M086589
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff-Respondent.	)	

**FIRST MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR POST
CONVICTION RELIEF**

NOW COMES, the Defendant, by and through the undersigned counsel, and submits the within memorandum of facts and law in support of the Defendant, Darius Cathcart's petition for relief pursuant to his motion for post conviction relief.

FACTS

The official events giving rise to this case occurred in the early morning hours of March 14, 2009. On that date it was alleged that the Defendant was involved in a late night altercation with Duncan Geter, his brother Dwight Geter and Bryant Miller at an establishment called Club Dreams. Later that evening, after leaving Club Dreams, the Geter brothers and Miller were sitting in a car when they were fired upon by gunmen in another car which had pulled up alongside. The Defendant and his co-defendant Rashawn Reeder ("Reeder"), and another individual named Antwan Mack aka "Black", were in the vehicle that had pulled up alongside the Geter brothers and Miller. The Defendant owned and was driving that vehicle, but was not armed and did not know why Mack directed him to pull up alongside the Geter brothers and Miller. Reeder and Mack started shooting at the vehicle occupied by the Geter brothers and

Miller. Someone returned fire from the vehicle occupied by the Geter brothers and Miller. The Petitioner was completely caught off guard by the shooting, so he threw his arms up over his head in an attempt to shield himself. The Defendant and Reeder were also shot, but neither was seriously injured. Duncan Geter was killed, and Miller suffered a minor grazing wound to his neck. Dwight Geter and Antwan Mack were not hit. The two vehicles eventually disengaged each other and sped off to separate hospitals. The Defendant and Reeder got out of the vehicle at a hospital and Mack left in the Defendant's vehicle. Dwight Geter drove his car to a different hospital so that his brother and Miller could be treated. The Defendant's vehicle was later found abandoned and burned out. The Defendant and Reeder were questioned by the police at the hospital, and ultimately arrested. Miller and Dwight Geter were also questioned by the police shortly after they arrived at the other hospital. The prosecution's case was based upon the theory that the Defendant opened fire on the Geter brothers and Miller in retaliation for the earlier altercation at Club Dreams.

LOWER COURT PROCEEDINGS

In May 2010, the grand jury for Spartanburg County, South Carolina returned an indictment charging the Defendant with murder (2010-GS-42-2874), assault and battery with intent to kill (2010-GS-42-2875), and assault with intent to kill (2010-GS-42-2876). Reeder was charged with similar offenses.

On May 9, 2011, the Defendant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch. The Defendant was tried with his co-defendant, Reeder. While instructing the jury prior to deliberations, the trial judge told the jury that malice may be inferred from the use of a deadly weapon, despite the fact that the judge also

charged the jury on the law of self defense. The Defendant's trial attorney did not object to this instruction regarding inferred malice. Neither the Defendant nor his co-defendant, Reeder testified at trial. The jury ultimately returned guilty verdicts on all counts against both the Defendant and Reeder, and the Defendant was sentenced to an aggregate term of 45 years incarceration.

On May 17, 2011, the Defendant filed a timely notice of appeal. On appeal, the Defendant's appointed attorney filed an *Anders* brief, arguing only that the trial judge erred in charging the jury that malice may be inferred from the use of a deadly weapon when the judge charged the jury on the law of self defense. On January 30, 2013, the South Carolina Court of Appeals issued an unpublished per curiam opinion dismissing the appeal after review pursuant to *Anders v. California*, and granted appellate counsel's motion to be relieved.

During the preliminary pre-trial stage of the case, the Petitioner was represented by David E. Turnipseed, Esq., 128 Magnolia Street, Spartanburg, SC 29304. During subsequent events in the trial court, including the pre-trial stage, the *Jackson v. Denno* hearing, the trial, and sentencing, the Defendant was represented by Roger Poole, Esq., Assistant Public Defender. On appeal, the Defendant was represented by Katherine H. Hudgins, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211-1589.

AFTER DISCOVERED EVIDENCE

As can be seen from the facts set forth hereinabove, the charges against the Defendant which resulted in his conviction arise from a shootout with another vehicle in which one of the occupants of that vehicle died. Both the Defendant and his co-defendant received gun shot

wounds in the shootout; however, it was and is the Defendant's position that he was not involved in the shootout and was compelled by a third part to be present at the time of the shoot out and that this defense was not presented at his trial. The Defendant's statement of facts are as follows.

On the night of March 14, 2009, the Defendant was at Club Dreams off and on until the early morning hours but that there was never any altercation between the Defendant and the Geter brothers or Miller. After the club closed, Reeder asked the Defendant for ride home saying his vehicle was inoperable. The Defendant agreed to give Reeder and Reeder's friend Black a ride home. However, instead of proceeding directly home, the three decided to try to find some marijuana and went to a couple of locations seeking to buy marijuana but were unsuccessful. During this time, the Defendant was driving his vehicle, Reeder was in the passenger seat and Black was in the back seat. In the process of looking for marijuana to purchase, Black spotted another vehicle some distance ahead of the Defendant's vehicle and Black told the Defendant to pull up alongside that vehicle. The vehicle in question was the other vehicle involved in the shootout occupied by the Geter Brothers and Miller. When the Defendant questioned Black about pulling along side the other vehicle, Black produced a pistol and held it to the Defendant's head and told him to "shut up and drive" and to pull along side of the other vehicle. Black also told the Defendant to turn his headlights off as he approached the other vehicle. The Defendant did as he was told. When the Defendant's vehicle pulled alongside the other vehicle, Black and Reeder started shooting at the occupants of the other vehicle. The Defendant did not fire any shots into the other vehicle.

During the shootout, both the Defendant and Reeder were injured and the Defendant

drove his vehicle to the hospital. Just before arriving to the hospital, Black told the Defendant and Reeder to get out about a block from the hospital and walk to the emergency room and Black would take the Defendant's vehicle. The Defendant and Reeder did as they were told and Black left with the Defendant's vehicle. The next day the Defendant's vehicle was found burned out.

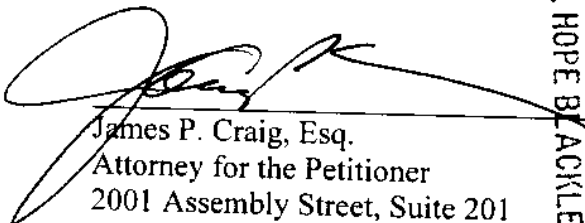
The Defendant told his initial attorney, David Turnipseed, Esq. about this factual scenario and Mr. Turnipseed made arrangements with local law enforcement to have the Defendant interviewed regarding same. Local law enforcement advised the Defendant and Mr. Turnipseed that they were familiar with Black and seemed to believe the Defendant's story. Thereafter, Mr. Turnipseed withdrew as the Defendant's attorney and Roger Poole, Esq. was appointed to represent the Defendant. The Defendant advised Mr. Poole about the factual scenario set forth hereinabove which should be presented as his defense. However, Mr. Poole did not present the defense set forth in the above factual scenario and simply relied upon the requirement of the prosecution to prove beyond a reasonable doubt that the Defendant was guilty. Mr. Poole did not present the Defense that the Defendant was being forced to be present at the shootout under threat of violence from Black.

After the Defendant was sentenced and through investigation conducted by the undersigned and by his private investigator, it has been learned that the Defendant's trial attorney, Roger Poole, previously and possibly during the time of representation of the Defendant, had represented Black. Mr. Poole never advised the Defendant that he represented Black and the Defendant was never aware that his attorney represented, or had represented, Black and/or upon very witness who could have provided exculpatory evidence for the Defendant and/or upon

whom the Defendant was basing his defense.

Mr. Poole's undisclosed representation of Black while representing the Defendant is a patent conflict of interest which the Defendant submits contributed to the Defendant's having been found guilty by a jury. Therefore, the Defendant moves for new trial so he can present the Defendant as set forth in the factual scenario set forth hereinabove and to have an opportunity to call Black as a witness in his defense.

Respectfully submitted,


 James P. Craig, Esq.
 Attorney for the Petitioner
 2001 Assembly Street, Suite 201
 Columbia, South Carolina 29201
 Phone: 803-252-5178
 E-mail: jcraig@craiglawfirm.com

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 AUG 31 AM 9:42
 M. HOPE BLACKLEY

Columbia, South Carolina
 July 21 2015

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 AUG 21 AM 10:05
 M. HOPE BLACKLEY

Craig Law Firm, P.C.*Attorneys & Counselors at Law*

2001 Assembly Street, Suite 201

Columbia, South Carolina 29201

Charlie M. Bru Pender

J. Kevin Craig

Of Counsel: James P. Craig

Phone (803) 252-5178

Fax (803) 252-5283

July 21, 2015

Spartanburg County Clerk of Court
 180 Magnolia Street, Ste. 500
 Spartanburg South Carolina 29303

Re: Darius Cathcart (#303063) v. State of South Carolina
 Application for Post Conviction Relief

Dear Clerk Blackley:

Enclosed please find the Post Conviction Relief Motion to be filed on behalf of Darius Cathcart. You may notice that it has been more than one year since Mr. Cathcart's conviction, but the standard one year statute of limitations does not apply to Mr. Cathcart in this case as the grounds for his PCR motion is after discovered evidence and is therefore, not subject to the one year statute of limitations.

I appreciate your filing the original of this motion and the memorandum in support thereof. I am enclosing in the copies and returning them to me in the enclosed, self addressed stamped envelope.

If you have any questions, please contact the address and/or telephone number listed above or via email at jcraig@craiglawfirm.com or you can ask to speak to my assistant, Shannon Goolsby (sgoolsby@craiglawfirm.com).

With kindest regards, I am,

Very truly yours,

James P. Craig

JPC/sg
 Enclosure
 Cc: Darius Cathcart
 NLPA

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2015 AUG 31 AM 9:43
 M. HOPE BLACKLEY

2015 AUG 21 AM 10:04
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Darius Cathcart,	)	Case No.: 2015-CP-42-3695
S.C.D.C. No. 303063,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina	)	
	)	
Respondent.	)	
	)	
	)	

Respondent, in making its Return to the application for post-conviction relief ("PCR") filed by Darius Cathcart ("Applicant") on August 31, 2015, would respectfully show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2010 term of the Spartanburg County Grand Jury for murder (2010-GS-42-2875), assault and battery with intent to kill (2010-GS-42-2876), and assault with intent to kill (2010-GS-42-2874). David Turnipseed, Esquire, initially represented Applicant, but withdrew before trial. J. Roger Poole, Esquire, thereafter represented Applicant. Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on May 12, 2011. Judge Couch sentenced Applicant to imprisonment for concurrent terms of 4 years for murder, 20 years for assault and battery with intent to kill, and 10 years for assault with intent to kill.

FILED
CLERK OF COURT
2015 NOV 21 AM 10:20
N. HOPE BLACKLEY

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, filed an Anders brief¹ on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Cathcart, Op. No. 2013-UP-052 (S.C. Ct. App. Order dated Jan. 30, 2013). The Remittitur was returned to the circuit court on February 21, 2013.

Current Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Conflict of interest, in that;
 - a. "After the Defendant was sentenced and through investigation conducted by the undersigned and by his private investigator, it has been learned that the Defendant's trial attorney, Roger Poole, previously and possibly during the time of representation of the Defendant, had represented Black.² Mr. Poole never advised the Defendant that he represented Black and the Defendant was never aware that his attorney represented, or had represented, the very witness who could have provided exculpatory evidence for the Defendant and/or upon whom the Defendant was basing his defense."

Applicant asserts this constitutes newly-discovered evidence pursuant to S.C. Code Ann. § 17-27-45(c), such that he should be entitled to an evidentiary hearing.

Attached to and incorporated herein are the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings. Respondent reserves the right to amend this Return upon receipt of relevant information.

¹ Anders v. California, 386 U.S. 738 (1967).

² Respondent acknowledges that references were made at trial to an individual known as "Black."

FILED
 CLERK OF COURT
 2016 NOV 21 AM 10:20
 M. HOPE BLACKLEY

II.

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160.

Section §17-27-45(a) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges in this application on May 12, 2011, and the Remittitur from Applicant's appeal was returned February 21, 2013. This application was filed on August 31, 2015, which was more than a year beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(C) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Court should summarily dismiss the application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

FILED
CLERK OF COURT
2016 NOV 21 AM 10:20
M. HOPE BLACKLEY

III.

Lastly, Applicant alleges his allegation of a conflict of interest constitutes newly-discovered evidence such that he should be entitled to an evidentiary hearing. Respondent submits this allegation should be denied and dismissed because Applicant has failed to make a *prima facie* showing that he is entitled to relief. An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)). Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Applicant asserts he has recently discovered a conflict of interest based on “investigation conducted by [counsel] and by [counsel’s] private investigator.” Applicant does not offer any details concerning how or when he discovered the alleged conflict, nor does he provide any details concerning the alleged conflict itself. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Respondent submits Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter should be summarily dismissed.

IV.

Respondent denies each allegation not expressly admitted, qualified, or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application as untimely.

Respectfully submitted,

ALAN WILSON
Attorney General

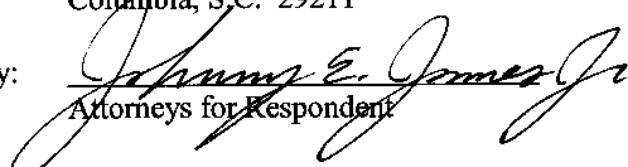
JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Columbia, South Carolina

16 November 2016

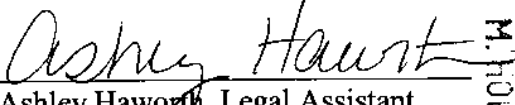
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2016 NOV 21 AM 10:20
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2015-CP-42-3695
DARIUS T. CATHCART, #303063,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

**Darius T. Cathcart, #303063
 Broad River Correctional Institution
 4460 Broad River Road
 Columbia, SC 29210**

DATED this 16th day of November, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

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 M. HOPE BLACKLEY



ALAN WILSON
ATTORNEY GENERAL

November 16, 2016

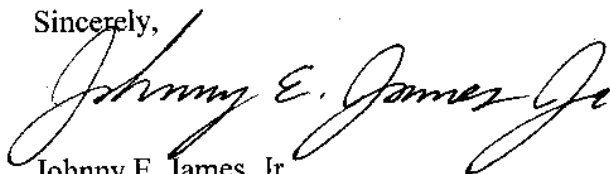
The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Darius T. Cathcart v. State of South Carolina
2015-CP-42-3695

Dear Ms. Blackley

Enclosed please find the original **Return and Motion to Dismiss** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,



Johnny E. James, Jr.
Staff Attorney

JEJ/ah

Enclosure

Application
Clerk's Records
SCDC Records
Direct Appeal Records

cc: Darius T. Cathcart, #303063

FILED
CLERK OF COURT
2016 NOV 21 AM 10:20
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
)

Darius Cathcart,) Case No.: 2015-CP-42-3695
S.C.D.C. No. 303063,)
)

Applicant,)

v.)

State of South Carolina)

Respondent.)
)
)

CONDITIONAL ORDER OF DISMISSAL

CLERK OF COURT
SPARTANBURG COUNTY
2016 NOV 22 AM 11:30
M. HOPE BLACKLEY

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Darius Cathcart ("Applicant") on August 31, 2015. Respondent made its Return, requesting the Application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2010 term of the Spartanburg County Grand Jury for murder (2010-GS-42-2875), assault and battery with intent to kill (2010-GS-42-2876), and assault with intent to kill (2010-GS-42-2874). David Turnipseed, Esquire, initially represented Applicant, but withdrew before trial. J. Roger Poole, Esquire, thereafter represented Applicant. Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on May 12, 2011. Judge Couch sentenced Applicant to imprisonment for concurrent terms of 45 years for murder, 20 years for assault and battery with intent to kill, and 10 years for assault with intent to kill.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, filed an Anders brief¹ on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Cathcart, Op. No. 2013-UP-052 (S.C. Ct. App. Order dated Jan. 30, 2013). The Remittitur was returned to the circuit court on February 21, 2013.

Current Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Conflict of interest, in that;

- a. "After the Defendant was sentenced and through investigation conducted by the undersigned and by his private investigator, it has been learned that the Defendant's trial attorney, Roger Poole, previously and possibly during the time of representation of the Defendant, had represented Black.² Mr. Poole never advised the Defendant that he represented Black and the Defendant was never aware that his attorney represented, or had represented, the very witness who could have provided exculpatory evidence for the Defendant and/or upon whom the Defendant was basing his defense."

Applicant asserts this constitutes newly-discovered evidence pursuant to S.C. Code Ann. § 17-27-45(c), such that he should be entitled to an evidentiary hearing.

Also before this Court are the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings.

¹ Anders v. California, 386 U.S. 738 (1967).

² Respondent acknowledges that references were made at trial to an individual known as "Black."

FILED
SPARTANBURG COUNTY
2016 NOV 22 AM 11:39
M. HOPE BLACKLEY

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of Limitations

The Court finds the application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Section §17-27-45(a) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges in this application on May 12, 2011, and the Remittitur from Applicant's appeal was returned February 21, 2013. This application was filed on August 31, 2015, which was more than a year beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(C) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Court finds this Application must be summarily dismissed for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

Newly-Discovered Evidence

Lastly, Applicant alleges his allegation of a conflict of interest constitutes newly-discovered evidence such that he should be entitled to an evidentiary hearing. This Court finds this allegation must be denied and dismissed because Applicant has failed to make a *prima facie* showing that he is entitled to relief. An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 281 S.C. 325, 256 S.E.2d 737 (1979)). Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Applicant asserts he has recently discovered a conflict of interest based on “investigation conducted by [counsel] and by [counsel’s] private investigator.” Applicant does not offer any details concerning how or when he discovered the alleged conflict, nor does he provide any details concerning the alleged conflict itself. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This Court finds Applicant has failed to make a *prima facie* showing that he is entitled to relief based on the information set forth. Therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this Court finds this allegation must be summarily dismissed.

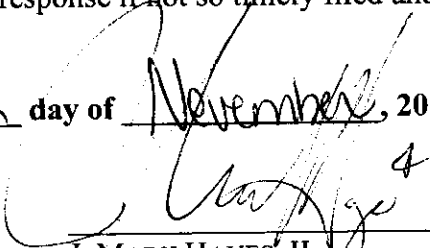
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(B), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
 Johnny E. James, Jr., Esquire
 Post-Conviction Relief Division
 P.O. Box 11549
 Columbia, SC 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 22 day of November, 2016.


 J. MARK HAYES, II
 Chief Administrative Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 NOV 22 AM 11:39
 M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley

Clerk of Court

November 22, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Darius Collicott
303063

Applicant

7TH JUDICIAL CIRCUITCASE # 2015 CP-42 3695

CERTIFICATE OF SERVICE

VS
State

Respondent

I certify that, on this date, I served a copy of the

In this action dated 11-22-2016 on

Additional Ord. of Dismissal
11-22-16

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Johnny Hammett

Alicia Oliver

Darius Collicott

11-22-16

(Date)

Cassie Smith
(Signature)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
)

Darius Cathcart,) Case No.: 2015-CP-42-03695
S.C.D.C. No. 303063,)
)

Applicant,)

v.)

State of South Carolina)

Respondent.)

FINAL ORDER OF DISMISSAL

2017 APR -3 PM 4:18
J. HOPE BLACKLEY

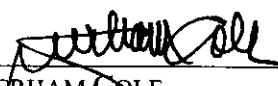
This matter comes before the Court by way of an application for post-conviction relief filed August 31, 2015. Respondent made its return on or about November 16, 2016, requesting the application be summarily dismissed as untimely.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed and filed November 22, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated December 5, 2016, serving the above-mentioned Conditional Order of Dismissal on Applicant.

The Applicant has failed to respond to either Respondent's motion to dismiss or this Court's Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED this 30 day of March, 2017.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

_____, South Carolina.

2017 APR -3 PM 4:18
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

April 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Darlene Cathcart
303063
Applicant

7TH JUDICIAL CIRCUIT

CASE # *2015-CP-42-3695*

VS
Steele
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the

In this action dated *3-30, 2017* on *Final Dec. of Dismissal* *4-4-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Hawthorth

Alecia Oliver

Darlene Cathcart

4-4-17
(Date)

Corrie Seay
(Signature)

STATE OF SOUTH CAROLINA

County of Spartanburg

In the Court of Common Pleas

Darius Cathcart 3030103

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

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 Broad River Correctional Institutional
2. Name and location of Court which imposed sentence Spartanburg County Court of
General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2010-GS-42-2874
 - (b) 2010-GS-42-2876
 - (c) 2010-GS-42-2875
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 9th, 11th
 - (b) _____
 - (c) _____

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SPARTANBURG COUNTY
2018 JUN 29 AM 8:49
M. HOPE BLACKLEY

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

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

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

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

i. Court of Appeals

ii. _____

iii. _____

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

i. Denied

ii. _____

iii. _____

(c) the date of each such result:

i. unknown

ii. _____

iii. _____

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

i. unknown

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) Conflict of Interest

(b) _____

(c) _____

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

(a) _____

(b) _____

(c) _____

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OF STANBURY COUNTY
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M. HOPE BLACKLEY

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. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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CLERK OF COURT
MARTINBURG COUNTY
2018 JUN 29 AM 8:49
M. HOPE BLACKLEY

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?

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- 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) _____
- (b) _____
- (c) _____

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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. Roger Poole, Esq. Public Defender's Office
- ii. Kathrine H. Hudings, Appellate Defense
- iii. _____

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

- i. Trial counsel - Roger Poole, Esq
- ii. Direct Appeal - Kathrine H. Hudings, Esq
- iii. _____

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CLERK OF COURT
STANTON COUNTY
2018 JUN 29 AM 8:49
M. HOPE BLACKLEY

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

I am seeking a new trial or vacate sentence

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

NO

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, Cathcart, Darius, 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.

Darius Cathcart

SWORN to and subscribed before me this 21st

day of June, 19 2018

Jennifer Washington (L.S.)
Notary Public

My Commission Expires: March 8, 2020

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

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

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

Applicant

SWORN or affirmed to and subscribed before me this

_____ day of _____, 19 _____

Notary Public

My Commission Expires _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 29 AM 8:49
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Department

1. SENTENCE

2. REPORT E

3. CARD PUL

4. INDEX

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

M086591 7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date:

5/12/11

DOCKET NO. **10-GS-42-2876**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE
VS.

Darius Tavares Cathcart

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 10 PM 2:14

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 06 2010, the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Darius Tavares Cathcart did in Spartanburg County on or about March 14, 2009 with malice aforethought, commit an unlawful act of violent injury upon the victim, Bryant Miller, by shooting the victim in the neck, causing the victim to require medical attention, all in violation of the laws of the State of South Carolina and Section 16-3-620 of the *Code of Laws of South Carolina*, 1976, as amended.

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



ASSISTANT SOLICITOR

M-086591

Computer

County/ Municipality of

AFFIDAVIT

ORIGINAL 1262 S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Darius Tavares Cathcart

Spartanburg

Personally appeared before me the affiant Lorin Williams who
being duly sworn deposes and says that defendant Darius Tavares Cathcart
did within this county and state on or about 03/14/2009 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)
in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

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:

That on March 14, 2009, in the county of Spartanburg, one Darius Tavares Cathcart did intentionally commit a battery upon Bryant
Miller by shooting the victim in the neck, with the intent to kill. jet

Warrant based upon police investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-Affiant's Telephone (864)503-4500

☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Darius Cathcart
on 3/15/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/14/2009 defendant Darius Tavares Cathcart
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

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 03/15/2009

Signature of Issuing Judge (L.S.)

James E. Talley

Judge Code: 7024Judge's Address Post Office Box 5221
Spartanburg, SC 29306-5221Judge's Telephone (864)596-2228Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

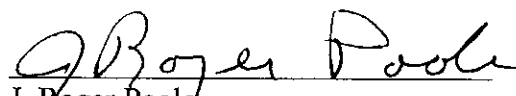
STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF SPARTANBURG) 2010-GS-42-2874: 2010-GS-42-2875:
 2010-GS-2876

The State of South Carolina)
)
 Plaintiff)
 VS.)
 Darius Cathcart)

**DEFENDANT'S REQUEST
 VOIR DIRE**

Defendant)
)
 _____)

1. Have you discussed this case or heard anyone discuss this case, either today or before today?
2. Have you formed any opinion about this case upon information that you have received?
3. Are you related by blood or marriage to, or are you a friend of anyone who is employed by the Seventh Judicial Circuit Solicitor's Office, the Spartanburg Department of Public Safety, the Spartanburg County Sheriff's Office, or the State Law Enforcement Division?
4. Have you or any member of your family ever been employed or are you currently employed by any civilian or military law enforcement agency?
5. Have you heard, seen or read anything about this case through any form of media?
6. Have you or any member of your family been the victim of a crime involving a firearm or other deadly weapon? If so, how would that affect your decision in this case?
7. Have you or any member of your family been the victim of a violent crime? If so, how would that affect your decision in this case?


 J. Roger Poole

Attorney for the Defendant
 Assistant Public Defender
 Seventh Judicial Circuit Public Defender Office
 366 North Church Street, Suite 3000
 Spartanburg, South Carolina 29303
 (864) 596-2561

March 25, 2011
 Spartanburg, South Carolina

COUNTY OF SPARTANBURG

1264

STATE VS.

INDICTMENT/CASE#: 2010GS4202876

Darius Tavares Cathcart

A/W#: M086591

AKA:

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and battery with Intent to Kill (ABWIK)

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620

of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Gray, Abel 1264 X 90309er Poole 4499
GRAY, ABEL SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/12/11
☒ 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.
☐ 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 Employment
Payment 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 \$ 100.00 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 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Pam Green

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2135Sentence Date: 5/12/11

ARREST WARRANT

3/17/09

M-086591

Computer

STATE OF SOUTH CAROLINA



County/

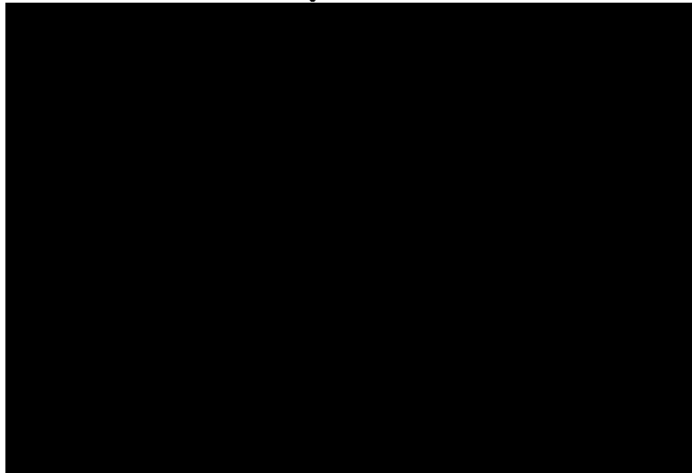


Municipality of

Spartanburg

THE STATE

against

☐ County/ ☐ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Darius Cathcart
on 3/15/09

William Talley
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/

Municipality of

Spartanburg

Personally appeared before me the affiant Lorin Williams whobeing duly sworn deposes and says that defendant Darius Tavares Cathcartdid within this county and state on or about 03/14/2009 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/

Municipality of

Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

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:

That on March 14, 2009, in the county of Spartanburg, one Darius Tavares Cathcart did intentionally commit a battery upon Bryant Miller by shooting the victim in the neck, with the intent to kill. jet

Warrant based upon police investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/

Municipality of

Spartanburg

Affiant's Address

8045 Howard StreetSpartanburg, SC 29303-

Affiant's Telephone

(864)503-4500

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/14/2009defendant Darius Tavares Cathcart

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

☒ County/

Municipality of

Spartanburg) as set forth below:DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

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 03/15/2009

(L.S.)

Signature of Issuing Judge

James E. TalleyJudge Code: 7024

Judge's Address

Post Office Box 5221Spartanburg, SC 29306-5221

Judge's Telephone

(864)596-2228

Issuing Court:



Magistrate



Municipal



Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

1265

Form Approved by
S.C. Attorney General
April 21, 2003
SC-20-518

Darius Tavares Cathcart

M-086591

Name of Defendant

Warrant/Ticket No.

Charges: Assault / Assault and battery with Intent to Kill (ABWIK)

County of Spartanburg

Trial Court:

General Sessions

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

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

☐ BAIL PROCEEDING

1. Form used at bail proceeding

- ☐ a. Bond Form I (personal recognizance)
- ☐ b. Bond Form II (surety, cash, percentage)
- ☒ c. None (Non-Bailable Offense)

2. For cases in which bond is set, defendant was informed:

- ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
- ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
- ☒ c. Failure to appear in court as required will result in issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

- ☒ a. Orally
- ☒ b. In writing

{NOTE: Defendant must be informed of right both orally and in writing.}

☒ 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

- ☒ a. Charges against defendant and nature of the charges.
- ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
- ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before

_____ located at _____

_____ for indigency screening. Defendant is responsible for a statutory fee of \$ _____

for indigency screening.

15-MAR-09
Appearance or Bond Hearing Date:

[Signature]
JUDGE'S SIGNATURE

INCIDENT REPORT

CASE NUMBER

1267

NCIC

IND. ENT.

200.9.0.3.0.1.6.2

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Homicide				☒ YES ☐ NO	☐ YES ☒ NO	Runaway		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. / Public ☐ Other ☐ Unknown ☐ Police Off.
2. Assault and Battery With Intent to Kill				☒ YES ☐ NO	☐ YES ☒ NO	Readonly		
3. A.W.I.K				☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE		
Mt. Pleasant Road and Burns Road Spartanburg				29303		Firearm		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	LOCATION NO.	
03-14-09	0330		03-14-09	0400	03-14-09	0406	7408	39
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
ADDRESS				CITY	STATE	ZIP CODE		

ADDRESS			

SUBJECT NO. 1	VISIBLE INJURY (VICT. 1) ☒ YES ☐ NO EXPLAIN <u>own hot to neck</u>				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO			
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☒ DRUGS: ☐ YES ☐ NO ☒ TYPE:							
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ * J - This Jurisdiction S - State O - Out of State U - Unknown							
	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.
☒ SUSPECT	Unknown				B	M		N
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
☐ WANTED	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.
☐ ARREST								
☐ JAIL	SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☒ DRUGS: ☐ YES ☐ NO ☒ TYPE:				ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE	
☐ SUMMONS					TOTAL # ARRESTED		DATE/TIME OF ARREST	
					03-14-09/0330			

on 03-14-09 at 0406 hours I was on Skylyn Drive when I responded to Mary Black hospital in reference to two gunshot victims that arrived to the emergency room in a red Ford Crown Vic. Upon my arrival at 0408 hours I observed a red Ford parked in the ambulance entrance to the hospital with no occupants. I then observed the complainant standing in the emergency walk-in breezeway wearing a black hoodie. The complainant was identified as [redacted] brother of victim [redacted] me that on 03-14-09

PROPERTY EST.	TYPE (GROUP)					TOTAL VALUE
	STOLEN					
	DAMAGED					
	BURNED					
ADMINISTRATIVE	RECOVERED					
	SEIZED					
	SUBJECT IDENTIFIED ☐ YES ☐ NO	SUBJECT LOCATED ☐ YES ☐ NO	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Forester, H.B.		03-14-09	127	[Signature]	3-14-09	334
		FOLLOW-UP INVESTIGATION ☐ YES ☐ NO				

PAGE 9 of 1 PAGES

AGENCY I.D.
SC0 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2009030662

NCIC

INQ. ENTD.

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>3</u> of <u>4</u> PAGES.
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #			#1	#2	#3	*JSOU						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	B	EVENING PHONE	H	B
	☐ WANTED												
☐ WARRANT													
☐ ARREST													
☐ JAIL													
☐ SUMMONS													
☐													

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #			#1	#2	#3	*JSOU						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	B	EVENING PHONE	H	B
	☐ WANTED												
☐ WARRANT													
☐ ARREST													
☐ JAIL													
☐ SUMMONS													
☐													

NARRATIVE	Was also shot but he did not know where on the body.		
	Mr. Eeter immediately drove both victims to Mary Black Hospital for treatment.		
	Deputy Davis placed Crime Scene tape around the Red Ford Crown Vic at the Emergency Ramp and began a Crime Scene Log.		
	Violent Crime Investigators were notified.		
	Dr. James Carter pronounced Victim 1 deceased at 0400 hrs.		
A voluntary statement was also			
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			
JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			

VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.
	☐ STOLEN	☒ VEHICLE		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.	STATE
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION	YEAR OF EXPIRATION
	☐ TOWED	☐ LICENSE PLATE	MODEL	STYLE
☒ SUSPECT	☐ SECURITIES/BONDS, STOCKS	NIC NO.	DENOMINATION	COLOR green
☐ VICTIM	☐ ARTICLE	MISCELLANEOUS	ISSUER	BRAND NAME
				CALIBER
				SECURITIES DATE

PROPERTY/EST.	TYPE (GROUP)						TOTAL VALUE
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
SEIZED							

SUBJECT IDENTIFIED	SUBJECT LOCATED	☐ ACTIVE	☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
☐ YES ☐ NO	☐ YES ☐ NO	☐ UNFOUNDED		☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Forester, HG	03/14/09	127	[Signature]	3/14/09	
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			OFFICER		

2009030662

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 4 of 4 PAGES.

NARRATIVE

obtained from Shawn Cape (w/m 39) who was the security guard on duty when the victims arrived. Mr. Geter advised that he and both victims had been at "Club Dreams" (1108 Charisma Drive) just prior to this incident. While there they all had a verbal altercation with several unknown black males. Mr. Geter would not provide any further information in reference to that incident other than he believes those black males followed him from "Club Dreams" to the incident location.

Investigator Williams arrived at Mary Black at 0512 hrs.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE NO CUSTODY									
REPORTING OFFICER(S) Forrester, H6		DATE 03-14-05		UNIT NUMBER 127		APPROVING OFFICER <i>[Signature]</i> OFFICER		DATE 3-14-05	
						FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		UNIT NUMBER 334	

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

1271

2009030662

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 3 PAGES

NAR

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS

TYPE

☐ STOLEN

☐ VEHICLE

☐ RECOVERED

☐ GUN

☐ FOUND

☐ BOAT

☐ TOWED

☐ LICENSE PLATE

☐ SUSPECT

☐ SECURITIES/BOND, STOCKS

☐ VICTIM

☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

TYPE (GROUP)

TOTAL VALUE

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED

☒ YES ☐ NO

SUBJECT LOCATED

☒ YES ☐ NO

☐ ACTIVE

☐ ADM. CLOSED

☐ UNFOUNDED

☐ ARRESTED UNDER 18

☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18

☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE -- NO CUSTODY

REPORTING OFFICER(S)

DATE

BADGE #

APPROVING OFFICER

DATE

BADGE #

L Williams

03/15/09

773

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

1272

2009030662

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM	TYPE ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BOND, STOCKS ☐ ARTICLE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.					
		SERIAL AND/OR OWNER APPLIED NO.			STATE				
		YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE	TYPE	
		MODEL		STYLE		COLOR		BRAND NAME	CALIBER
		NIC NO.		DENOMINATION		ISSUER		SECURITIES DATE	
		MISCELLANEOUS							

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE -- NO CUSTODY							
REPORTING OFFICER(S)		DATE	BADGE #	APPROVING OFFICER		DATE	BADGE #
L Williams		03/14/09	773				
				FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER	

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

1273

2009030662

NCIC
INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS TYPE
☐ STOLEN ☐ VEHICLE
☐ RECOVERED ☐ GUN
☐ FOUND ☐ BOAT
☐ TOWED ☐ LICENSE PLATE
☐ SUSPECT ☐ SECURITIES/BOND, STOCKS
☐ VICTIM ☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

TYPE (GROUP)

TOTAL VALUE

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED

☐ YES ☐ NO

SUBJECT LOCATED

☐ YES ☐ NO

☐ ACTIVE

☐ ADM. CLOSED

☐ UNFOUNDED

☐ ARRESTED UNDER 18

☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18

☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE -- NO CUSTODY

REPORTING OFFICER(S)

DATE

BADGE #

APPROVING OFFICER

DATE

BADGE #

L Williams

03/14/09

773

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

VICTIM NOTIFICATION OF ARREST/BOND HEARING/RELEASE

WARRANT # M-080591 VICTIM Miller, Bryant SUSPECT _____

ARREST/DETENTION

DATE 03.15.09 TIME NOTIFIED 20:10 BY ZSM PERSON CONTACTED see comm.

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: no typed communications of arrest and
arrestment will send officer to house.

BOND HEARING/JUVENILE DETENTION HEARING

DATE OF BOND HEARING _____ TIME _____ LOCATION _____

RESET DATE _____ TIME _____ LOCATION _____

DATE OF JUVENILE DETENTION HEARING _____ TIME _____ LOCATION _____

RESET DATE _____ TIME _____ LOCATION _____

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: _____

RELEASE/TRANSFER/ESCAPE

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: _____

VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA)

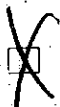
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA

vs.

Catncart, Darius

Check and complete one of the following:



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s)

Miller, Bryant

OR



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant),* indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s)

Brittany McElrath

(Representative's Signature)*

[Signature]

(Judge's Signature)

* Or the arresting officer if Defendant is brought directly before the Judge.

WITNESSES

Spartanburg County Sheriff's Department

*T.K. Tillotson*1. SENTENCE MADE ☒

2. REPORT ENDED

3. CARD PULLED ☒4. INDEXED ☒

ARREST WARRANT NUMBER

M086589 6. CHECKED SIGNATURE ☒7. ASSESSMENT AND
FINE CARD MADE ☒8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: *5/16/10*

VERDICT

*Guilty**[Signature]*
Foreperson of Petit Jury
Date: *5/12/11*

DOCKET NO.

10-GS-42-2875

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor***Computer**

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE

v

Darius Tavares Cathcart

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 MAY 10 PM 2:14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL
SESSIONS

COUNTY OF SPARTANBURG

SEVENTH JUDICIAL CIRCUIT

State of South Carolina,

v.

VERDICT FORM

Case No.: 10-GS-42-2874

Case No.: 10-GS-42-2875

Case No.: 10-GS-42-2876

Darius Tavares Cathcart,

Defendant,

VERDICT

As to the indictment number 10-GS-42-2874 for Assault with Intent to Kill, we the jury,
unanimously find the Defendant, Darius Tavares Cathcart:

_____ Not Guilty

_____ ☒ Guilty

As to the indictment number 10-GS-42-2875 for Murder, we the jury, unanimously find the
Defendant, Darius Tavares Cathcart:

_____ Not Guilty

_____ ☒ Guilty

As to the indictment number 09-GS-42-2876 for Assault and Battery with Intent to Kill, we the
jury, unanimously find the Defendant, Darius Tavares Cathcart:

_____ Not Guilty

_____ ☒ Guilty

I certify this decision was the unanimous decision of the jury.

Foreperson

Date

5/12/11

STATE OF SOUTH CAROLINA)

)

COUNTY OF SPARTANBURG)

)

The State of South Carolina,)

)

vs.)

)

Darius Cathcart & Rashawn Reeder,)

)

Defendant.)

)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NOS.: 2010-GS-42-2874 to 2876

2010-GS-42-2926 to 2928

State's List of Potential Witnesses

M-086589

Computer

☒ County/
Spartanburg
 ☐ Municipality of
Spartanburg

AFFIDAVIT

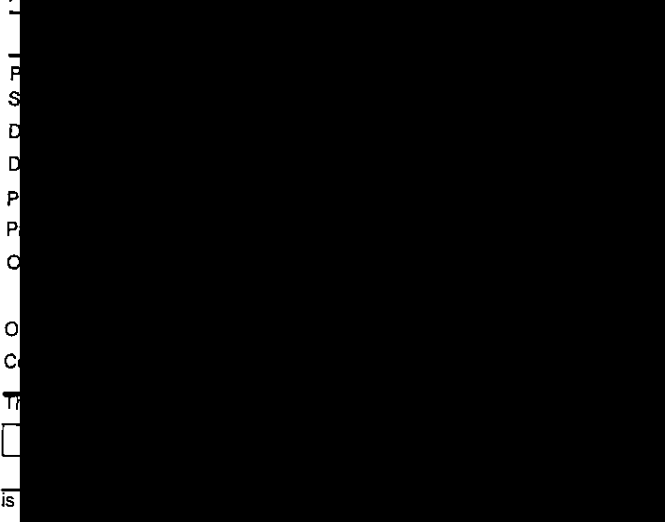
ORIGINAL
1279S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/
Spartanburg
 ☐ Municipality of
Spartanburg
THE STATE
against

Darius Tavares Cathcart

Address: 802 Monarch Rd



dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant Darius Cathcart
on 3/15/09
William [Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Personally appeared before me the affiant Lorin Williamsbeing duly sworn deposes and says that defendant Darius Tavares Cathcartdid within this county and state on or about 03/14/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder
 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:

 That on March 14, 2009 in the county of Spartanburg, one Darius Tavares Cathcart did, with malice and aforethought, cause the
death of Duncan Geter by shooting the victim in the neck/jet

Warrant based upon police investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

 Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-
Affiant's Telephone (864)503-4500

ARREST WARRANT

 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE CLERK OF COURT
It appearing from the above affidavit that there are SPARTANBURG COUNTY grounds to believe that

 on or about 3/14/2009 defendant Darius Tavares Cathcart

 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Spartanburg

 BY: 3/17/09
DATED 3/17/09 D.C.

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder
 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 03/15/2009
James E. Talley (L.S.)
Signature of Issuing Judge

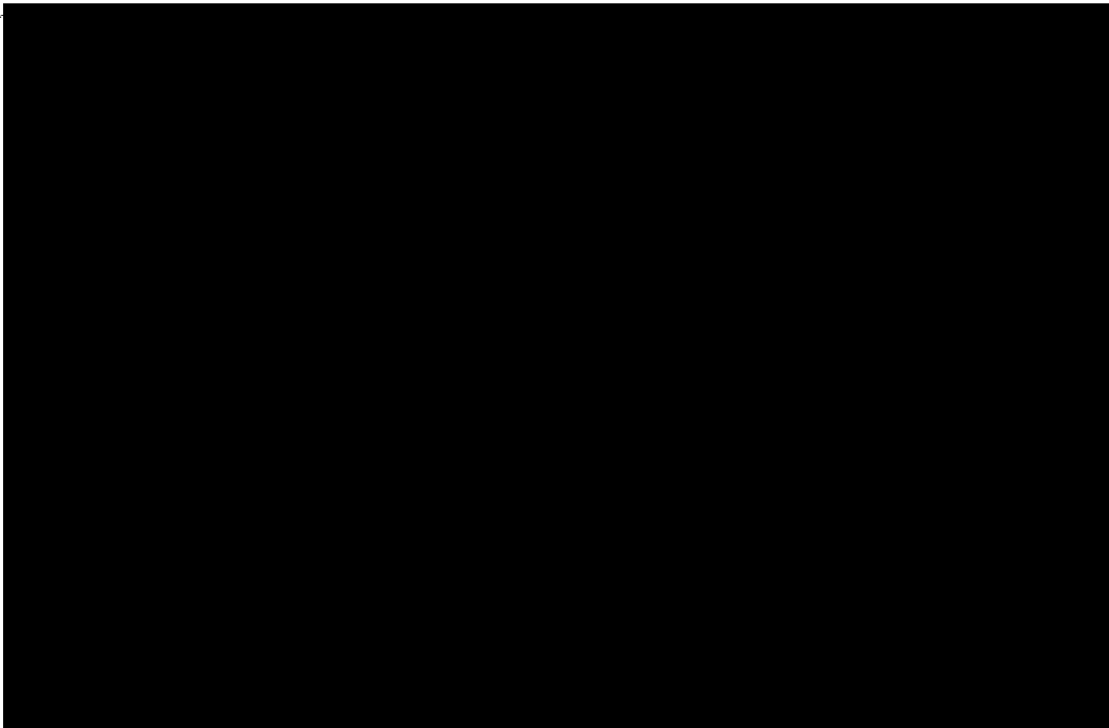
James E. Talley

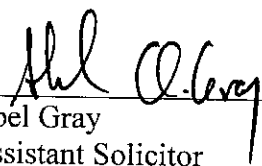
Judge Code: 7024
 Judge's Address Post Office Box 5221
Spartanburg, SC 29306-5221
Judge's Telephone (864)596-2228
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL





Abel Gray
Assistant Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
May 9, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

The State of South Carolina)
Plaintiff,)

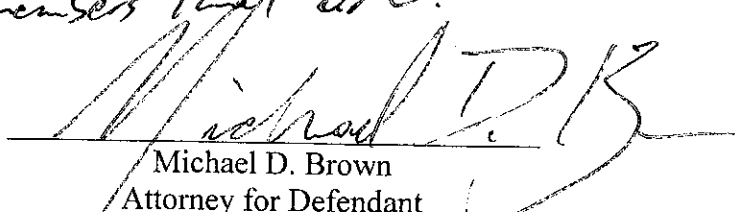
vs.)

IN THE COURT OF GENERAL SESSIONS

DEFENSE VOIR DIRE REQUESTRishawn Reeder, Defendant,)
_____)

Defense would ask the court to examine the jury pool based upon its standard questions to include: family members who are previous law enforcement, previous victims of crime and family members who have been victims of crime.

**Also, anyone employed by Spartanburg County or family members that are.*



Michael D. Brown
Attorney for Defendant
145 N. Church Street
Spartanburg, South Carolina

March 28, 2011

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF SPARTANBURG	)	IN THE COURT OF GENERAL SESSIONS
	)	SEVENTH JUDICIAL CIRCUIT
	)	
STATE	)	2010-GS-42-2926-2928
	)	2010-GS-42-2874-2876
	)	
V.	)	STATE'S REQUEST FOR
RASHAWN REEDER	)	VOIR DIRE QUESTIONS
<u>DARIUS CATHCART</u>	)	

The State respectfully requests that the following questions to be asked of the jury panel:

- (1) Does anyone in the jury panel know or work with the defendant(s) or anyone in their families?
- (2) Does anyone in the jury panel know or work with any of the Defendants' witnesses or their family members?
- (3) Does anyone in the jury panel know or have been represented by the Defendant's attorneys, J. Roger Poole and Michael D. Brown?
- (4) Has anyone in the jury panel been represented by or knows anyone in the law firm of the above attorney, or have a family member or close friend that has been or is currently being represented by the Public Defenders' Office or the office of Michael Brown?
- (5) Has anyone in the jury panel been arrested for, charged with, or convicted of any crime involving violence in any state court such as General Sessions Court, Family Court, Magistrate Court, and/or City Court?
- (6) Does anyone in the jury panel have a family member or close friend that has been arrested for, charged with, or convicted of any crime of violence in any state court such as General Session Court, Family Court, Magistrate Court, and/or City Court?
- (7) Is anyone in the jury panel or any of their family members currently being or has been prosecuted by any Solicitor's Office or a Prosecuting Attorney's Office in South Carolina or another state?
- (8) Has anyone in the jury panel been arrested by the Spartanburg City Police Department or the Spartanburg County Sheriff's Department?

- (9) Does anyone in the jury panel know of any reason that they cannot give either the State or the Defendant a fair trial?

Spartanburg, South Carolina
May 9, 2011

Submitted by:



Abel O. Gray
Assistant Solicitor
Seventh Judicial Circuit

Spartanburg County Courthouse
RANDOM STRIKE SHEET

1284

JUDGE NAME : Couch, Roger L.

TRIAL TYPE : Criminal

PANEL ID : 10-2927 10-2875

COURTROOM EAST

DESCRIPTION : Rashawn Reeder & Darius Cathcart

Sorted by: Random Nbr

Trial

**** END OF REPORT ****

Spartanburg County Courthouse
RANDOM STRIKE SHEET

1285

JUDGE NAME : Couch, Roger L.

TRIAL TYPE : Criminal

PANEL ID : 10-2927 10-2875

COURTROOM EAST

DESCRIPTION : Rashawn Reeder & Darius Cathcart

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS

Spartanburg County Courthouse
RANDOM STRIKE SHEET

1286

JUDGE NAME : Couch, Roger L.

TRIAL TYPE : Criminal

PANEL ID : 10-2927 10-2875

COURTROOM EAST

Sorted by: Random Nbr

DESCRIPTION : Rashawn Reeder & Darius Cathcart

Trial

NAME

JUROR NBR

RACE

SEX

ST/PLTFF

DEF

CRT

REMARKS

Spartanburg County Courthouse
RANDOM STRIKE SHEET

1287

JUDGE NAME : Couch, Roger L.

TRIAL TYPE : Criminal

PANEL ID : 10-2927 10-2875

COURTROOM EAST

DESCRIPTION : Rashawn Reeder & Darius Cathcart

Sorted by: Random Nbr

Trial

NAME

JUROR NBR

RACE

SEX

ST/PLTFF

DEF

CRT

REMARKS

**** END OF REPORT ****

COUNTY OF SPARTANBURG

STATE VS.

Darius Tavares Cathcart

INDICTMENT/CASE#: 2010GS4202875

A/W#: M086589

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

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

ATTEST:

GRAY, ABEL

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

☐ 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: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Pam Green

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2135

Sentence Date: 5/12/11

ARREST WARRANT

M-086589

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Lorin Williamsbeing duly sworn deposes and says that defendant Darius Tavares Cathcartdid within this county and state on or about 03/14/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)ORIGINAL 1289
Form Approved by
SC Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

violate the criminal laws of the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Darius Cathcart
on 3/15/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-Affiant's Telephone (864)503-4500

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/14/2009defendant Darius Tavares Cathcart

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

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

DESCRIPTION OF OFFENSE: Murder / Murder

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 meon 03/15/2009

Signature of Issuing Judge

James E. Talley

Judge Code: 7024Judge's Address Post Office Box 5221Spartanburg, SC 29306-5221Judge's Telephone (864)596-2228Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

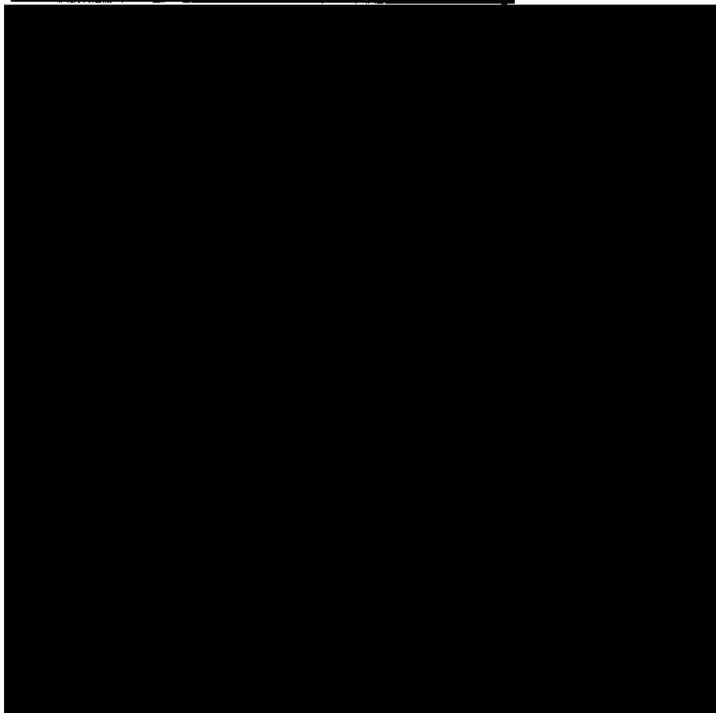
STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

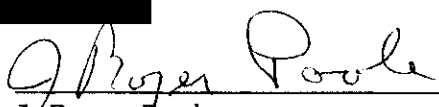
IN THE COURT OF GENERAL SESSIONS

THE STATE,)
)
)
v)
)
)

DEFENDANT'S
LIST OF POTENTIAL WITNESSES

DARIUS CATHCART, Defendant)





J. Roger Poole
Seventh Circuit Public Defender's Office

W

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
 SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
)

v.)
)
Andrea White)
)
 Defendant.)

AFFIDAVIT OF DISCOVERY

Indictment No(s): 10. 4313 -15

Warrant No(s): M121043-44, 46

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:
☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☒ Video/DVD <u>CD of photos</u>	
☐ Voluntary Statement(s)		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Medical Records	
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			
☐ Other			

TOTAL COPIED/NUMBERED: _____

DATED: 8/18/11

I, Richard Whelchel, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 18 day of AUG, 2011.

Donald E. Hester
 Attorney or Designee

A. Piggini - 20F
 SOLICITOR'S OFFICE

SWORN to before me this 18 day

of Aug, 2011.

A. Jones
 Notary Public for South Carolina
 My commission expires 4.23.19

CLERK OF COURT
 SPARTANBURG COUNTY
 2011 AUG 19 PM 1:05
 MANOPE BLACKLEY

W

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
 FOR THE SEVENTH JUDICIAL CIRCUIT

STATE,)
)
)
)
)
 v.)
 Darius Tavares Cathcart,)
 Defendant.)

Notice of Motion & Motion in Limine
 to Exclude Third Party Guilt or any
 reference to it by the defense during the
 trial

10-GS-42-2874 to 2876
 Warrants: M086589-M086591

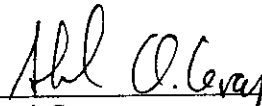
To: The Defendant, through his attorney Roger Poole

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina will move in front of this Court on March 28, 2011 or when scheduled by this Court for an order to prevent the Defendant and his attorney from making reference to third party guilt evidence during the trial of the case.

The State will ask for the exclusion of any reference to any items involving third party guilt including, but not limited to: any inquiry by counsel and/or any reference by counsel during summation, argument, opening statement, closing argument, any objections, witness examination, and any actions in front of jury which alleges any specific instance of third party guilt.

The State would request an *in-camera* review by the Court before any such evidence may be deemed relevant or admissible in this case under the grounds stated in this Motion.

Respectfully,



 Abel Gray
 Assistant Solicitor
 Seventh Judicial Circuit

Spartanburg, South Carolina
 March 21, 2011

[Faint, illegible handwritten notes or stamps]



STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF SPARTANBURG)
)
 THE STATE OF SOUTH CAROLINA)
)
 vs.) SOLICITOR'S AFFIDAVIT OF
) SERVICE
)
 DARIUS TAVARES CATHCART)
)
 DEFENDANT.)
)
)

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he served the following materials:

1. _____ Incident report	5. _____ Co-Def. Statement
2. _____ Detective notes	6. _____ Rap sheet
3. _____ Defendant's written statement	7. _____ Sol. Rule 5 req.
4. _____ SLED reports	

8. Other NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE THIRD PARTY GUILT OR ANY REFERENCE TO IT BY THE DEFENSE DURING THE TRIAL

in this action on ROGER POOLE

- ☒ by delivering SHEILA CHILDERS personally.
☐ by delivering _____, a person of age and discretion residing at the residence of the defendant and being at said residence at the time of service.
☐ by delivering to _____ at the place of business

and leaving with him/her copies of the same at PUBLIC DEFENDER OFFICE, SPARTANBURG, South Carolina, on the 25TH day of MARCH, 2011, and that the deponent is not a party to this action and has no interest therein or connection therewith.

[Signature]

 Seventh Judicial Circuit
 Office of the Solicitor

SWORN to before me this 25th
 day of March, 2011.

[Signature] (SEAL)
 Notary Public for South Carolina
 My Commission expires: 1/13/2010

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 MAR 28 AM 11:14
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

1294

The State of South Carolina;)

v.)

Darrell Cathcart)

Defendant.)

AFFIDAVIT OF DISCOVERY

Indictment No(s):

Warrant No(s):

MOB 589 - 591

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☒ **HARD COPY**; ☐ **ELECTRONICALLY (e-mail)**; ☐ **MEDIA (CD, DVD)**

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s)		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☒ Other

Page 1-52 ID Reports

Supplemental

TOTAL COPIED/NUMBERED: 52 pgs DATED: 3/25/2011

I, Roger Poole, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 25 day of MARCH, 20 11.

Donald E. Hays
Attorney or Designee

Abel O. Gray / C. Beale
SOLICITOR'S OFFICE

SWORN to before me this 28 day
of Mar, 20 11.

S. Jones
Notary Public for South Carolina
My commission expires: 4/23/19

State of South Carolina
County of Spartanburg

Darius Tavares Cathcart
Petitioner

In the court of
General Sessions

Warrant nos. M-086589,
M-086590, & M-086591
M-023189, M-023190 & M-023191

Application for Immediate
Disposition of
Arrest Warrant /
Indictment

The above named Petitioner respectfully requests the immediate disposition of the above warrants on him pursuant to South Carolina code of Law § 17-23-120.

The Petitioner also requests that the Clerk forward the arrest warrants pursuant to § 17-23-12 and South Carolina rules of Criminal procedures rule 3(b), and would further request that the Solicitor on this particular case prepare the formal charges pursuant to § 17-23-13; § 14-17-220; § 14-17-260, and Rule (3)(1), and all processes pursuant to the statutory Law bear the time, date, signature, and seal of this office.

The Petitioner respectfully request this 1 of 2 to be accepted as the statutory rights to a fast and speedy trial (within 180 days) of his case pursuant to § 17-11-10 and South Carolina Const. Art. 1, § 9 and Petitioner would state he has the right to due process of law on his case pursuant to § 14-17-100 and would request that when the documents is lawfully processed with all the above, he be served a copy of

the legal document pursuant to § 17-13-90, and would request a copy of the indictment that this court has, providing it has already been indicted; so he can properly place objection to the indictment if it is not pursuant to the laws.

Wherefore, the petitioner respectfully request all of the above pursuant to his due process of law rights and equal protection rights according to South Carolina Const. Art. 1, § 3 and Statute § 14-1-100 as well as the United States Const. 6th and 14th Amendments.

This 30th day of November, 2010

2 of 2

Signed:

950 California Ave.

Spartanburg, S.C. 29303

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 DEC 16 PM 3:16
M. HOPE BLACKLEY

COUNTY OF SPARTANBURG

The State of South Carolina,

v. Darius Cathcart

Defendant.

AFFIDAVIT OF DISCOVERY

Indictment No(s): 10-2875

Warrant No(s): mob6589

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that the following materials and provided same to the Defendant's attorney of record by:

☒ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT
☒ Warrant(s) or Ticket(s) 13-15, 39-41		☐ Forensic Report(s) (ID Reports)
☒ Incident Report(s) 1-4		☒ Evidence Sheet(s)
☐ Investigation Report(s)		☐ Photograph(s)
☐ Supplemental Report(s)		☐ Line-up(s)
☒ Waiver of Rights Form(s) 5, 11, 18, 42		☐ Video/DVD
☒ Voluntary Statement(s): 6, 9-10, 11, 19, 43-44		☐ SLED Request Form(s)
☐ Witnesses Written Statement(s)		Phone records 128-138
☒ Defendant's NCIC (Rap) 20-37, 313-328		Search Warrant 139-153
☐ Consent to Search Form(s)		GSR form 154-159
☐ Search Warrant and Return		Crime Scene Log 160-161
☐ Drug Report(s)		Inventory sheet pg 1162
☐ SLED Lab Report(s)		Cell tower records pg 163-257
☐ Hospital Lab Report(s)		Sheriff's Office Photos 309-344
☐ Solicitor's Reciprocal Rule 5		Bond sheet pg 344-353

☒ Other
 Polygraph report pg 7, 260
 Mugshot lineup pg 8, 12, 38, 45
 SLED report pg 90-98, Search Warrant pg 121-127, lineup pg 259, 42

TOTAL COPIED/NUMBERED: 353pg DATED: 12/13/10

I, Roger Pade, attorney for the Defendant(s) or his/her designee, hereby accept service of the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 14 day of Dec, 2010.

Donald E. Steyer
 Attorney or Designee

Abel O. Gray / C. Beall
 SOLICITOR'S OFFICE

SWORN to before me this 14 day

of December 2010.

Roger D. Pade

Notary Public for South Carolina

My commission expires: 5-23-2018

RECEIVED 10 AM 9:20
 M. HOFFMAN, CLERK

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

1298

COUNTY OF SPARTANBURG)

The State of South Carolina,)

CONT.

AFFIDAVIT OF DISCOVERY

Indictment No(s): 10-2875

Warrant No(s): M080589

v.)

Darius Cartwright)

Defendant.)

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says t
the following materials and provided same to the Defendant's attorney of record by:☒ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)
☐ Incident Report(s)		☐ Evidence Sheet(s)
☒ Investigation Report(s)	49-119	☐ Photograph(s)
☒ Supplemental Report(s)	93-89	☐ Line-up(s)
☐ Waiver of Rights Form(s)		☐ Video/DVD
☒ Voluntary Statement(s): 412-47, 2123-2105		☐ SLED Request Form(s)
☐ Witnesses Written Statement(s)		Dr. Wren report 281-283
☐ Defendant's NCIC (Rap)		Carroll's photos 284-312
☐ Consent to Search Form(s)		
☐ Search Warrant and Return		
☐ Drug Report(s)		
☒ SLED Lab Report(s)	276-280	
☐ Hospital Lab Report(s)		
☐ Solicitor's Reciprocal Rule 5		

☒ OtherMugshot pg 48, forensic report 80-82, coroner's report 2126-2126
Contingency report pg 271-275

TOTAL COPIED/NUMBERED: _____ DATED: _____

I, _____, attorney for the Defendant(s) or his/her designee, I
above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Mot
I also accept service of the Solicitor's Reciprocal Rule 5.Signed/Accepted this 14 day of Dec, 2010.Donald E. Steg
Attorney or Designee

SOLICITOR'S OFFICE

SWORN to before me this 14 dayof December 2010Rebecca D. Goble
Notary Public for South CarolinaMy commission expires: 5-23-2018RECEIVED
M. HOPE ELLIOTT
2010 DEC 13 PM 5:20

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA)

VS.)

Darius Cathcart)

IN THE COURT OF GENERAL SESSIONS

Indictment No(s): 10.2875

Warrant No(s): M086589

REQUESTS FOR DISCLOSURE
(Recip. Rule 5)

TO: DEFENDANT AND HIS ATTORNEY Robert Poole:

Pursuant to Rule 5, Rules of Criminal Procedure, the State in the above captioned matter requests the disclosure of the following evidence to the State by the Defendant:

1) That the Defendant permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant and which the Defendant intends to introduce as evidence in chief at the trial;

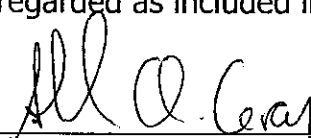
2) That the Defendant permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports related to his testimony.

3) The prosecution requests that the Defendant serve upon the prosecution a written notice if he intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on March 14, 2009 the names, address, and birthdays of the witnesses upon whom he intends to rely to establish such alibi.

4) That any and all evidence is available for viewing at the arresting agency or the South Carolina Law Enforcement Division.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.


Abel O. Gray
Assistant Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
Dated: December 13, 2010

CLERK OF COURT
SPARTANBURG COUNTY
RECEIVED
DEC 15 AM 9:20

Nov: 1. 2010 9:10AM

8645735342

Turnipseed & Brannon Law Firm

No. 9155 1300

File

TURNIPSEED, BRANNON & STEVENS LAW FIRM

ATTORNEYS AT LAW
128 Magnolia Street
Spartanburg, SC 29306

DAVID E. TURNIPSEED
N. DOUGLAS BRANNON
BRAD H. TURNIPSEED
J. BENJAMIN STEVENS

MAILING ADDRESS:
POST OFFICE BOX 1904
SPARTANBURG, SC 29304
PHONE (864) 673-0048
FAX (864) 673-5342
PHONE (864) 885-1339
FAX (864) 585-1398

TELECOPIER TRANSMITTAL COVER SHEET

DATE: 11/1/10
TO: Twanzette Anderson
FROM: Noel Price
TELECOPIER NO. 596-2239

RE:

No. of Pages Including transmittal sheet: 4

DIRECT INQUIRY/UNSUCCESSFUL TRANSMISSION TO 864-573-0048 INCLUDING COVER PAGE

MESSAGE:

The information contained in this Fax Message is privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this fax message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby on notice that you are in possession of confidential and privileged information, and dissemination, distribution, or copying of this communication is strictly prohibited, you are requested to immediately notify the sender by telephone of your inadvertent receipt. You are further requested to return the original fax message to the sender at the address above, via the United States Postal Service. Your cooperation is appreciated.

N. Douglas Brannon
Brac H. Turnipseed
J. Benjamin Stevens

David E. Turnipseed
(of counsel)

TBS

Turnipseed | Brannon | Stevens
Attorneys at Law

November 1, 2010

Ms. Twanzette Anderson
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, SC 29306

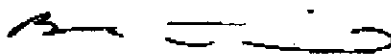
Re: State of South Carolina vs Darius T. Cathcart
Warrant Numbers: M 086589, M 086590, M 086591, M 023189, M 023190 & M 023191

Dear Twan:

This letter is to confirm that this firm no longer represents Darius T. Cathcart on the above listed charges or any other charge. Enclosed please find a copy of the Order to be Relieved as Counsel clocked on June 24, 2010. Please make a note in your file.

If you have any questions or wish to discuss this matter further please do not hesitate to contact me at my office. I am,

Sincerely,



Brac H. Turnipseed

/rnp

FILED
SPARTANBURG COUNTY
2010 NOV -1 AM 9:24
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
THE STATE	)	
	)	
vs	)	ORDER
	)	TO BE RELIEVED AS COUNSEL
DARIUS T. CATHCART	)	
	)	WARRANT NUMBERS: M-086589,
DEFENDANT.	)	M-086590, M-086591, M-023189, M-023190
	)	& M-023191

David E. Turnipseed of the Spartanburg County Bar and the firm of Turnipseed, Brannon and Stevens are counsel of record for the above named Defendant. Mr. Turnipseed moves the Court to be relieved as counsel in the above captioned case. The Motion was heard by me in chambers Wednesday, June 23, 2010. Mr. Abel Gray of the Seventh Circuit Solicitor's Office was present along with David and Brac Turnipseed. The Seventh Circuit Solicitor's Office has no objection to the relief asked for in the Motion.

It appears to the Court that an impasse has been reached between the above named Defendant and his attorneys and that it is no longer possible for them to represent Mr. Cathcart.

NOW THEREFORE on Motion of David E. Turnipseed, attorney for the Defendant, and with the consent of the Seventh Circuit Solicitor's Office

IT IS HEREBY ORDERED that Mr. Turnipseed and the firm of Turnipseed, Brannon and Stevens are hereby relieved of any further responsibility to represent Mr. Cathcart in the above captioned case.

AND IT IS SO ORDERED .

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 NOV - 1 AM 9:24
M. HOPE BLACKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN 24 AM 11:01
M. HOPE BLACKLEY

I SO MOVE

David E. Turnipseed
David E. Turnipseed

The Honorable J. Derham Cole
Seventh Judicial Circuit

I CONSENT

Abel Gray
Abel Gray

2

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 NOV -1 AM 9:24

M. HOPE BLACKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN 24 AM 11:01
M. HOPE BLACKLEY

ORIGINAL 1304

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

THE STATE)

vs)

DARIUS T. CATHCART)

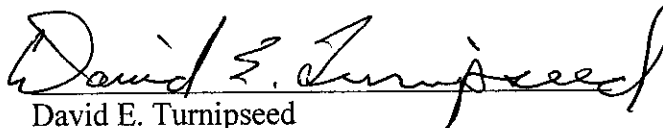
DEFENDANT.)

NOTICE OF MOTION AND MOTION
TO BE RELIEVED AS COUNSEL

WARRANT NUMBERS: M-086589,
M-086590, M-086591, M-023189, M-023190
& M-023191

TO: Mr. Todd Wilson & Mr. Abel Gray, Assistant Solicitor Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____,
2010, at _____ .m. or as soon thereafter as this matter can be heard, the undersigned
attorney, will move before the Presiding Judge for an Order to be relieved as Counsel on the
above named Defendant.



David E. Turnipseed
Turnipseed and Brannon
Attorneys for the Defendant
128 Magnolia Street
Post Office Box 1904
Spartanburg, SC 29304
864-573-0048

June 9, 2010

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN -9 PM 4:32
M. HOPE BLACKLEY

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 vs)
)
 DARIUS T. CATHCART,)
)
 DEFENDANT.)

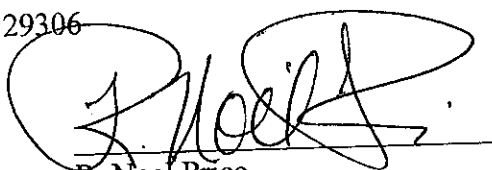
CERTIFICATE OF SERVICE
 BY HAND DELIVERY
 WARRANT NUMBERS: M-086589,
 M-086590 & M-086591

The undersigned certifies that she is employed in the law offices of Turnipseed and Brannon located at 128 Magnolia Street, Spartanburg, SC; mailing address of Post Office Box 1904, Spartanburg, SC 29304; that on June 8, 2010 she served a copy of the documents listed below on the person or persons listed below by hand delivery.

DOCUMENTS: Notice of Motion and Motion to be Relieved as Counsel

ADDRESSEE: Mr. Todd Wilson
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306

Mr. Abel Gray
 Assistant Solicitor
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306


 R. Noel Price
 Turnipseed and Brannon
 P.O. Box 1904
 Spartanburg, SC 29304
 864-573-0048

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 JUN -9 PM 4:32
 M. HOPE BLACKLEY

AGENCY I.D.
SCD 420000

INCIDENT REPORT

CASE NUMBER

1306

NCIC

ING. ENTD.

20090301662

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Homicide	☒ YES ☐ NO	☐ YES ☒ NO	residence		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public
2. Assault and Battery With Intent to Kill	☒ YES ☐ NO	☐ YES ☒ NO	residence		

SUBJECT NO. 1	VISIBLE INJURY (VICT. 1) ☒ YES ☐ NO EXPLAIN <u>gunshot to neck</u>		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO			
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:					
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ * J - This Jurisdiction S - State O - Out of State U - Unknown					
	NAME (LAST, FIRST, MIDDLE) <u>UNKNOWN</u>		RACE <u>B</u> SEX <u>M</u> AGE <u>/</u> ETH. <u>N</u> DATE OF BIRTH <u>/</u> HEIGHT <u>/</u> WEIGHT <u>/</u> HAIR <u>/</u> EYES <u>/</u>			
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
SUBJECT NO. 1	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
	SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☒ UNK. ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO DATE/TIME OF OFFENSE <u>03-14-09 0730</u>		DATE/TIME OF ARREST			
	DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:		TOTAL # ARRESTED			

on 03-14-09 at 0406 hours I was on Skylyn Drive when I responded to Mary Black Hospital in reference to two gunshot victims that arrived to the emergency room in a red Ford Crown Vic. Upon my arrival at 0408 hours I observed a red Ford parked in the ambulance entrance to the hospital with no occupants. I then observed the complainant standing in the emergency walk-in breezeway wearing a black hoodie jacket and blue jeans. The complainant was identified as Dwight Jamar Geter (Blm 19) who is also the brother of victim 1 (Duncan Peter Blm 16). Mr. Geter advised me that on 03-14-09

PROPERTY EST.	TYPE (GROUP)						TOTAL VALUE
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18
							☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
	Forester, H. G.		03-14-09	127	<i>[Signature]</i>	3-14-09	331

FOLLOW-UP INVESTIGATION ☐ YES ☐ NO

AGENCY I.D.
SC0 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2009030662

NCIC

INQ. ENTD.

☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL	☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE	☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY	PAGE <u>2</u> of <u>4</u> PAGES.

NARRATIVE	Father		USING DRUGS: ☐ NO ☐ YES → TYPE: ☐ UNK	
	he was driving his red Ford Crown Vic with Victim 1 who was seated in the rear behind the driver and Victim 2 who was the passenger of vehicle. Mr. Eter advised that he approached the Stop Sign on Mt. Pleasant Road at Burns Road and stopped. Mr. Eter observed a green vehicle (make + model unknown) pull up beside his stopped vehicle on the drivers side. At that time an unknown black male began shooting into his vehicle. Mr. Eter advised that Victim 1 was shot in the			
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
	neck and Victim 2			
VEH. / GUN / ETC. 1	STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☒ VICTIM TYPE ☒ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS, STOCKS ☐ ARTICLE		VIN AND/OR LICENSE NO. SERIAL AND/OR OWNER APPLIED NO. YEAR OF REGISTRATION MODEL Crown Vic NIC NO.	
			BOAT HULL NO. AND/OR REG. NO. (BC Auto Paper Trng) STATE YEAR OF EXPIRATION YEAR MAKE Ford TYPE STYLE 4dr COLOR red BRAND NAME CALIBER ISSUER SECURITIES DATE	
			MISCELLANEOUS	
PROPERTY EST.	TYPE (GROUP)		TOTAL VALUE	
	STOLEN			
	DAMAGED			
	BURNED			
ADMINISTRATIVE	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY			
	SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO	
	REPORTING OFFICER(S) Forresto, H6 DATE 03-11-09 UNIT NUMBER 127		APPROVING OFFICER DATE 3-14-09 UNIT NUMBER 331	
	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			

AGENCY I.D.
SCO 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

2009030662

INQ. ENTD.

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>3</u> of <u>4</u> PAGES.
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #			#1	#2	#3	*JSOU						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	B	EVENING PHONE	H	B
	☐ WANTED	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES EXPLAIN:		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED							

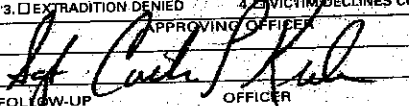
VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #			#1	#2	#3	*JSOU						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	B	EVENING PHONE	H	B
	☐ WANTED	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES EXPLAIN:		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED							

NARRATIVE	was also shot but he did not know where on the body. Mr. Geter immediately drove both victims to Mary Black Hospital for treatment. Deputy Davis placed crime scene tape around the Red Ford Crown Vic at the Emergency Ramp and began a Crime Scene Log. Violent Crime Investigators were notified. Dr. James Carter pronounced victim 1 deceased at 0400 hrs. A voluntary statement was also											
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					

VEH. / GUN / ETC. 1	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN	☒ VEHICLE			SERIAL AND/OR OWNER APPLIED NO.				STATE			
	☐ RECOVERED	☐ GUN			YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR		MAKE	
	☐ FOUND	☐ BOAT			MODEL		STYLE		COLOR		BRAND NAME	
	☐ TOWED	☐ LICENSE PLATE			NIC NO.		DENOMINATION		ISSUER		SECURITIES DATE	

PROPERTY-EST.	TYPE (GROUP)										TOTAL VALUE	
	STOLEN											
	DAMAGED											
	BURNED											
	RECOVERED											

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
Forester, HG		03/14/09		137		 OFFICER		3-14-09	

AGENCY I.D.
SCO 420000

SUPPLEMENTARY REPORT

CASE NUMBER

1309

NCIC

INQ. ENTD.

2009030642

☒ ORIGINAL
REPORT

☐ SUPPLEMENTAL
REPORT

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
STOLEN PROPERTY

PAGE 4 of 4 PAGES.

☐ MODIFIES
ORIGINAL

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
RECOVERED PROPERTY

obtained from Shawn Cape (w/m 39) who was the security guard on duty when the victims arrived. Mr. Geter advised that he and both victims had been at "Club Dreams" (1108 Charisma Drive) just prior to this incident. While there they all had a verbal altercation with several unknown black males. Mr. Geter would not provide any further information in reference to that incident other than he believes those black males followed him from "Club Dreams" to the incident location.

Investigator Williams arrived at Mary Black at 0512 hrs.

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED
☐ YES ☐ NO

SUBJECT LOCATED
☐ YES ☐ NO

☐ ACTIVE ☐ ADM. CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT
NUMBER

APPROVING OFFICER

DATE

UNIT
NUMBER

Forrester, H6

03-11-05

127

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

314-09 334

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

2009030662

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS

TYPE

☐ STOLEN☐ VEHICLE☐ RECOVERED☐ GUN☐ FOUND☐ BOAT☐ TOWED☐ LICENSE PLATE☐ SUSPECT☐ SECURITIES/BOND, STOCKS☐ VICTIM☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

TOTAL VALUE

TYPE (GROUP)

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☒ YES ☐ NO

☐ ACTIVE
☐ UNFOUNDED

☐ ADM. CLOSED

☐ ARRESTED UNDER 18
☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)

DATE
03/15/09BADGE #
773

APPROVING OFFICER

DATE

BADGE #

L Williams

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

2009030662

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS

TYPE

☐ STOLEN☐ VEHICLE☐ RECOVERED☐ GUN☐ FOUND☐ BOAT☐ TOWED☐ LICENSE PLATE☐ SUSPECT☐ SECURITIES/BOND, STOCKS☐ VICTIM☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

TYPE (GROUP)

TOTAL VALUE

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED
☐ YES ☐ NO

SUBJECT LOCATED
☐ YES ☐ NO

☐ ACTIVE
☐ UNFOUNDED

☐ ADM. CLOSED☐ ARRESTED UNDER 18☐ ARRESTED 18 AND OVER☐ EX-CLEAR UNDER 18☐ EX-CLEAR 18 AND OVERREASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)

DATE

BADGE #

APPROVING OFFICER

DATE

BADGE #

L Williams

03/14/09

773

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

AGENCY I.D.
SC0420000SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

2009030662

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS

TYPE

☐ STOLEN☐ VEHICLE☐ RECOVERED☐ GUN☐ FOUND☐ BOAT☐ TOWED☐ LICENSE PLATE☐ SUSPECT☐ SECURITIES/BOND, STOCKS☐ VICTIM☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

TYPE (GROUP)

TOTAL VALUE

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED
☐ YES ☐ NOSUBJECT LOCATED
☐ YES ☐ NO☐ ACTIVE
☐ UNFOUNDED☐ ADM. CLOSED☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVERREASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)

DATE

BADGE #

APPROVING OFFICER

DATE

BADGE #

L. Williams

03/14/09

773

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

1313
ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

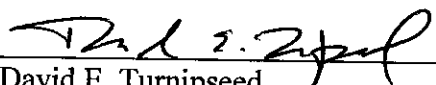
THE STATE)
vs)
DARIUS T. CATHCART)
DEFENDANT.)

NOTICE OF MOTION AND MOTION
TO SET BOND

WARRANT NUMBERS: M-086589,
M-086590 & M-086591

TO: Mr. Todd Wilson, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____,
2009, at _____ .m. or as soon thereafter as this matter can be heard, the Defendant, by
and through his undersigned attorney, will move before the Presiding Judge for an Order setting
bond on the above named Defendant.


David E. Turnipseed
Turnipseed and Brannon
Attorneys for the Defendant
128 Magnolia Street
Post Office Box 1904
Spartanburg, SC 29304
864-573-0048

March 28, 2009

MARC KITCHENS
2009 MAR 27 PM 1:08
CLERK OF COURT
SPARTANBURG COUNTY

1314
ORIGINAL

pw

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

vs)

DARIUS T. CATHCART,)

DEFENDANT.)

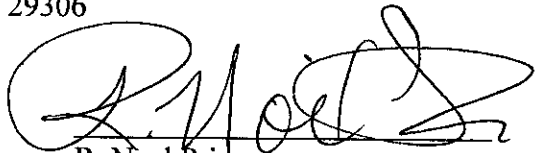
CERTIFICATE OF SERVICE
BY HAND DELIVERY ✓
WARRANT NUMBERS: M-086589,
M-086590 & M-086591 ✓

The undersigned certifies that she is employed in the law offices of Turnipseed and Brannon located at 128 Magnolia Street, Spartanburg, SC; mailing address of Post Office Box 1904, Spartanburg, SC 29304; that on March 27, 2009 she served a copy of the documents listed below on the person or persons listed below by hand delivery.

DOCUMENTS: Notice of Motion and Motion to Set Bond

ADDRESSEE: Mr. Todd Wilson
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306

Mr. Derrick Bulsa
Assistant Solicitor
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306



R. Noel Price
Turnipseed and Brannon
P.O. Box 1904
Spartanburg, SC 29304
864-573-0048

MARC KITCHENS
2009 MAR 27 PM 1:08
SPARTANBURG COUNTY
CLERK OF COURT
FILED

pw5

STATE OF SOUTH CAROLINA

)

IN THE GENERAL SESSIONS COURT

COUNTY OF SPARTANBURG

)

The State of South Carolina,

)

Plaintiff,

)

)

NOTICE OF REPRESENTATION

vs.

)

)

Warrant Numbers: M-086589,
M-086590 & M-086591

DARIUS T. CATHCART,

)

)

Defendant.

)

)

TO: Mr. Derrick Bulsa, Assistant Solicitor, Seventh Judicial Circuit

PLEASE LET IT BE KNOWN, that the undersigned has been formally retained and he will be representing the Defendant, Darius T. Cathcart, in the above referenced matter pending before the General Sessions Court for Spartanburg County. All further correspondence or contact is to be forwarded to the undersigned attorney and not to the Defendant above named.

TURNIPSEED & BRANNON
ATTORNEYS AT LAW



David E. Turnipseed
Attorney for Defendant
Post Office Box 1904
Spartanburg, SC 29304
864-573-0048

Spartanburg, South Carolina

March 27, 2009

MARC KITCHENS

2009 MAR 27 PM 1:09

CLERK OF COURT
SPARTANBURG COUNTY

ORIGINAL

PW

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
)

PLAINTIFF,

NOTICE OF BRADY MOTION AND
 CRIMINAL PRACTICE RULE 5
 REQUEST FOR DISCLOSURE

vs.

DARIUS T. CATHCART

WARRANT NUMBERS: ✓

M-086589, M-086590 & M-086591

DEFENDANT.

TO: Mr. Derrick Balsa, Assistant Solicitor, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that the Defendant, above named, by his undersigned attorney, will move before the presiding judge of The General Sessions Court, ten (10) days prior to the time and date set for trial; for information pursuant to Brady v. Maryland, 373 U. S. 83 (1963) and information pursuant South Carolina Court Criminal Practice Rule 5 on the belief of the attorney for the defense that such information is important to the defendant's defense. Specifically requested are the following:

1. Disclosure to the defense of any and all exculpatory information that is now or has been or may come to the attention of the prosecution or police or any person or agency associated with the prosecution, in the subject matter, until the conclusion of this matter by trial and appeal; as required under the mandate of Brady vs. Maryland, 373 U. S. 83 (1963)

2. Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person known to the Defendant to be a prosecution agent.

3. A copy of the Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due

PW

ORIGINAL

diligence may become known, to the attorney for the prosecution.

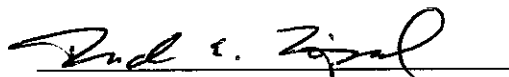
4. All books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or where obtained from or belong to the Defendant.

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

6. All statements, oral or written, made by prosecution witnesses or prospective witnesses.

7. A certification from the State that the within Motion and Request has been complied with; and further a certification that any Court Order pertinent to the within Motion and Request has been complied with; and further that there is no information, either "material to the defense", or otherwise that has been kept from the defense; and further that the prosecution has not seen or known of any such information either in the custody of the prosecution or in the possession of any agent of the prosecution, police, or investigation agency; and transcripts of testimony of all fact witnesses before the Grand Jury.

8. Copies of any and all video or audio tapes relating to the pursuit, arrest, investigation, or administering of scientific tests. If no video or audio tapes exist, the Defendant requests, by and through this motion, for an affidavit from the investigating officers that there are no tapes available.



David E. Turnipseed
TURNIPSEED & BRANNON
Attorney for Defendant
P.O. Box 1904
Spartanburg, SC 29304-1904
864-573-0048

March 27, 2009

MARC KITCHENS

2009 MAR 27 PM 1:09

FILED
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
)

PLAINTIFF,)
)

vs.)
)

DARIUS T. CATHCART)
)

DEFENDANT.)
)

CERTIFICATE OF SERVICE)
)

BY HAND DELIVERY)
)

WARRANT NUMBERS: M-086589)
)

M-086590 & M-086591)
)

The undersigned certifies that she is employed in the law offices of Turnipseed & Brannon located at 128 Magnolia Street, Spartanburg, SC; mailing address of P.O. Box 1904, Spartanburg, SC 29304; that on March 27, 2009 she served a copy of the documents listed below on the person or persons listed below by Hand Delivery.

DOCUMENTS: Brady Motion and Rule 5 Request for Discovery
 & Notice of Representation

ADDRESSEE: Mr. Derrick Bulsa
 Assistant Solicitor
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306



R. Noel Price
 Turnipseed & Brannon
 P.O. Box 1904
 Spartanburg, SC 29306-1904
 864-573-0048

MARC KITCHENS

2009 MAR 27 PM 1:09

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA)

Indictment No(s): 08.7478-80

Warrant No(s): M023189-91

VS.)

REQUESTS FOR DISCLOSURE
(Recip. Rule 5)Darius Cathcart)

TO: DEFENDANT AND HIS ATTORNEY David Turnipseed:

Pursuant to Rule 5, Rules of Criminal Procedure, the State in the above captioned matter requests the disclosure of the following evidence to the State by the Defendant:

1) That the Defendant permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant and which the Defendant intends to introduce as evidence in chief at the trial;

2) That the Defendant permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports related to his testimony.

3) The prosecution requests that the Defendant serve upon the prosecution a written notice if he intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on July 30, 2008 the names, address, and birthdays of the witnesses upon whom he intends to rely to establish such alibi.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.

A. Anderson
J Patrick Anderson
Assistant Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
Dated: June 10, 2009

2009 JUN 11 AM 9:30
MARC KITCHENS

7

2

BROADCAST CONFIRMATION REPORT

1321

04/03/2009 15:44

ID=SPTBG CO CLK OF CRT

PAGES = 01

TOTAL TIME = 00:01'04"

LOCATION ID	PAGES	RESULT	LOCATION ID	PAGES	RESULT
ONE TOUCH					
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MESSAGE CONFIRMATION

04/03/2009 15:45

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DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
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04/03/2009 15:41 SPTBG CO CLK OF CRT

NO.348 001

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

The STATE,)

-VS-)

Darius T. Cathcart,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS

ORDER FOR BAIL - SURETY REQUIRED
With Special Conditions

Warrant/Indictment Number(s)

M-086589, M-086590, and M-086591

This matter was before this Court on the defendant's motion, by and through his/her attorney, **David E. Turnipseed, Esq.**, pursuant to S. C. Code Ann. Section 17-15-10, *et. seq.*, for release on bail pending trial on the above-referenced charge(s) and/or for a reduction in bail previously set. At a hearing held in this matter the State was represented by **Derrick Bulsa** of the Circuit Solicitor's office.

It appears that the defendant is being held in the County Detention Facility, having been charged with the crime(s) of **Murder, Assault and Battery With Intent to Kill**, and **Assault With Intent to Kill**.

It further appears that releasing the defendant on his/her own recognizance will not reasonably assure his/her appearance at any future court proceedings as required and/or an unreasonable risk of danger to the community will result.

Having considered the nature and circumstances of the offense(s) charged, the defendant's character and mental condition, family ties and length of residence in the community, employment and financial resources, prior criminal history, any record of

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF SPARTANBURG) INDICTMENT NOS:

THE STATE OF SOUTH CAROLINA)

v.)

Darius Tavares Cathcart,)

DEFENDANT.)

SOLICITOR'S
 AFFIDAVIT OF SERVICE

Warrant No(s): M-086589-91

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that she copied/served the following materials:

DISCOVERY –
CD containing case file, photos

I, David Turnipseed, attorney for the Defendant(s) or his/her designee, have received the above-referenced material and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 20th day of April, 2009.

BY: [Signature]

Seventh Judicial Circuit
 Office of the Solicitor

[Signature]
 Defense Attorney or Designee

SWORN to before me this 20th
 day of April, 2009.

[Signature] (SEAL)

Notary Public for South Carolina

My Commission expires: 07/03/2014

MARC KITCHENS

2009 APR 20 PM 2:48

CLERK OF COURT
 SPARTANBURG COUNTY

[Handwritten mark]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 THE STATE)
)
 vs)
)
 DARIUS T. CATHCART)
)
 DEFENDANT.)
)

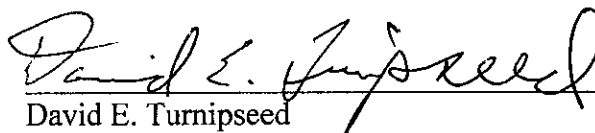
IN THE GENERAL SESSIONS COURT
 SEVENTH JUDICIAL CIRCUIT

NOTICE OF MOTION AND MOTION
 TO AMEND BOND

WARRANT NUMBERS: M-086589,
 M-086590 & M-086591

TO: Mr. Todd Wilson, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____,
 2009, at _____ .m. or as soon thereafter as this matter can be heard, the Defendant, by
 and through his undersigned attorney, will move before the Presiding Judge for an Order
 amending bond on the above named Defendant.


 David E. Turnipseed
 Turnipseed and Brannon
 Attorneys for the Defendant
 128 Magnolia Street
 Post Office Box 1904
 Spartanburg, SC 29304
 864-573-0048

July 28, 2009

FILED
 SEVENTH JUDICIAL CIRCUIT
 SPARTANBURG COUNTY
 2009 JUL 29 PM 4:27
 MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)

vs)
)

DARIUS T. CATHCART,)
)

DEFENDANT.)
)
 _____)

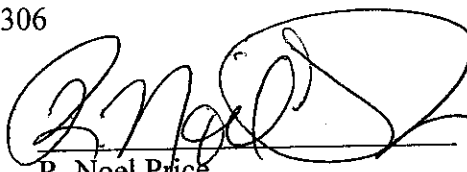
CERTIFICATE OF SERVICE
BY HAND DELIVERY
WARRANT NUMBERS: M-086589,
M-086590 & M-086591

The undersigned certifies that she is employed in the law offices of Turnipseed and Brannon located at 128 Magnolia Street, Spartanburg, SC; mailing address of Post Office Box 1904, Spartanburg, SC 29304; that on July 29, 2009 she served a copy of the documents listed below on the person or persons listed below by hand delivery.

DOCUMENTS: Notice of Motion and Motion to Amend Bond

ADDRESSEE: Mr. Todd Wilson
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306

Mr. Derrick Bulsa
 Assistant Solicitor
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306



R. Noel Price
 Turnipseed and Brannon
 P.O. Box 1904
 Spartanburg, SC 29304
 864-573-0048

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2009 JUL 29 PM 4:27
 MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

THE STATE)

vs)

DARIUS T. CATHCART)

DEFENDANT.)

NOTICE OF MOTION AND MOTION
TO AMEND BOND

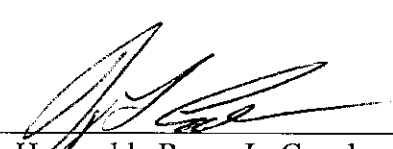
WARRANT NUMBERS: M-086589,
M-086590 & M-086591

This matter is before the me pursuant to Mr. Turnipseed's Motion to reduce the Defendant's bond. The Court is aware that bond was previously set by Judge Cole in the amount of \$150,000.00, One hundred and fifty thousand dollars. The Court was further made aware that since bond was set, that the Defendant has a new baby daughter and has a very good job prospect where he could earn income and contribute to her support. The Defendant's family is unable to post a surety bond of \$150,000.00. One hundred and fifty thousand dollars. The Court is of the opinion that te bond should be reduced to the sum of \$75,000.00, seventy five thousand dollars.

IT IS THEREFORE ORDERED that the Defendant be admitted to bail in the amount of \$75,000.00, seventy five thousand dollars, surety bond.

IT IS FURTHER ORDERED that all of the terms and conditions of Judge J. Derham Cole's bond remain in full force and effect including but not limited to home detention with the Defendant being allowed to go to work, church, medical appointments or emergencies and to his lawyer's office.

AND IT IS SO ORDERED.


The Honorable Roger L. Couch
Seventh Judicial Circuit

August 11, 2009

2009 AUG 11 AM 9:48
MARC KITCHENS
FILED
COURT

MESSAGE CONFIRMATION

08/11/2009 09:12
ID=SPTBG CO CLK OF CRT

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
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08/11/2009 09:12 SPTBG CO CLK OF CRT → 95963423

NO. 738 001

STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT
))	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
THE STATE)	
))	
vs)	NOTICE OF MOTION AND MOTION
))	TO AMEND BOND
DARIUS T. CATHCART)	
))	
DEFENDANT.)	WARRANT NUMBERS: M-086589,
))	M-086590 & M-086591

This matter is before the me pursuant to Mr. Turnipseed's Motion to reduce the Defendant's bond. The Court is aware that bond was previously set by Judge Cole in the amount of \$150,000.00, One hundred and fifty thousand dollars. The Court was further made aware that since bond was set, that the Defendant has a new baby daughter and has a very good job prospect where he could earn income and contribute to her support. The Defendant's family is unable to post a surety bond of \$150,000.00. One hundred and fifty thousand dollars. The Court is of the

MESSAGE CONFIRMATION

08/11/2009 09:13
ID=SPTBG CO CLK OF CRT

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
08/11	00'17"	95963426	TX	01	OK 0000

08/11/2009 09:12 SPTBG CO CLK OF CRT → 95963426

NO.739 001

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
THE STATE	)	
	)	
vs	)	NOTICE OF MOTION AND MOTION
	)	TO AMEND BOND
DARIUS T. CATHCART	)	
	)	WARRANT NUMBERS: M-086589,
DEFENDANT.	)	M-086590 & M-086591
	)	

This matter is before the me pursuant to Mr. Turnipseed's Motion to reduce the Defendant's bond. The Court is aware that bond was previously set by Judge Cole in the amount of \$150,000.00, One hundred and fifty thousand dollars. The Court was further made aware that since bond was set, that the Defendant has a new baby daughter and has a very good job prospect where he could earn income and contribute to her support. The Defendant's family is unable to post a surety bond of \$150,000.00. One hundred and fifty thousand dollars. The Court is of the

MESSAGE CONFIRMATION

08/11/2009 09:15
ID=SPTBG CO CLK OF CRT

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
08/11	00'17"	98645962986	TX	01	OK 0000

08/11/2009 09:12 SPTBG CO CLK OF CRT → 95962986

NO. 740 001

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
THE STATE	)	
	)	
vs	)	NOTICE OF MOTION AND MOTION
	)	TO AMEND BOND
DARIUS T. CATHCART	)	
	)	WARRANT NUMBERS: M-086589,
DEFENDANT.	)	M-086590 & M-086591

This matter is before the me pursuant to Mr. Turnipseed's Motion to reduce the Defendant's bond. The Court is aware that bond was previously set by Judge Cole in the amount of \$150,000.00, One hundred and fifty thousand dollars. The Court was further made aware that since bond was set, that the Defendant has a new baby daughter and has a very good job prospect where he could earn income and contribute to her support. The Defendant's family is unable to post a surety bond of \$150,000.00. One hundred and fifty thousand dollars. The Court is of the

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

v.

DARIUS T. CATHCART

NAME OF DEFENDANT

Offense Charged: MURDER AWIK ABWIK

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

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

This determination was based upon the following findings of fact: _____

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

THEREFORE, IT IS HEREBY ORDERED:

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

CASH IN LIEU OF BOND

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

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$75,000.00 w/ GPS monitoring

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

- ☒ the term of _____ COURT OF GENERAL SESSIONS beginning on 9-17-09
at 9:00 o'clock, AM, at 180 MAGNOLIA STREET, SPARTANBURG, SC
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of _____ MAGISTRATE COURT beginning on _____
at _____ o'clock, _____ at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT D.C.

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE Su Cathcart OrderAugust 10, 2009
DATE

APPLICATION TO ACT AS ACCOMMODATION BONDSMAN
(PLEASE PRINT)

NAME: Addinekia Brewer
MAILING ADDRESS: 137 Prospect Ave.
TELEPHONE: 381-3109 DRIVER'S LICENSE/ID NO: 007384002

ADDRESS OF PROPERTY TO BE USED FOR BOND
137 Prospect Ave Sptbg SC 29306
ALL OWNERS OF THIS PROPERTY Addinekia Brewer
PERSON YOU WISH TO BOND Darius Cathcart

I MAKE THE FOLLOWING CERTIFICATIONS TO THE COURT.

1. I am at least eighteen (18) years of age.
2. I am a South Carolina resident.
3. I have not received, and will not receive, any money or any other thing of value to act as a bondsman.
4. I am not a law enforcement officer, judicial officer, attorney, probation or parole officer, jailer, employee of any court of this state.
5. I own the above-listed real estate, subject to the following debts, liabilities, and exemptions.

	AMOUNT
a. Outstanding balance on mortgage:	\$ <u>0</u>
b. Recorded judgements or liens where I or other owners have been sued:	\$ _____
c. Bonds previously signed within the last three years:	
PERSON BONDED	
_____	\$ _____
_____	\$ _____
_____	\$ _____
d. Do you or a dependant use this real estate as a residence?	
<u>✓</u> yes	\$ _____
_____ no	

I understand that if the defendant for whom I sign a bond does not appear in court when required or otherwise violates any condition of his bond, my property can be sold by the State to satisfy the amount of the bond. I also understand that I can be charged with a criminal offense if any of the above representations are false.

8/18/09
DATE

Addinekia Brewer
SIGNATURE

COURT USE ONLY

ASSESSED VALUE OF PROPERTY
- TOTAL DEBTS, LIABILITIES & EXEMPTIONS
NET EQUITY

\$ 58,600
\$ 5,000
\$ _____

MAXIMUM ALLOWABLE BOND

\$ 53,600

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Eric Littlejohn

to

Brandy W. McBee, Clerk
of Court of Cherokee County, or
his/her successor in office,

A TRUE COPY

*Brandy W. McBee*CLERK OF COURT
CHEROKEE COUNTY, S.C.

NOTICE

OF
PLEDGEOF
REAL ESTATE

200900004262

Filed for Record in
CHEROKEE COUNTY, SC
BRANDY W MCBEE08-18-2009 At 11:29 am.
MTG / BOND 10.00

OR Volume 29 Page 2384 - 2387

KNOW ALL MEN by these presents, that Eric Littlejohn, Owner, does hereby pledge the below described real estate to Brandy W. McBee, Clerk of Court for Cherokee County, or her successor in office, as collateral for the approval of surety bonds for Darius T. Cathcart in the amount of Forty Thousand and No/100th Dollars (\$40,000.00) of the \$75,000.00 Total Bond.

Offense: MurderWarrant #: M-086589County: SpartanburgOffense: ABWIKWarrant #: M-086590County: SpartanburgOffense: ABWIKWarrant #: M-086591County: SpartanburgOffense: Bench WarrantsWarrant #: GSBWM023189, GSBWM 023190, GSBWM 023191County: Spartanburg

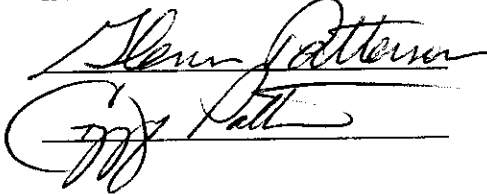
SEE ATTACHED "EXHIBIT A" FOR DESCRIPTION

In consideration of the issuance of approval of surety bonds by Brandy W. McBee, Clerk of Court of Cherokee County, the undersigned does agree that said real estate will not be transferred, conveyed or encumbered without notice to the said Brandy W. McBee, Clerk of Court for Cherokee County.

This pledge shall remain in force and effect until canceled or released by instrument filed in the Register of Deeds office for Cherokee County.

WITNESS my hand(s) and seal(s) this 14th day of August, 2009.

IN THE PRESENCE OF:


Eric Littlejohn

Personally appeared before me the above witness and made oath that (s)he saw the within named Property Owner(s) sign, seal and as his/her/their act and deed, deliver the within instrument for the uses and purposes therein mentioned, and that (s)he, with the other witness above named, witnessed the execution thereof.

SWORN TO before me this 14th day
of August, 2009.

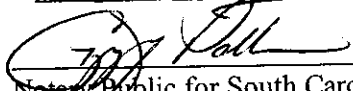

(L.S.)
Notary Public for South Carolina
My Commission expires: July 2, 2011

EXHIBIT A

All that certain piece, parcel or lot of land, with all improvements thereon or to be constructed thereon, lying and being situate in the State of South Carolina, County of Cherokee, being shown and delineated as a portion of Lot No. 47, Buford Heights Subdivision, containing 0.242 acre, more or less, on plat prepared for Christine R. Shippy by Lavender, Smith and Associates, Inc., Surveyors, dated November 3, 1995, and recorded in the Office of the Clerk of Court for Cherokee County in Deed Book 14-V, at Page 193 . Reference to the aforesaid plat is made in aid of further description.

This being the identical property conveyed unto Eric Littlejohn by deed of Mulberry Properties, LLC recorded in the Office of the Clerk of Court for Cherokee County, South Carolina in Deed Book 14, at Page 2155.

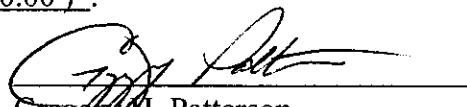
Tax Map Number: 080-06-00-007
Property Address: 108 Kennedy Street
Gaffney, SC 29341

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

CERTIFICATE OF VALUE
FOR BOND

This is to certify that title to the real estate designated as: Tax Map # 080-06-00-007 a/k/a 108 Kennedy Street is vested in Eric Littlejohn and is situate in the County of Cherokee, State of South Carolina, the derivation of which is a Deed from Mulberry Properties, LLC, recorded December 26, 2007 in Book 14 at Page 2155 in the Office of the Clerk of Court for Cherokee County and is more particularly described in the attached Deed. This Certificate of Value is being issued so that Eric Littlejohn may pledge the real estate described herein as collateral for a surety bond for Darius T. Cathcart, who has been charged with Murder, ABWIK, & Bench Warrants and perhaps other offenses, bond having been set at Seventy Five Thousand and No/100th Dollars (\$75,000.00) and this is to certify that, after deducting the amount due under the liens affecting the property and not including the value of any mobile home which may be situate on the property, that the value of the property is equal to at least Fifty Six Thousand and No/100th Dollars (\$56,000.00).

Date: August 14, 2009



Gregory H. Patterson
Attorney at Law
225 E. Floyd Baker Blvd.
Gaffney, SC 29340

State of South Carolina

DEED

200700008050

Filed for Record in
CHEROKEE COUNTY, SC

BRANDY W MCREE

12-26-2007 At 03:30 PM,

DEED 139.50

DR Volume 14 Page 2155 - 2156

COUNTY OF CHEROKEE

(Individual)

KNOW ALL MEN BY THESE PRESENTS, That Mulberry Properties, L.L.C.; acting by and through its sole member, Joel L. Mazyck (hereinafter called "Grantor"), for and in consideration of the sum of Thirty Four Thousand Eight Hundred Seven (\$34,807.00) Dollars to the Grantor in hand paid at and before the sealing of these presents, by Eric Littlejohn of Cherokee County (hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, her heirs, successors and assigns:

LEGAL DESCRIPTION

All that certain piece, parcel or lot of land with all improvements thereon, situate, lying and being in the State of South Carolina, County of Cherokee, being shown and delineated as a portion of Lot No. 47, Buford Heights Subdivision, containing 0.242 acre, more or less, on plat prepared for Christine R. Shippy by Lavender, Smith and Associates, Inc., Surveyor, dated November 3, 1995 and recorded in the Office of the Clerk of Court for Cherokee County in Deed Book 14-V at Page 193. Reference to the aforesaid plat is made in aid of further description.

Being the same property conveyed to Mulberry Properties, L.L.C. by deed of Federal Home Loan Mortgage Corporation dated and recorded October 10, 2003, in DEED BOOK 161 AT PAGE 211.

TMS# 080-06-00-007.00

Grantee's Address: 108 Kennedy Street, Gaffney, SC 29341

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
THE STATE)	
vs)	NOTICE OF MOTION AND MOTION
DARIUS T. CATHCART)	TO AMEND BOND
DEFENDANT.)	WARRANT NUMBERS: M-086589,
	M-086590 & M-086591

This matter is before the me pursuant to Mr. Turnipseed's Motion to reduce the Defendant's bond. The Court is aware that bond was previously set by Judge Cole in the amount of \$150,000.00, One hundred and fifty thousand dollars. The Court was further made aware that since bond was set, that the Defendant has a new baby daughter and has a very good job prospect where he could earn income and contribute to her support. The Defendant's family is unable to post a surety bond of \$150,000.00. One hundred and fifty thousand dollars. The Court is of the opinion that te bond should be reduced to the sum of \$75,000.00, seventy five thousand dollars.

IT IS THEREFORE ORDERED that the Defendant be admitted to bail in the amount of \$75,000.00, seventy five thousand dollars, surety bond.

IT IS FURTHER ORDERED that all of the terms and conditions of Judge J. Derham Cole's bond remain in full force and effect including but not limited to home detention with the Defendant being allowed to go to work, church, medical appointments or emergencies and to his lawyer's office.

AND IT IS SO ORDERED.


 The Honorable Roger L. Couch
 Seventh Judicial Circuit

August 10, 2009

2009 AUG 11 AM 9:48
 MARC KITCHENS
 CLERK OF COURT
 SPARTANBURG COUNTY
 FILED

1337

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The STATE,

-VS-

Darius T. Catheart,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

ORDER FOR BAIL - SURETY REQUIRED
With Special Conditions

Warrant/Indictment Number(s)

M-086589, M-086590, and M-086591

This matter was before this Court on the defendant's motion, by and through his/her attorney, **David E. Turnipseed, Esq.**, pursuant to S. C. Code Ann. Section 17-15-10, *et. seq.*, for release on bail pending trial on the above-referenced charge(s) and/or for a reduction in bail previously set. At a hearing held in this matter the State was represented by **Derrick Balsa** of the Circuit Solicitor's office.

It appears that the defendant is being held in the County Detention Facility, having been charged with the crime(s) of **Murder, Assault and Battery With Intent to Kill, and Assault With Intent to Kill.**

It further appears that releasing the defendant on his/her own recognizance will not reasonably assure his/her appearance at any future court proceedings as required and/or an unreasonable risk of danger to the community will result.

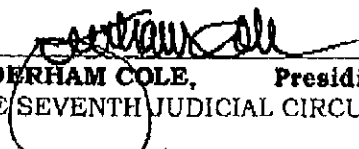
Having considered the nature and circumstances of the offense(s) charged, the defendant's character and mental condition, family ties and length of residence in the community, employment and financial resources, prior criminal history, any record of flight to avoid prosecution and any failure to appear at other court proceedings, this Court finds that the defendant's **motion** for release on bail pending trial and/or for a reduction in bail previously set should be and is therefore **granted.**

It is therefore ordered that the defendant shall be released from pre-trial confinement upon the execution of an appearance bond, with surety, in the sum of **ONE HUNDRED FIFTY THOUSAND** Dollars, (\$ **150,000**), to be signed by a licensed professional bondsman and/or other person(s) owning sufficient property to secure such sum and/or such other good and sufficient surety as approved by this Court, with such bond being returnable on demand to the Court of General Sessions for Spartanburg County, South Carolina.

IT IS ORDERED THAT the defendant's release shall, in addition to the usual and ordinary conditions of release, be subject to the following **special conditions**:

HOME DETENTION pursuant to the Spartanburg County Home Detention program which shall include GPS monitoring at the expense of the defendant; **NO CHANGE OF ADDRESS** without prior court approval; **NO FIREARMS** in actual or constructive possession; **NO CONTACT** with any named victim or his/her family member or potential prosecution witness without prior court approval.

IT IS SO ORDERED!


J. DERHAM COLE, Presiding Judge
THE SEVENTH JUDICIAL CIRCUIT COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
) IN THE GENERAL SESSIONS COURT
)

The State of South Carolina,

)

Plaintiff,

)

vs.

)

DARIUS T. CATHCART,

)

Defendant.

)

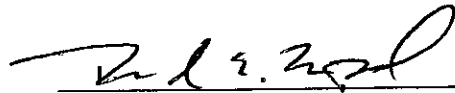
NOTICE OF REPRESENTATION

Warrant Numbers: M-086589,
M-086590 & M-086591

TO: Mr. Derrick Balsa, Assistant Solicitor, Seventh Judicial Circuit

PLEASE LET IT BE KNOWN, that the undersigned has been formally retained and he will be representing the Defendant, Darius T. Cathcart, in the above referenced matter pending before the General Sessions Court for Spartanburg County. All further correspondence or contact is to be forwarded to the undersigned attorney and not to the Defendant above named.

TURNIPSEED & BRANNON
ATTORNEYS AT LAW



David E. Turnipseed
Attorney for Defendant
Post Office Box 1904
Spartanburg, SC 29304
864-573-0048

Spartanburg, South Carolina

March 27, 2009

MARC KITCHENS

2009 MAR 27 PM 1:09

FILED
CLERK OF COURT
SPARTANBURG COUNTY



COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,

AFFIDAVIT OF DISCOVERY

Indictment No(s):

Warrant No(s): m0010589

^v
Darius Cathcart

Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☒ **HARD COPY** ☐ **ELECTRONICALLY**

☒ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☒ Photograph(s)	20-71e
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☒ SLED Lab Report(s)	1-6		
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

Other

Coroner's report pg 7-10, Autopsy report pg 11-15, SLED report pg 16-19

TOTAL COPIED/NUMBERED: _____ DATED: _____

1. David J. Ingersoll, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. ~~I also accept service of the Solicitor's Reciprocal Rule 5.~~ Supplemental discovery

Signed/Accepted this 3 day of May, 20

Attorney or Designee

SOLICITOR'S OFFICE

SWORN to before me this 9 day

of Hals, 20

Notary Public for South Carolina

My commission expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY -4 PM 2:04

ORIGINAL 1340

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

THE STATE)
vs)
DARIUS T. CATHCART)
DEFENDANT.)
_____)

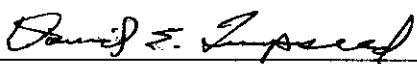
IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

NOTICE OF MOTION AND MOTION
TO SET BOND

WARRANT NUMBERS: M-086589,
M-086590 & M-086591

TO: Mr. Todd Wilson & Mr. Abel Gray, Assistant Solicitor, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____,
2010, at _____ .m. or as soon thereafter as this matter can be heard, the Defendant, by
and through his undersigned attorney, will move before the Presiding Judge for an Order setting
bond on the above named Defendant.



David E. Turnipseed
Turnipseed, Brannon & Stevens
Attorneys for the Defendant
128 Magnolia Street
Post Office Box 1904
Spartanburg, SC 29304
864-573-0048

April 8, 2010

2010 APR - 8 PM 4:26

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
 vs)
)
 DARIUS T. CATHCART,)
)
 DEFENDANT.)
 _____)

CERTIFICATE OF SERVICE
 BY HAND DELIVERY
 WARRANT NUMBERS: M-086589,
 M-086590 & M-086591

The undersigned certifies that she is employed in the law offices of Turnipseed, Brannon & Stevens located at 128 Magnolia Street, Spartanburg, SC; mailing address of Post Office Box 1904, Spartanburg, SC 29304; that on April 8, 2010 she served a copy of the documents listed below on the person or persons listed below by hand delivery.

DOCUMENTS: Notice of Motion and Motion to Set Bond

ADDRESSEE: Mr. Todd Wilson
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306

Mr. Abel Gray
 Assistant Solicitor
 Seventh Judicial Circuit
 180 Magnolia Street
 Spartanburg, SC 29306



 R. Noel Price
 Turnipseed, Brannon & Stevens
 P.O. Box 1904
 Spartanburg, SC 29304
 864-573-0048

2010 APR -8 PM 4:26

FILED
 CLERK
 COURT OF GENERAL SESSIONS
 SPARTANBURG, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
 SEVENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
 v.)
)
 Darius Tavares Cathcart,)
)
 Defendant.)

AFFIDAVIT OF ADDITIONAL DISCOVERY

Indictment No(s):

Warrant No(s): M086589-91

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☒ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			

☒ Other (NO CHARGE)

DVD containing pages 1-511 (file list attached) and video from SRMC and Southeastern Converters

TOTAL COPIED/NUMBERED: _____ DATED: _____

I, **David Turnipseed**, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter.

Signed/Accepted this _____ day of _____, 20____.

David S. Turnipseed
 Attorney or Designee

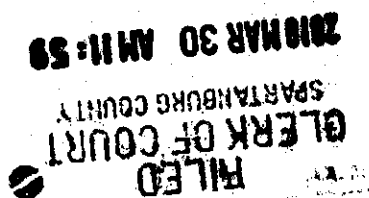
[Signature]
 SOLICITOR'S OFFICE (DBB)

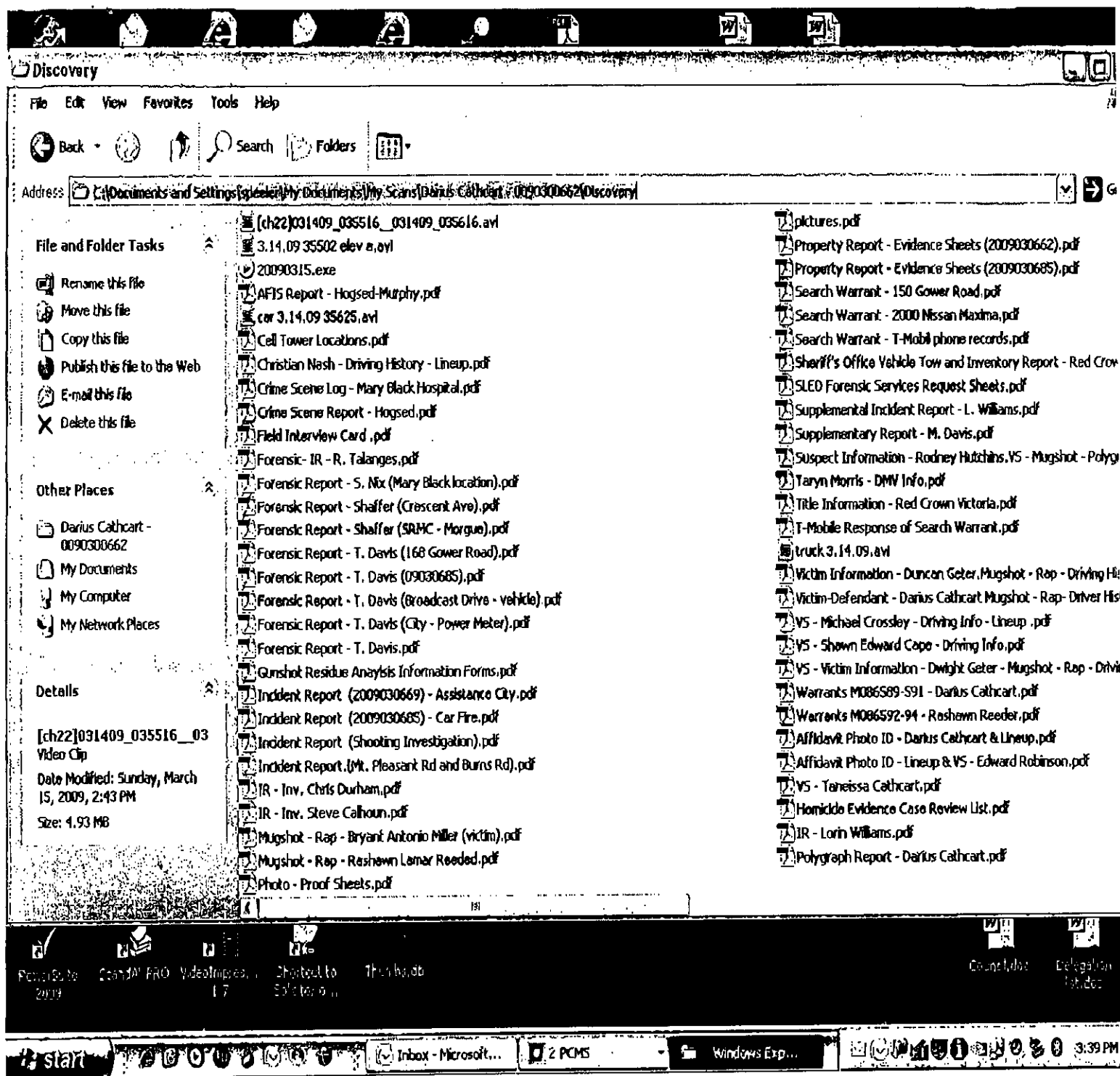
SWORN to before me this 30 day

of March, 2010.

Notary Public for South Carolina

My commission expires: 3-23-2018





1344
ORIGINAL
OK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

THE STATE)
vs)
DARIUS T. CATHCART)
DEFENDANT.)

NOTICE OF MOTION AND MOTION
TO AMEND BOND

WARRANT NUMBERS: M-086589,
M-086590 & M-086591

TO: Mr. Todd Wilson, Seventh Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____,
2010, at _____ .m. or as soon thereafter as this matter can be heard, the Defendant, by
and through his undersigned attorney, will move before the Presiding Judge for an Order setting
bond on the above named Defendant.

David E. Turnipseed

David E. Turnipseed
Turnipseed, Brannon & Stevens
Attorneys for the Defendant
128 Magnolia Street
Post Office Box 1904
Spartanburg, SC 29304
864-573-0048

February 23, 2010

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 FEB 23 PM 4:20

OK

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
vs)
)
DARIUS T. CATHCART,)
)
DEFENDANT.)

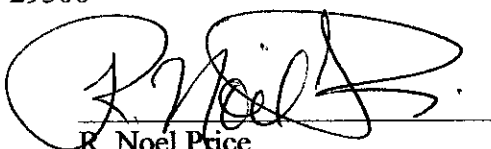
CERTIFICATE OF SERVICE
BY HAND DELIVERY
WARRANT NUMBERS: M-086589,
M-086590 & M-086591

The undersigned certifies that she is employed in the law offices of Turnipseed, Brannon & Stevens located at 128 Magnolia Street, Spartanburg, SC; mailing address of Post Office Box 1904, Spartanburg, SC 29304; that on 23, 2010 she served a copy of the documents listed below on the person or persons listed below by hand delivery.

DOCUMENTS: Notice of Motion and Motion to Set Bond

ADDRESSEE: Mr. Todd Wilson
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306

Mr. Derrick Bulsa
Assistant Solicitor
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306


R. Noel Price
Turnipseed, Brannon & Stevens
P.O. Box 1904
Spartanburg, SC 29304
864-573-0048

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 FEB 23 PM 4:20

STATE OF SOUTH CAROLINA)

COUNTY OF **SPARTANBURG**)The **STATE**,)

-vs-)

Darius T. **CATHCART**,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

ORDER*Denying Motion to Reinstate Home Detention***Warrant/Indictment Number(s),****M-086589, M-086590, M-086591**

This matter was before this Court on the defendant's motion by and through his attorney, **Douglas N. Brannon, Esq.**, for reinstatement of the defendant to bail pursuant to the Spartanburg County Home Detention program. At the hearing held in this matter **Derrick Balsa** of the Circuit Solicitor's office appeared on behalf of the State.

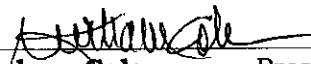
The defendant is now confined in the County Detention Facility for his failure to abide by the conditions of release including home detention. The defendant seeks to have the original bail reinstated allowing her/his release pursuant to the Spartanburg County Home Detention program pending trial.

Having considered the nature and circumstances of the offense(s) charged; the defendant's character and mental condition; the defendant's family ties and length of residence in the community; employment and financial resources; prior criminal history; any record of flight to avoid prosecution; any failure to appear at other court proceedings and; any failure to comply with the conditions of any bail order previously entered, this Court finds that the defendant's **motion** for reinstatement of bail and to home detention should be and is therefore **denied**.

The defendant shall be remanded to the custody of the County Detention Facility where he shall remain in pre-trial confinement pending trial on the above-referenced charges.

The **trial** of these cases shall be **scheduled** for trial and disposition made not later than **180** days. The defendant shall have the right to renew his request for bail upon a material change in circumstances and/or if these cases are not scheduled for trial and disposition made in compliance with the terms of this order.

It Is So Ordered!


J. Derham Cole, Presiding Judge
The Seventh Judicial Circuit Court

May 4, 2010

Spartanburg, South Carolina 29101

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 MAY 13 2010

BROADCAST CONFIRMATION REPORT

1347

05/13/2010 08:43

ID=SPTBG CO CLK OF CRT

PAGES = 01

TOTAL TIME = 00:00'56"

LOCATION ID	PAGES	RESULT	LOCATION ID	PAGES	RESULT
ONE TOUCH					
1 = 864 596 3423	01	OK	2 = MAG	01	OK
3 = 98645962986	01	OK			

MESSAGE CONFIRMATION

05/13/2010 08:43
ID=SPTBG CO CLK OF CRT

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
05/13	00'56"		B.C.		COMP 60A0

05/13/2010 08:41 SPTBG CO CLK OF CRT NO.840 001

STATE OF SOUTH CAROLINA
COUNTY OF **SPARTANBURG**

IN THE COURT OF GENERAL SESSIONS

The **STATE**,

ORDER

Denying Motion to Reinstate Home Detention

-vs-

Darius T. CATHCART,

Warrant/Indictment Number(s),

M-086589, M-086590, M-086591

Defendant.

This matter was before this Court on the defendant's motion by and through his attorney, **Douglas N. Brannon, Esq.**, for reinstatement of the defendant to bail pursuant to the Spartanburg County Home Detention program. At the hearing held in this matter **Derrick Bulsa** of the Circuit Solicitor's office appeared on behalf of the State.

The defendant is now confined in the County Detention Facility for his failure to abide by the conditions of release including home detention. The defendant seeks to have the original bail reinstated allowing her/his release pursuant to the Spartanburg County Home Detention program pending trial.

Having considered the nature and circumstances of the offense(s) charged; the defendant's character and mental condition; the defendant's family ties and length of

Darius Tavares Cathcart

M-086589

Name of Defendant

Warrant/Ticket No.

Charges: Murder / Murder

County of Spartanburg

Trial Court:

General Sessions

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

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

☐ BAIL PROCEEDING

1. Form used at bail proceeding

- ☐ a. Bond Form I (personal recognizance)
☐ b. Bond Form II (surety, cash, percentage)
☒ c. None (Non-Bailable Offense)

2. For cases in which bond is set, defendant was informed:

- ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
☒ c. Failure to appear in court as required will result in issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

- ☒ a. Orally
☒ b. In writing
 {NOTE: Defendant must be informed of right both orally and in writing.}

☒ 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

- ☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before

_____ located at _____
 _____ for indigency screening. Defendant is responsible for a statutory fee of \$ _____
 for indigency screening.

15-MAR-09
 Appearance or Bond Hearing Date:

[Signature]
 JUDGE'S SIGNATURE



Victim Notification Information

SPARTANBURG COUNTY SHERIFF'S OFFICE

AGENCY I.D. SCO 420000

Victim Information

Case # 2009030662

In order for Law Enforcement to make a reasonable attempt to contact you of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure, it is your responsibility to notify the appropriate agency of any change in your address or phone number.

The information given on this form will be provided to the jail, prison, detention or holding facility having physical custody of the defendant. It will also be made available to the prosecuting agency and the Department of Juvenile Justice System, if the defendant is a juvenile.

Court Date Information (if available at time of report)

State vs _____

Warrant # / Ticket # _____

Date and Time: _____

Location: _____

An arrest or juvenile detention can occur anytime during a 24 hour period. Arraignment may take place within several hours of the arrest. A juvenile detention hearing is usually held within 48 hours of the detention, excluding holidays and weekends. Please check the boxes below if you do or do not wish to be notified.

I do ☒ I do not ☐ wish to be notified when the defendant is arrested and when arraignment or juvenile detention hearing may take place, anytime day or night.

I do ☒ I do not ☐ wish to be contacted when bond is set, anytime day or night.

I do ☒ I do not ☐ wish to be contacted when the defendant is released from jail, anytime day or night.

As a victim of crime I have received a copy of the Victim Notification Information Form provided to me by the Spartanburg County Sheriff's Office and I agree that the victim information is correct. I have also received a copy of the 1997 Victims and Witness Services Statute.

Signature of person receiving information

L. Williams

Date

3-14-09

Signature of Reporting Officer

Date

VICTIM NOTIFICATION OF ARREST/BOND HEARING/RELEASE

WARRANT # M18U689 VICTIM Geeter, Duncan (deceased) SUSPECT Cathcart, Darius

ARREST/DETENTION

DATE 03.15.09 TIME NOTIFIED 70:30 BY BSM PERSON CONTACTED comment

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: Notified communications of arrest and a arigh
Will send police to address.

BOND HEARING/JUVELINE DETENTION HEARING

DATE OF BOND HEARING _____ TIME _____ LOCATION _____

RESET DATE _____ TIME _____ LOCATION _____

DATE OF JUVENILE DETENTION HEARING _____ TIME _____ LOCATION _____

RESET DATE _____ TIME _____ LOCATION _____

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: _____

RELEASE/TRANSFER/ESCAPE

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: _____

WITNESSES

Spartanburg County Sheriff's Office

135

T. K. Tulliam

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

MO86590

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Computer

ACTION OF GRAND JURY

Case 6-11

Foreperson of Grand Jury
Date: 5-6-11

VERDICT

Guilty

Foreperson of Court Jury
Date: 5/12/11

DOCKET NO.

10-GS-42-287-1

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE

VS.

Darius Tavares Cathcart

Indictment for

ASSAULT W/ INTENT TO KILL

SC Code: 17-25-0030
CDR Code: 768
Class MIS-UNC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 10 PM 2:14

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

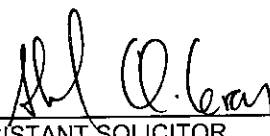
INDICTMENT

At a Court of General Sessions, convened on MAY 06 2010, the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT WITH INTENT TO KILL

That Darius Tavares Cathcart did in Spartanburg County on or about March 14, 2009, unlawfully attempt to commit a violent injury to the person of another with malice aforethought accompanied by a present ability to complete the act to wit: by shooting into the victim, Dwight Jamar Geter's vehicle, with a gun, all in violation of the common law of the State of South Carolina and §17-25-30 (CL), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.

1354

INDICTMENT/CASE#: 2010GS4202874

Darius Tavares Cathcart

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

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

ATTEST: Al Gray 12164 X 12 9 Bryan Pool 4499
 GRAY, ABEL SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/12/11
☒ 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.

☐ 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: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk J.T. Camp
 Court Reporter: Ann Price
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2135
 Sentence Date: 5/12/11

M-086590

Computer

County/

☐ Municipality of

AFFIDAVIT

ORIGINAL

1355

S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

against

Darius Tavares Cathcart

Address: 802 Monarch Rd

Spartanburg

Personally appeared before me the affiant Lorin Williams

who

being duly sworn deposes and says that defendant Darius Tavares Cathcartdid within this county and state on or about 03/14/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/

County/

☐ Municipality of

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault with intent to kill (AWIK)

MAR 18 2009

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Darius Cathcarton 3/15/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone (864)503-4500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE
It appearing from the above affidavit that there are CLERK OF COURT believe thaton or about 3/14/2009defendant Darius Tavares Cathcart

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

☒ County/☐ Municipality of

Spartanburg

BY: CLERK OF COURTDATED 3/19/09

) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault with intent to kill (AWIK)

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 03/15/2009

(L.S.)

Signature of Issuing Judge

James E. Talley

Judge Code: 7024Judge's Address Post Office Box 5221

Spartanburg, SC 29306-5221

Judge's Telephone (864)596-2228Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

3/11/07

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant

Lorin Williams

AFFIDAVIT

ORIGINAL
1356Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

M-086590

Computer

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

who

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
 The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant Darius Cathcart

on 3/15/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 180 Magnolia Street
 P O Box 3483
 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone (864)503-4500

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/14/2009 defendant Darius Tavares Cathcart

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

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

DESCRIPTION OF OFFENSE: Assault / Assault with intent to kill (AWIK)

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 03/15/2009

(L.S.)

Signature of Issuing Judge

James E. Talley

Judge Code: 7024

Judge's Address Post Office Box 5221
Spartanburg, SC 29306-5221

Judge's Telephone (864)596-2228

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



ALAN WILSON
ATTORNEY GENERAL

February 26, 2013

Honorable Barry J. Barnette
Solicitor, Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, South Carolina 29306

Re: State v. Darius Cathcart

Dear Solicitor Barnette:

In its Opinion No. 2013-UP-052 filed January 30, 2013, the South Carolina Court of Appeals dismissed the above appeal. The Remittitur was subsequently sent to the Spartanburg County Clerk of Court. Therefore, with this letter, we are closing our direct appeal file in this matter.

This office has verified through the South Carolina Department of Corrections that the Appellant is presently incarcerated. By copy of this letter to the Department of Corrections, we are asking that they ensure that this sentence is carried out.

Sincerely,

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lbb

Enclosures: Opinion of S.C. Court of Appeals
Remittitur

cc: David M. Tatarsky, SC Dept. of Corrections
M. Hope Blackley, Clerk of Court
Sandi Wofford, Director, Victims Assistance

2013 FEB 28 PM 4:34
M. HOPE BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Darius Cathcart, Appellant.

Appellate Case No. 2011-192329

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2013-UP-052
Submitted January 1, 2013 – Filed January 30, 2013

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Attorney General Donald J. Zelenka, all of
Columbia; and Solicitor Barry J. Barnette, of
Spartanburg, for Respondent.

FILED
SPARTANBURG COUNTY
2013 FEB 28 PM 4:34
M. HOPE BLACKLEY



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

February 21, 2013

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

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

11:00 AM
13 FEB 28 PM 4:35
M. HOPE BLACKLEY

REMITTITUR

Re: The State v. Cathcart, Darius
Lower Court Case No. 2010GS4202874, 2010GS4202875, 2010GS4202876
Appellate Case No. 2011-192329

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Kathrine Haggard Hudgins
Donald J. Zelenka

ATTORNEY GENERAL'S OFFICE
RECEIVED 2/22/13
ADMINISTRATIVE INSTRUCTIONS
FILE _____ OPEN ☒ END
HAVE _____ COPIES MADE
ROUTE TO _____
ORDER _____ TRANSCRIPT
PEN RECORDS _____ CLERK RECORDS
OTHER _____

11-1936

RECEIPTS FOR EXHIBITS

1361

CASE NO. 2010-C.S-42-2874-2874 JUDGE Lozu Couch
 PLAINTIFF The State of SC PLT ATTY Abel Bry / Prime Tardier
 DEFENDANT Warren Calhoun & Roxham Kenna DEF ATTY Roger Pate - Alquin
Mark Brown - Kenna
 TRIAL START DATE 3-28-11 TRIAL END DATE _____

RECEIVED OF PAM FAUCETTE, COURT REPORTER FOR THE ABOVE CASE, THESE EXHIBITS:

PLT'S EXHIBITS

DEF'S EXHIBITS

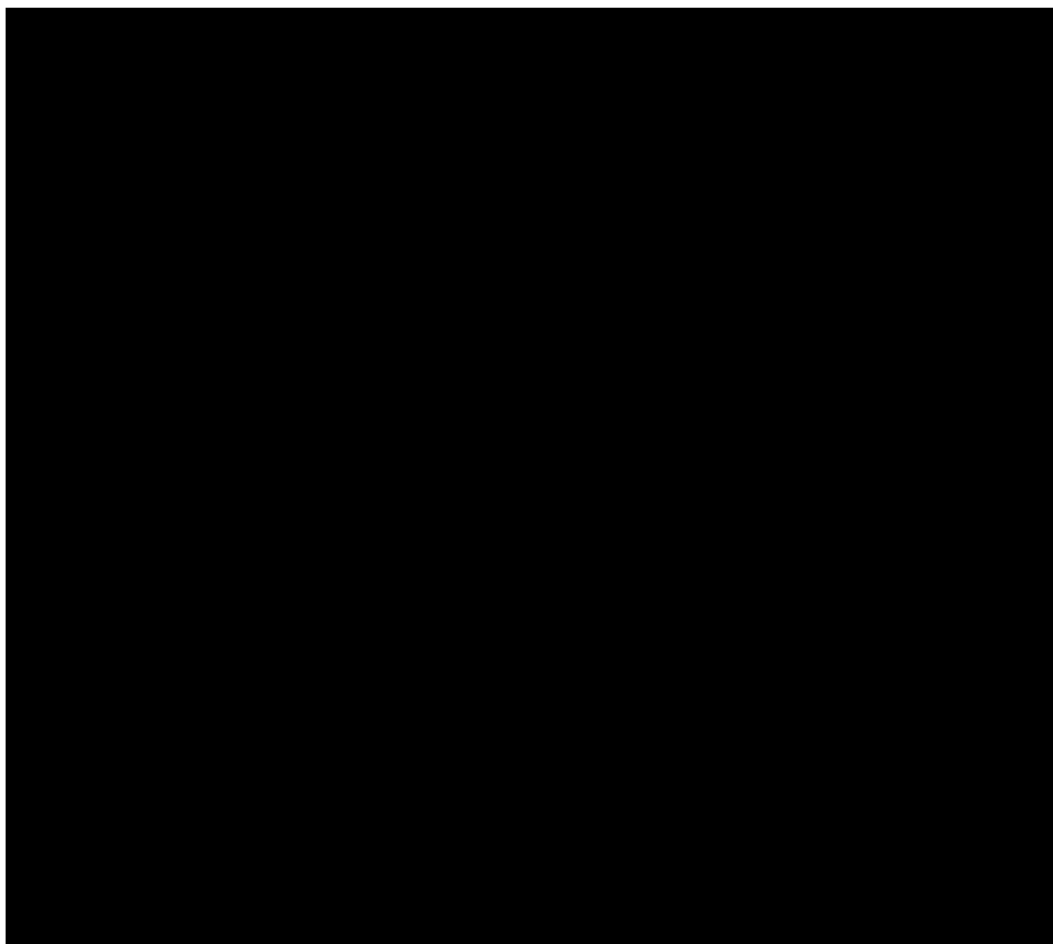
1. <u>Pre-Interrogation Waiver 3-14-09</u>	1. _____
2. <u>" " " Statement 3-15-09</u>	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____
10. _____	10. _____
11. _____	11. _____
12. _____	12. _____
13. _____	13. _____
14. _____	14. <u>see CT100n</u>
15. _____	15. <u>Box 2LgS</u>

COURT'S/JOINT EXHIBITS

1. _____	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____

Pamela Faucette
 PAMELA FAUCETTE

Janja Camp/Kenneth Kenna, Jr.
 CLERK OF COURT



Assistant Solicitor
Seventh Judicial Circuit

Spartanburg, South Carolina
May 9, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)

INDICTMENT NOS.: 2010-GS-42-2874 to 2876

2010-GS-42-2926 to 2928

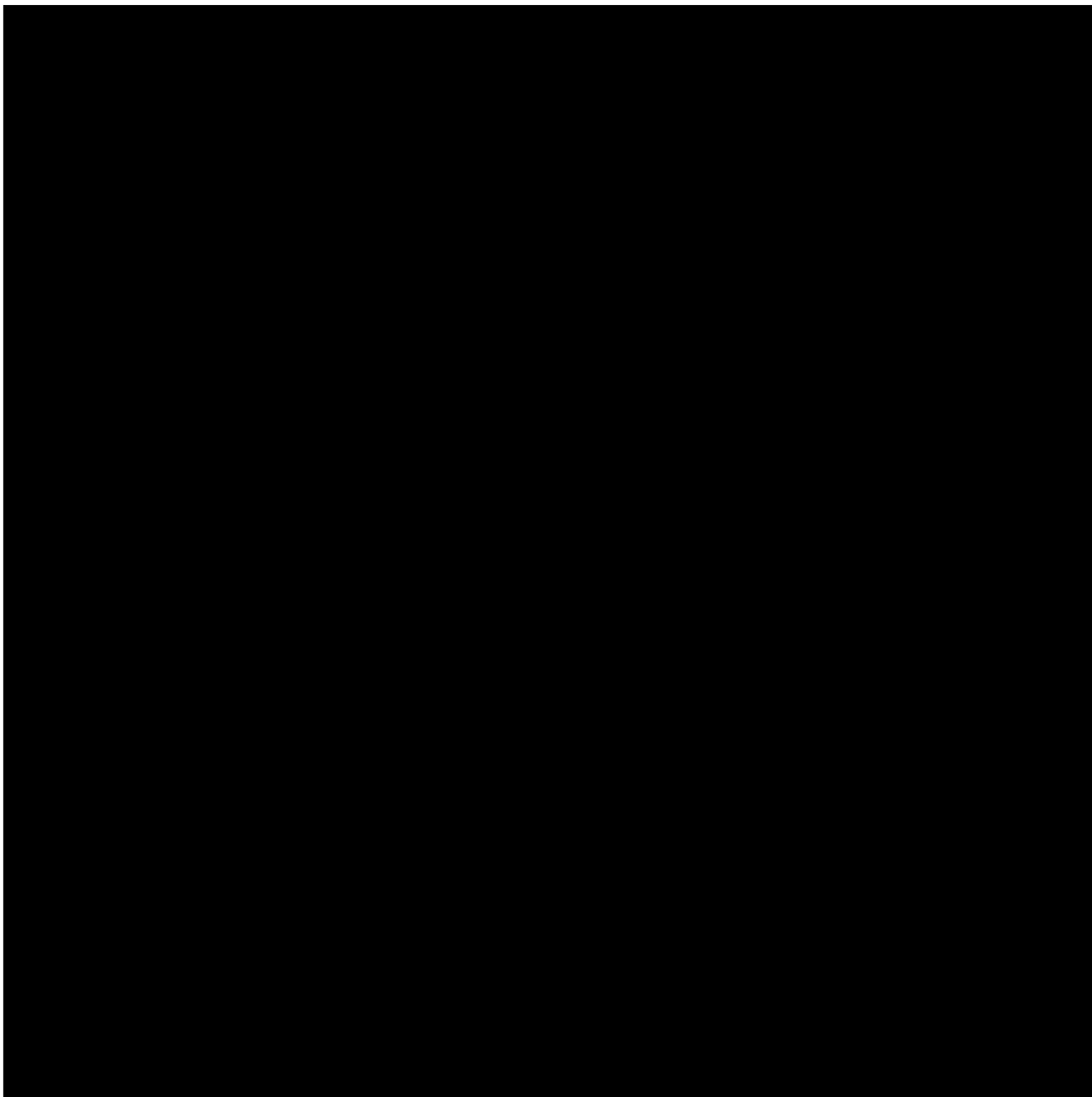
The State of South Carolina,)

vs.)

State's List of Potential Witnesses

Darius Cathcart & Rashawn Reeder,)

Defendant.)



RECEIPT FOR EXHIBITS

Case # 10-GS/CP-42-82874-2876 Judge CauchPlaintiff StakP's ally A. Gray P. TaylorDefendant D. Cathcart, R. ReiderD's ally R. Pade, M. BrownReceived from Pam Green, Circuit Court Reporter, the following exhibits:

- 5-1- ~~officer~~ photos ✓
- ✓ 2-14 photos ✓
- 15- waiver form ✓
- 16- photos (3) ✓
- 17- photos (30) ✓
- 18- photos (10) ✓
- 19- photos (31) ✓
- 20- shell casings ✓
- 21- projectile ✓
- 22- cartridge casing ✓
- 23- " ✓
- 24- projectile ✓
- 25- cartridge casing ✓
- 26- " ✓
- 27- spent casing ✓
- 28- DVD ✓
- 29- surveillance video SMC (Returned to) Stak
- 30- photo line up ✓
- 31- 9mm bullet ✓
- 32- bill of sale info.
- ✓ 33- GSR kit
- ✓ 34- "
- ✓ 35- "
- 36- "
- 37- " how defense exhibits
- 38- "
- D-1 report ID
- ✓ 2- GSR - was 36 Stak
- ✓ 3- GSR - was 37 Stak
- ✓ 4- GSR - was 38 Stak
- 5- diagram
- C-T note from jury
- see entry
- Section 2 gs

Received by Karen Camp / A. Seau, Clerk of CourtMay 12

2001

VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA

vs.

Catncart, Darius

Check and complete one of the following:



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s)

Beter, Duncan

OR



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), * indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s)

Brittany Nesbitt

(Representative's Signature)*

B. Volley
(Judge's Signature)

* Or the arresting officer if Defendant is brought directly before the Judge.

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CERTIFICATE OF SERVICE

Vs.

INDICTMENTS: 2008-GS-42-07478,
2008-GS-42-07479, 2008-GS-42-07480

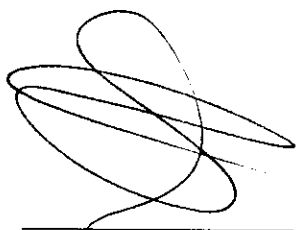
WARRANTS: M086589; M086590;
M086591; M023189; M023190; M023191

DARIUS CATHCART

Personally appeared before me, Shelia Childers, who being duly sworn, deposes and says that she is employed by the Spartanburg County Public Defender's Office, and is a person of such age and discretion as to be competent to serve papers.

That on March 31, 2009, she served a copy of the Notice Of Appearance And Request For Discovery, by delivering a copy of same to the person herein after named at the address given below:

ADDRESSEE: Trey Gowdy
Solicitor, Seventh Judicial Circuit
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306



Sworn to before me this

31st day of March, 2009

Shelia Childers

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 1/24/2016

I ACCEPT SERVICE:

Sally Jones

Seventh Judicial Circuit Solicitor's Office

3-31-09

Date

NOTARY PUBLIC

FOR OFFICE USE:
A 09-00057699
J. Roger Poole



THE STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
))
THE STATE OF SOUTH CAROLIA) INDICTMENTS: 2008-GS-42-07478,
2008-GS-42-07479, 2008-GS-42-07480
))
Vs.) WARRANTS: M086589; M086590;
M086591; M023189; M023190; M023191
))
DARIUS CATHCART) NOTICE OF APPEARANCE
AND REQUEST FOR DISCOVERY
))

DEFENDANT)

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense statements of the Defendant, the Defendant's prior record, all documents, tangible objects, reports of examination and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 and 6 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitney, 514 U.S. 419 (1995), and their progeny. This includes all information which may tend to exculpate the Defendant and which may tend to mitigate any punishment should he be found guilty.

This request is a continuing request for all such discoverable information as it becomes known to the prosecution or any prosecution agents or which, by the exercise of due diligence, may become known to the prosecution.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S. Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of all persons within the chain of custody of all physical evidence.

Respectfully Submitted,

J. Roger Poole
Bar Number: 4499
SPARTANBURG COUNTY PUBLIC DEFENDER OFFICE

Spartanburg, South Carolina
Dated: March 25, 2009

SPARTANBURG COUNTY
PUBLIC DEFENDER OFFICE

A 09-00057699
J. Roger Poole



VICTIM NOTIFICATION FORM

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA

vs.

Catncart, Darius

Check and complete one of the following:



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s)

Geter, Dwight

OR



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant),* indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s)

Brittany Nesbitt

(Representative's Signature)*

[Signature]

(Judge's Signature)

* Or the arresting officer if Defendant is brought directly before the Judge.



Victim Notification Information

SPARTANBURG COUNTY SHERIFF'S OFFICE

AGENCY I.D. SCO 420000

Victim InformationCase # 2609030662Name of Victim: Dwight Peter Victim is ☐ deceased or ☐ minorMailing Address: 150 Gower RdTelephone #: (H) 5835412 (B) _____ Emergency # _____

Relative or Contact Person: _____

Mailing Address: _____

Telephone #: (H) _____ (B) _____ Emergency # _____

Additional Information or Comments: _____

In order for Law Enforcement to make a reasonable attempt to contact you of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure, it is your responsibility to notify the appropriate agency of any change in your address or phone number.

The information given on this form will be provided to the jail, prison, detention or holding facility having physical custody of the defendant. It will also be made available to the prosecuting agency and the Department of Juvenile Justice System, if the defendant is a juvenile.

Court Date Information (if available at time of report)

State vs _____ Warrant # / Ticket # _____

Date and Time: _____ Location: _____

An arrest or juvenile detention can occur anytime during a 24 hour period. Arraignment may take place within several hours of the arrest. A juvenile detention hearing is usually held within 48 hours of the detention, excluding holidays and weekends. Please check the boxes below if you do or do not wish to be notified.

I do ☒ I do not ☐ wish to be notified when the defendant is arrested and when arraignment or juvenile detention hearing may take place, anytime day or night.

I do ☐ I do not ☐ wish to be contacted when bond is set, anytime day or night.

I do ☒ I do not ☐ wish to be contacted when the defendant is released from jail, anytime day or night.

As a victim of crime I have received a copy of the Victim Notification Information Form provided to me by the Spartanburg County Sheriff's Office and I agree that the victim information is correct. I have also received a copy of the 1997 Victims and Witness Services Statute.

Signature of person receiving information

Date

L. Williams3-14-09

Signature of Reporting Officer

Date

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

1370

2009030662

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

STATUS TYPE
☐ STOLEN ☐ VEHICLE
☐ RECOVERED ☐ GUN
☐ FOUND ☐ BOAT
☐ TOWED ☐ LICENSE PLATE
☐ SUSPECT ☐ SECURITIES/BOND, STOCKS
☐ VICTIM ☐ ARTICLE

VIN AND/OR LICENSE NO. BOAT HULL NO. AND/OR REG. NO.
SERIAL AND/OR OWNER APPLIED NO. STATE
YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR MAKE TYPE
MODEL STYLE COLOR BRAND NAME CALIBER
NIC NO. DENOMINATION ISSUER SECURITIES DATE
MISCELLANEOUS

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

SUBJECT IDENTIFIED ☐ YES ☐ NO SUBJECT LOCATED ☐ YES ☐ NO ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE -- NO CUSTODY

REPORTING OFFICER(S)	DATE	BADGE #	APPROVING OFFICER	DATE	BADGE #
L Williams	03/14/09	773			
			FOLLOW-UP INVESTIGATION ☐ YES ☐ NO	OFFICER	

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

1371

NCIC

2009030662

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS

TYPE

☐ STOLEN

☐ VEHICLE

☐ RECOVERED

☐ GUN

☐ FOUND

☐ BOAT

☐ TOWED

☐ LICENSE PLATE

☐ SUSPECT

☐ SECURITIES/BOND, STOCKS

☐ VICTIM

☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

TYPE (GROUP)

TOTAL VALUE

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

SUBJECT IDENTIFIED
☐ YES ☐ NO

SUBJECT LOCATED
☐ YES ☐ NO

☐ ACTIVE
☐ UNFOUNDED

☐ ADM. CLOSED

☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE -- NO CUSTODY

REPORTING OFFICER(S)

DATE

BADGE #

APPROVING OFFICER

DATE

BADGE #

L Williams

03/14/09

773

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT
SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

1372

NCIC

2009030662

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☒ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☒ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 3 PAGES

NAME (LAST, FIRST, MIDDLE)

VICTIM RELATIONSHIP TO SUBJECT

*RESIDENT

RACE

SEX

AGE

D.O.B

ETH

NARRATIVE

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

STATUS

TYPE

☐ STOLEN

☐ VEHICLE

☐ RECOVERED

☐ GUN

☐ FOUND

☐ BOAT

☐ TOWED

☐ LICENSE PLATE

☐ SUSPECT

☐ SECURITIES/BOND, STOCKS

☐ VICTIM

☐ ARTICLE

VIN AND/OR LICENSE NO.

BOAT HULL NO. AND/OR REG. NO.

SERIAL AND/OR OWNER APPLIED NO.

STATE

YEAR OF REGISTRATION

YEAR OF EXPIRATION

YEAR

MAKE

TYPE

MODEL

STYLE

COLOR

BRAND NAME

CALIBER

NIC NO.

DENOMINATION

ISSUER

SECURITIES DATE

MISCELLANEOUS

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

TYPE (GROUP)

STOLEN

DAMAGED

BURNED

RECOVERED

SEIZED

TOTAL VALUE

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☒ YES ☐ NO

☐ ACTIVE
☐ UNFOUNDED

☐ ADM. CLOSED

☐ ARRESTED UNDER 18

☒ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18

☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)

DATE

BADGE #

APPROVING OFFICER

DATE

BADGE #

L Williams

03/15/09

773

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

AGENCY I.D.
SC0 420000

SUPPLEMENTARY REPORT

CASE NUMBER

1373

NCIC

INQ. ENTD.

2009030662

☒ ORIGINAL
REPORT

☐ SUPPLEMENTAL
REPORT

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
STOLEN PROPERTY

PAGE 4 of 4 PAGES.

☐ MODIFIES
ORIGINAL

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
RECOVERED PROPERTY

obtained from Shawn Cape (w/m 39) who was the security guard on duty when the victims arrived.

Mr. Geter advised that he and both victims had been at "Club Dreams" (1108 Charisma Drive) just prior to this incident. While there they all had a verbal altercation with several unknown black males. Mr. Geter would not provide any further information in reference to that incident other than he believes those black males followed him from "Club Dreams" to the incident location.

Investigator Williams arrived at Mary Black at 0912 hrs.

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED

☐ YES ☐ NO

SUBJECT LOCATED

☐ YES ☐ NO

☐ ACTIVE ☐ ADM. CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT
NUMBER

APPROVING OFFICER

DATE

UNIT
NUMBER

Forrester, H6

03-11-09

127

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

314-09 334

AGENCY I.D.
SCO 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

1374

NCIC

INQ. ENTD.

2009030662

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>3</u> of <u>4</u> PAGES.
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #					#1	#2	#3	*JSOU						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	☐ RUNAWAY	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	B	EVENING PHONE	H	B
	☐ WANTED														
	☐ WARRANT														
	☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES				☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE		☐ DETECTIVE/SPLASMT.		☐ ALONE	
	☐ JAIL	EXPLAIN:				☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE-MAN VEHICLE		☐ OTHER		☐ ASSISTED	
	☐ SUMMONS	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ NO ☐ YES													
	☐	☐ USING DRUGS: ☐ NO ☐ YES ☒ TYPE: ☐ UNK.													

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #					#1	#2	#3	*JSOU						
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	☐ RUNAWAY	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	B	EVENING PHONE	H	B
	☐ WANTED														
	☐ WARRANT														
	☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES				☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE		☐ DETECTIVE/SPLASMT.		☐ ALONE	
	☐ JAIL	EXPLAIN:				☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE-MAN VEHICLE		☐ OTHER		☐ ASSISTED	
	☐ SUMMONS	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ NO ☐ YES													
	☐	☐ USING DRUGS: ☐ NO ☐ YES ☒ TYPE: ☐ UNK.													

NARRATIVE	Was also shot but he did not know where on the body.													
	Mr. Geter immediately drove both victims to Mary Black Hospital for treatment.													
	Deputy Davis placed Crime Scene tape around the Red Ford Crown Vic at the Emergency Ramp and began a Crime Scene Log.													
	Violent Crime Investigators were notified.													
	Dr. James Carter pronounced Victim 1 deceased at 0400 hrs.													
	A voluntary statement was also													
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY													
	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY													

VEH. / GUN / ETC. 1	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.							
	☐ STOLEN	☒ VEHICLE														
	☐ RECOVERED	☐ GUN			SERIAL AND/OR OWNER APPLIED NO.				STATE							
	☐ FOUND	☐ BOAT			YEAR OF REGISTRATION				YEAR OF EXPIRATION		YEAR		MAKE		TYPE	
	☐ TOWED	☐ LICENSE PLATE			MODEL				STYLE		COLOR		BRAND NAME		CALIBER	
	☒ SUSPECT	☐ SECURITIES/BONDS, STOCKS			NIC NO.				DENOMINATION		green		ISSUER		SECURITIES DATE	
	☐ VICTIM	☐ ARTICLE			MISCELLANEOUS											

PROPERTY EST.	TYPE (GROUP)														TOTAL VALUE
	STOLEN														
	DAMAGED														
	BURNED														
	RECOVERED														
	SEIZED														

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER		
	☐ YES ☐ NO		☐ YES ☐ NO								
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY		REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER	
	Follesdale, HIG		03/14/09		127		Sgt. Carter / P. Kuhl		3-14-09		

AGENCY I.D.
SC0 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

1375

NCIC

INQ. ENTD.

2009030662

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of 4 PAGES.

NARRATIVE

He was driving his red Ford Crown Vic with Victim 1 who was seated in the rear behind the driver and Victim 2 who was the passenger of vehicle. Mr. Geter advised that he approached the Stop Sign on Mt. Pleasant Road at Burns Road and stopped. Mr. Geter observed a green vehicle (make + model unknown) pull up beside his stopped vehicle on the drivers side. At that time an unknown black male began shooting into his vehicle. Mr. Geter advised that Victim 1 was shot in the neck and Victim 2

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

VEH. / GUN / ETC. 1

STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☒ VICTIM	TYPE ☒ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS, STOCKS ☐ ARTICLE	VIN AND/OR LICENSE NO. SERIAL AND/OR OWNER APPLIED NO. YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR MAKE TYPE MODEL STYLE COLOR NIC NO. DENOMINATION ISSUER SECURITIES DATE MISCELLANEOUS	BOAT HULL NO. AND/OR REG. NO. STATE Ferd Crown Vic 4dr red ABC Auto Paper Trng

PROPERTY EST.

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☐ NO	SUBJECT LOCATED ☐ YES ☐ NO	☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
REPORTING OFFICER(S) Forrester, HIG	DATE 03-14-04	UNIT NUMBER 131	APPROVING OFFICER Sgt. [Signature]		DATE 3-14-04
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			UNIT NUMBER 334		

AGENCY I.D.
SC0420000

INCIDENT REPORT

CASE NUMBER

1376

NCIC

INQ. ENTD.

2009.03.01.1662

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
					☒ Individual ☐ Business

SUBJECT	☐ ARREST	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.			
	☐ JAIL	SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE	DATE/TIME OF ARREST		
	☐ SUMMONS	DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE:		TOTAL # ARRESTED		03-14-09 0530			
NARRATIVE	On 03-14-09 at 0406 hours I was on Skylyn Drive when I responded to Mary Black Hospital in reference to two gunshot victims that arrived to the emergency room in a red Ford Crown Vic. Upon my arrival at 0408 hours I observed a red Ford parked in the ambulance entrance to the hospital with no occupants. I then observed the complainant standing in the emergency walk-in breezeway wearing a black hoodie jacket and blue jeans. The complainant was identified as Dwight Jamae Geter (Blm 19) who is also the brother of victim 1 (Duncan Geter Blm 16). Mr. Geter advised me that on 03-14-09								
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
	TYPE (GROUP)						TOTAL VALUE		
	STOLEN								
	DAMAGED								
	BURNED								
	RECOVERED								
	SEIZED								
	ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
		REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
Forester, H. G.		03-14-09	127	[Signature]		3-14-09	334		
				FOLLOW-UP INVESTIGATION ☐ YES ☐ NO					

INVESTIGATION

Name of Defendant

Warrant/Ticket No.

Charges: Assault / Assault with intent to kill (AWIK)

County of Spartanburg

Trial Court: General Sessions

AWIK, Murder

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

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

☐ BAIL PROCEEDING

1. Form used at bail proceeding

- ☐ a. Bond Form I (personal recognizance)
- ☐ b. Bond Form II (surety, cash, percentage)
- ☐ c. None (Non-Bailable Offense)

2. For cases in which bond is set, defendant was informed:

- ☐ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
- ☐ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
- ☐ c. Failure to appear in court as required will result in issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

- ☐ a. Orally
- ☐ b. In writing

{NOTE: Defendant must be informed of right both orally and in writing.}

☐ 4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

- ☐ a. Charges against defendant and nature of the charges.
- ☐ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
- ☐ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before

_____ located at _____

_____ for indigency screening. Defendant is responsible for a statutory fee of \$ _____

for indigency screening.

Appearance or Bond Hearing Date:

JUDGE'S SIGNATURE

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/17/18
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 303063 LOC: BROAD RIVER
CATHCART, DARIUS TAVARES SCDC CLASSIFICATION... **VIOLENT**
OFFENDER TYPE...: **ADULT-STRAIGHT SENTENCE** SEXUAL REGISTRY... **N**
SEXUAL PREDATOR...: **NOT APP**
DNA STATUS.....: **COMPLETED**
GPS REQUIREMENT...: **N**
PREA DECISION....:
PREA PERP...:
PREA VICTIM.....:
CURRENT SENTENCE: **045-00-000** CONSECUTIVE SENTENCE ...: **N**
045-00-000 CURRENT SENT START DATE: **09/18/2009**
PROJECTED COMPLETION DATES
MAXOUT DATE: **09/07/2054** CURRENT EWC ..: **3 F 5**
YOA SIX YEAR DATE: / / CURRENT EEC ..: **NOT CURRENTLY EARNING EEC**
INITIAL PAROLE DATE: **00/00/0000** NEXT PAROLE HEARING DATE: **00/00/0000**

TOTAL GT DAYS EARNED: **000000** LABOR CREW/WORK PROG DATE: **99/99/9999**
TOTAL EARNED WORK CREDITS ..: **000757** LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: **000000** **CATEGORY 4 OR 5 OFFENSE**
TOTAL EXTRA EARNED CREDITS ..: **000** SUPERVISED REENTRY DATE...: **00/00/00**
TOTAL SERVICE TIME EARNED ..: **003179** ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, July 17, 2018

Classification Summary Reports

Inmate Number

Classification Summary Report for CATHCART, DARIUS TAVARES :

CLASSIFICATION SUMMARY REPORT DATED 07/17/2018

SCDC# 00303063

CATHCART, DARIUS TAVARES

FBI# 738984AC2

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: BROAD RIVER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 45 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS:

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

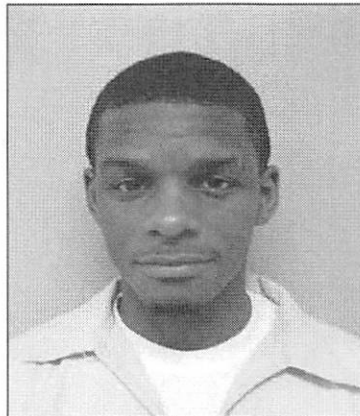
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 33



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: MO 0244 A

PROJ MAXOUT
DATE: 09/07/2054

PROJ PAROLE
DATE: -

EWC
JOB: WARDKEEPER ASSISTANT

ASSIGNMENT: WARD HELPER

EWC
LEVEL: 3F5 EEC LEVEL:

EDUC
PGM: ADULT ED I

SECURITY THREAT GROUP
DESCRIPTION: BLOODS

SECURITY THREAT GROUP STATUS: NON-
VALIDATED

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT
ASSAULT W/INT TO KILL	10	0	0	SPARTANBURG	09/18/2009	N	4	10GS4202874	
ASSLT & BATT W/INTNT KIL	20	0	0	SPARTANBURG	09/18/2009	V	4	10GS4202876	
MURDER	45	0	0	SPARTANBURG	09/18/2009	V	5	10GS4202875	

COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT
HABITUAL TRAFFIC OFFENDE	1	0	0	SPARTANBURG	01/19/2010	N	2	05GS4203837	
FAIL TO STOP FOR OFFICER	1	0	0	SPARTANBURG	01/19/2010	N	2	05GS4203840	
FAIL TO STOP FOR OFFICER	1	0	0	SPARTANBURG	11/18/2005	N	2	05GS42-3840	
HABITUAL TRAFFIC OFFENDE	1	0	0	SPARTANBURG	11/18/2005	N	2	05GS42-3837	
RESISTING OFFICER	1	0	0	SPARTANBURG	11/18/2005	N	3	05GS42-3838	
FINAN TRANS CARD THEFT	1	0	0	SPARTANBURG	11/18/2005	N	2	05GS42-4968	
THREAT TO BOMB	1	0	0	SPARTANBURG	11/18/2005	N	3	04GS42-4788	
THREAT TO BOMB	1	0	0	SPARTANBURG	11/18/2005	N	3	04GS42-4789	
DRIVING UNDER SUSPENSION	0	0	180	SPARTANBURG	10/04/2005	N	1		
BREAKING INTO MOTOR VEH	1	11	28	SPARTANBURG	06/29/2005	N	2	04GS422232	
COCAINE POSSESS	0	0	365	SPARTANBURG	06/29/2005	N	2	04GS423199	
DRIVING UNDER SUSPENSION	0	4	0	SPARTANBURG	06/14/2005	N	1	05GS421651	
FAIL TO STOP FOR OFFICER	1	0	0	SPARTANBURG	06/14/2005	N	2	05GS421652	
RECEIVE STOLEN PROPERTY	4	0	0	SPARTANBURG	06/13/2005	N	2	05GS421653	
CARRY PROHIBITED WEAPON	1	0	0	SPARTANBURG	02/23/2005	N	3	04GS42-4739	
RECEIVE STOLEN PROPERTY	0	0	30	SPARTANBURG	05/27/2004	N	2		
MOVING TRAFFIC VIOL	0	0	30	SPARTANBURG	05/27/2004	N	1		
OBTAIN GOODS FALSE PRETEN	0	0	60	SPARTANBURG	05/25/2004	N	1		
RECEIVE STOLEN PROPERTY	0	0	30	SPARTANBURG	05/25/2004	N	2		

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

04/26/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
01/29/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
12/16/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
10/18/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
10/18/2015	SMUGGLING/CONSPIRACY SMUGGLE CONTRABAND	CONVICTED	MAJOR DISC. HEARING

06/10/2014	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
02/18/2014	DAMAGE, DESTROY, PROP. VALUE AT \$100./MORE	DISMISSED	MAJOR DISC. HEARING
02/06/2013	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
02/03/2013	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
08/01/2012	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
05/01/2007	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
02/21/2007	FIGHTING WITHOUT A WEAPON	CONVICTED	ADMINISTRATIVE RESOLUTION
11/27/2006	SEXUAL MISCONDUCT	CONVICTED	MAJOR DISC. HEARING
11/18/2006	INTERFERING WITH COUNT	CONVICTED	ADMINISTRATIVE RESOLUTION
05/24/2006	FIGHTING WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING
04/09/2006	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
08/29/2005	REFUSING TO ATTEND COMPULSORY PROGRAM	DISMISSED	CHARGES DROPPED/INSUFF. E

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

06/29/2017	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
06/29/2017	PALMETTO RCHLAND	AUTH ABSENCE (AWL)	MEDICAL
05/23/2017	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
05/23/2017	KIRKLAND	INCARCERATED	MEDICAL
05/15/2017	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
05/15/2017	KIRKLAND	INCARCERATED	MEDICAL
10/09/2014	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/19/2014	MCCORMICK	INCARCERATED	ADMINISTRATIVE
08/19/2014	KIRKLAND	INCARCERATED	MEDICAL
07/22/2013	MCCORMICK	INCARCERATED	ADMINISTRATIVE
02/05/2013	LIEBER	INCARCERATED	ADMINISTRATIVE
02/04/2013	KIRKLAND	INCARCERATED	MEDICAL
01/17/2012	LIEBER	INCARCERATED	ADMINISTRATIVE
09/12/2011	PERRY	INCARCERATED	ADMINISTRATIVE
06/07/2011	KIRKLAND	INCARCERATED	R&E PROCESSING
06/07/2011	PERRY	INCARCERATED	NEW ADMISSION
09/01/2010	UNK	RELEASE	EXPIRATION OF SENTENCE
08/28/2010	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
07/26/2010	KIRKLAND	INCARCERATED	R&E PROCESSING
07/26/2010	PERRY	INCARCERATED	PROBATION VIOLATOR
11/30/2007	SPARTANBURG CO	PROBATION	RELEASED TO PROBATION
06/12/2007	RIDGELAND	INCARCERATED	ADMINISTRATIVE
06/12/2007	KIRKLAND	INCARCERATED	MEDICAL
02/16/2006	RIDGELAND	INCARCERATED	RETURN FROM COURT
02/12/2006	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
11/20/2005	RIDGELAND	INCARCERATED	RETURN FROM COURT
11/11/2005	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
10/08/2005	RIDGELAND	INCARCERATED	RETURN FROM COURT
09/30/2005	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
09/05/2005	RIDGELAND	INCARCERATED	RETURN FROM COURT
08/26/2005	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
08/02/2005	RIDGELAND	INCARCERATED	ADMINISTRATIVE
07/05/2005	KIRKLAND	INCARCERATED	R&E PROCESSING
07/05/2005	PERRY	INCARCERATED	NEW ADMISSION
08/25/2004	UNK	RELEASE	EXPIRATION OF SENTENCE
07/26/2004	TYGER RIVER	INCARCERATED	ADMINISTRATIVE

07/21/2004	KIRKLAND	INCARCERATED	RETURN FROM COURT
07/15/2004	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
06/23/2004	KIRKLAND	INCARCERATED	R&E PROCESSING
06/23/2004	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	06/09/2016	-		3F5
WARDKEEPER ASSISTANT	10/14/2014	10/18/2015	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	07/23/2013	10/09/2014	INSTIT TRANSFER	3F5
CUSTODIAN HELPER	07/19/2012	03/19/2013	PLACED IN ST/SP CUSTODY	2F5
MECHANIC HELPER	02/01/2012	03/20/2012	UNSAT JOB PERFORM	2F5
FOOD SERVICE AIDE	11/08/2011	01/17/2012	INSTIT TRANSFER	2F5
WARDKEEPER	06/01/2007	11/30/2007	RELEASED/PAROLED	2F5
WARDKEEPER	04/25/2007	05/31/2007	MI ELIGIBLE FOR LEVEL 2	3F5
WARDKEEPER	06/27/2006	12/04/2006	PLACED IN ST/SP CUSTODY	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	02/20/2015	10/18/2015	PLACED IN ST/SP CUSTODY
BONUS 4-7 HRS/WK	05/30/2014	10/09/2014	INSTIT TRANSFER
LVL 2 - FULL TIME(NO EWC)	10/10/2005	04/10/2006	PLACED IN ST/SP CUSTODY
LVL 2 - FULL TIME(NO EWC)	08/15/2005	09/30/2005	COURT
LVL 2 - FULL TIME(NO EWC)	07/30/2004	08/25/2004	RELEASED/PAROLED
LVL 3 - FULL TIME(NO EWC)	07/28/2004	07/29/2004	MI ELIGIBLE FOR LEVEL 2

***** END OF REPORT *****

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[Version: 1.4.16 Built: 06/21/2018 03:28:42 PM Time: 02:41:40 PM]

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Darius Tavares Cathcart

AKA:

Race: BLACK Sex: M Age: 25

DOB: SS#:

Address: Monarch Rd

City, State, Zip: Wellford, SC 29385

DL#: SID#:

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

in violation of § 16-03-0010, of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

GRAY, ABEL

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ 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: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS4202875

A/W#: M086589

Date of Offense: 3/14/2009

S.C. Code § : 16-03-0010,

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Life 30 to Life

Presiding Judge

Judge Code: 2135

Sentence Date:

5/12/11

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Darius Tavares Cathcart

AKA:

Race: BLACK Sex: M Age: 25

DOB: SS#:

Address: Monarch Rd.

City, State, Zip: Wellford, SC 29385

DL#: SID#:

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

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

TO: Assault / Assault and battery with Intent to Kill (ABWIK)

in violation of § 16-03-0620

of the S.C. Code of Laws, bearing CDR Code # 0014

☐ 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: GRAY, ABEL 12164 X Defendant 9/30/11 Attorney for Defendant 4499 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/12/11☒ 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.☐ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.40
TOTAL		\$ 133.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS 1384

INDICTMENT/CASE#: 2010GS4202876

A/W#: M086591

Date of Offense: 3/14/2009

S.C. Code § : 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

upto 20 yrs

(defendant's initials)

Negotiated Sentence, Recommendation by the State.

Attorney for Defendant 4499 SC Bar#

County Detention Center, years and/or payment

probation, which are incorporated by reference.

CONSECUTIVE to sentence on:

by the State Department of Corrections.

§17-25-135.

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

SPECIAL CONDITIONS:

Ordered

\$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
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Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.40
TOTAL		\$ 133.40

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public

Other:

CLERK OF COURT
SPARTANBURG COUNTY
BY: J. Camp D.C.☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2135

Sentence Date: 5/12/11

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Darius Tavares Cathcart

AKA:

Race: BLACK Sex: M Age: 25

DOB: SS#:

Address: Monarch Rd

City, State, Zip: Wellford, SC 29385

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault with intent to kill (AWIK)

in violation of § C/L, 16-03-0 of the S.C. Code of Laws, bearing CDR Code # 0768

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Gray, Abel 12164 Defendant Boyer Pool 4499 Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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.☐ 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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Pam Green

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

1385

INDICTMENT/CASE#: 2010GS4202874

A/W#: M086590

Date of Offense: 3/14/2009

S.C. Code § : C/L, 16-03-0

CDR Code #: 0768

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSup to 10 yrs

in violation of § C/L, 16-03-0 of the S.C. Code of Laws, bearing CDR Code # 0768

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Gray, Abel 12164 Defendant Boyer Pool 4499 Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
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of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
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by the State Department of Corrections.☐ 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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
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§ 56-5-2995 (DUI Assessment)	\$12	\$
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3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Pam Green

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: M. Hope Blackup

CLERK OF COURT

SPARTANBURG COUNTY

BY: T. Camp D.C.DATED: 5/12/11☐ Appointed PD or appointed other to supervise
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2135Sentence Date: 5/12/11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Darius Cathcart,	)	Case No.: 2018-CP-42-02286
S.C.D.C. No. 303063,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	(No Appointment of Counsel Requested)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Darius Cathcart (Applicant) on June 29, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2010 term of the Spartanburg County Grand Jury for assault with intent to kill (2010-GS-42-02874), murder (2010-GS-42-02875), assault and battery with intent to kill (2010-GS-42-02876). Roger Poole, Esq. represented Applicant, and Abel O. Gray, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case.

Prior to trial, Applicant appeared before the Honorable Roger L. Couch on or about March 28, 2011,¹ for a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). On May 9, 2011, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on May 12, 2011. Judge Couch sentenced Applicant to imprisonment for concurrent terms of 10 years for AWIK, 40 years for murder, and 20 years for ABWIK.

¹ The transcript indicates it was on March 28 and March 29 at different points.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

Did the trial judge err in charging the jury that malice may be inferred from the use of a deadly weapon when the judge charged the jury on the law of self defense?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Cathcart, Op. No. 2013-UP-052 (S.C. Ct. App. filed Jan. 30, 2013). The Remittitur was issued on February 21, 2013.

First PCR Application: 2015-CP-42-03695

Applicant filed his first application for post-conviction relief on August 31, 2015 (2015-CP-42-03695). He alleged the following grounds for relief in his application:

1. Conflict of interest, in that:
 - a. "After the Defendant was sentenced and through investigation conducted by the undersigned and by his private investigator, it has been learned that the Defendant's trial attorney, Roger Poole, previously and possibly during the time of representation of the Defendant, had represented Black. Mr. Poole never advised the Defendant that he represented Black and the Defendant was never aware that his attorney represented, or had represented, the very witness who could have provided exculpatory evidence for the Defendant and/or upon whom the Defendant was basing his defense."

Respondent made its return and motion to dismiss on November 16, 2016, arguing the application was untimely. On November 22, 2016, the Honorable J. Mark Hayes, II issued a Conditional Order of Dismissal. Applicant did not respond to the Conditional Order. On April 3, 2017, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal.

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Conflict of Interest"

Attached to and incorporated herein are the Spartanburg County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the conditional and final order of Applicant's previous PCR action, and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

III. MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing Respondent requests the Court not appoint counsel in this matter, and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.² See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

² A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

Statute of Limitations

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160.

Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A). The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant was convicted on May 12, 2011, and the remittitur from his direct appeal issued on February 21, 2013. The current application was not filed until June 29, 2018—well after the one-year statutory filing period expired. Therefore, the application should be summarily dismissed as barred by the statute of limitations.

Successive

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which

for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised ... in the previous application.” Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant’s current allegations were raised in the proceedings based on Applicant’s prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Therefore, he has failed to meet the burden imposed upon him, and the application should be dismissed as successive to Applicant’s previous PCR application.

IV. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

V. CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the application because it is untimely and successive.

Respectfully submitted,

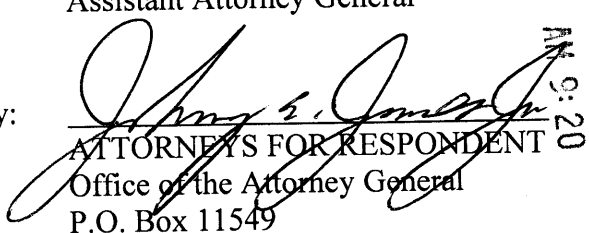
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

22 May, 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

DARIUS CATHCART,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-42-02286

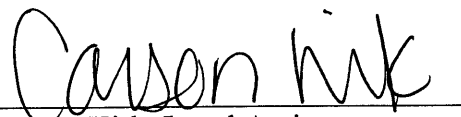
AFFIDAVIT OF SERVICE BY MAIL

19 MAY 28 AM 9:20

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

**Darius Cathcart, #303063
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210**

DATED this 22nd day of May, 2019.



Carson Kirk, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

May 22, 2019

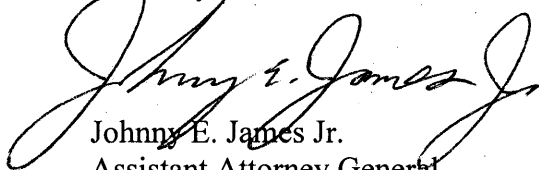
The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304

Re: Darius Cathcart, #303063 v. State of South Carolina
2018-CP-42-02286

Dear Ms. Cox:

Enclosed please find the original **Return and Motion to Dismiss** in the above-captioned case for filing in your office.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/ck
Enclosure

cc: Darius Cathcart, #303063

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Darius Cathcart,	)	Case No.: 2018-CP-42-02286
S.C.D.C. No. 303063,	)	
	)	
Applicant,	)	
	)	CONDITIONAL ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Darius Cathcart (Applicant) on June 29, 2018. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2010 term of the Spartanburg County Grand Jury for assault with intent to kill (2010-GS-42-02874), murder (2010-GS-42-02875), assault and battery with intent to kill (2010-GS-42-02876). Roger Poole, Esq. represented Applicant, and Abel O. Gray, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case.

Prior to trial, Applicant appeared before the Honorable Roger L. Couch on or about March 28, 2011,¹ for a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). On May 9, 2011, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on May 12, 2011. Judge Couch sentenced Applicant to

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imprisonment for concurrent terms of 10 years for AWIK, 40 years for murder, and 20 years for ABWIK.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

Did the trial judge err in charging the jury that malice may be inferred from the use of a deadly weapon when the judge charged the jury on the law of self defense?

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Applicant filed his first application for post-conviction relief on August 31, 2015 (2015-CP-42-03695). He alleged the following grounds for relief in his application:

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Respondent made its return and motion to dismiss on November 16, 2016, arguing the application was untimely. On November 22, 2016, the Honorable J. Mark Hayes, II issued a Conditional Order of Dismissal. Applicant did not respond to the Conditional Order. On April

3, 2017, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal.

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Conflict of Interest"

Before this Court are the Spartanburg County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the conditional and final order of Applicant's previous PCR action, and the records of this current PCR action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Statute of Limitations

The Court finds the application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

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Applicant was convicted on May 12, 2011, and the remittitur from his direct appeal issued on February 21, 2013. The current application was not filed until June 29, 2018—well after the one-year statutory filing period expired. Therefore, the Court shall dismiss the application as barred by the statute of limitations.

Successive

The Court finds the application must also be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

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Applicant's current allegations were raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Therefore, he has failed to meet the burden imposed upon him, and the application should be dismissed as successive to Applicant's previous PCR application.

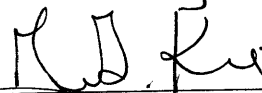
IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Johnny E. James, Jr., Esquire
PCR Division – 7th Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 28 day of May, 2019.



GRACE G. KNIE
Chief Judge for Common Pleas
Seventh Judicial Circuit

Spartanburg, South Carolina



ALAN WILSON
ATTORNEY GENERAL

May 22, 2019

The Honorable Grace G. Knie
Chief Judge for Common Pleas, Seventh Circuit
180 Magnolia Street
Spartanburg, South Carolina 29306

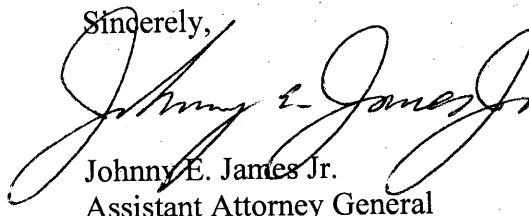
Re: Darius Cathcart, #303063 v. State of South Carolina
2018-CP-42-02286

2019 MAY 29 PM 4:37

Dear Judge Knie:

Enclosed please find the Respondent's Return and Motion to Dismiss and the original proposed **Conditional Order of Dismissal** in the above-captioned case. If this order meets your approval, please sign and forward to the Spartanburg County Clerk of Court to be filed and served.

Sincerely,



Johnny E. James Jr.
Assistant Attorney General

JEJ/ck
Enclosures

cc: Darius Cathcart, #303063

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Darius Cathcart, #303063

☐ Plaintiff

v.

State Of South Carolina

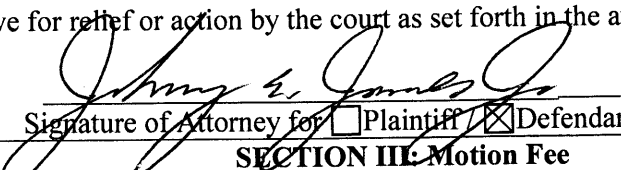
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2018-CP-42-02286

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Darius Cathcart, #303063, Bar No. Address: Tyger River CI 200 Prison Road, Enoree, SC 29335 phone: fax: e-mail: other:	Defendant's Attorney: Johnny E. James Jr., Bar No. 101260 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: JJames@scag.gov other:
☐ 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	May 22, 2019 Date submitted
SECTION III: Motion Fee	
☐ PAID – AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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, SCRPC) ☐ 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	
Date Filed: _____ Collected by: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

State of South Carolina
County of Spartanburg

In the Court of Common Pleas
For the Fourth Judicial Circuit

Darius Cathcart
S.C.D.C. NO. 303063

Case No: 2018-CP-42-02286

Petitioner

Response to motion to
dismiss

v.

State of South Carolina
Respondent

Comes Now, Darius Cathcart, (hereinafter Petitioner) In response to the state's motion to dismiss, Respectfully moves this Honorable Court to deny the state's motion to dismiss & allow Petitioner to proceed with the PCR pending for the following:

As stated within the state's motion to dismiss Petitioner filed a PCR on August 31, 2015. However, Petitioner was represented by James Craig, said Attorney submitted the PCR untimely & failed to respond to the State's motion to dismiss, thus causing Petitioner's PCR to be dismissed

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SPARTANBURG COUNTY
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Petitioner submitted the PCR now pending, contending that PCR Counsel was ineffective for not filing the PCR timely, & failing to respond to the State's motion to dismiss, thus causing the default that denied the Petitioner the Constitutional Due Process right to have the court adjudicate the facts & law relating to the claims presented.

The state also contends that Petitioner's PCR is successive. However, a careful review of Petitioner's Procedural history clearly establishes that Petitioner has never had the opportunity to have the court render a ruling based upon the merits of the Petitioner's claim, thus the Petitioner has never had that one full bite of the apple as mandated by this State & Federal Constitution. The 14th & 5th amendment, & this State Supreme Court in *Aice v. State*, 305 S.C. 448, 409 S.E. 2d. 392 (1991). Also note that the Petitioner's Memorandum of Law in support of PCR

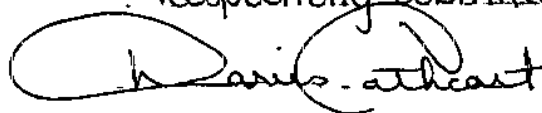
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SPARTANBURG COUNTY
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Conclusion

Wherefore, Petitioner moves this Honorable Court to Deny the States motion to dismiss & allow Petitioner's PCR to be heard by the court based upon the merits of the claims presented.

6/13/19

Respectfully submitted

David A. Heath

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State of South Carolina
County of Spartanburg

In the Court of Common Pleas

Darius Cathcart
Petitioner

2018-CP-42-02286

vs
State of South Carolina
Respondent

Certificate of Service

I, Darius Cathcart have placed this response to the State's motion to dismiss in the prison's mailbox on this 13 day of June & has served the office of the Attorney General, Johnny E. James Jr Esquire, PCR Division - 7th Floor P.O. Box 11549, Columbia, SC 29211, under the penalty of perjury.

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SPARTANBURG COUNTY
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Darius Cathcart June 13, 2019
Petitioner

Janelle T. Spearman
Notary
JANELLE T. SPEARMAN
Notary Public - State of South Carolina
My Commission Expires
August 26, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
DARIUS TAVARES CATHCART,	)	
APPLICANT.	)	ORDER DENYING THE STATE'S
v.	)	MOTION TO DISMISS
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2018-CP-42-2286

BEFORE THE COURT is the State's Motion to Dismiss the Applicant's Post-Conviction Relief (PCR) matter based upon the Applicant's Petition being filed outside of the one-year statute of limitations period allowed by law per the Uniform Post Conviction Relief Act, SC Code Section 17-27-45(a). A Post-Conviction Relief hearing was held on September 14, 2021, in Spartanburg County, South Carolina. Representing the State was William Ray, Esq., of the South Carolina Attorney General's Office. The Applicant was present and represented by Susannah Ross, Esq.

At the commencement of the hearing Counsel for the State argued that the present Application was filed outside of the one-year statute of limitations and was successive as a prior PCR applications had been summarily dismissed. Counsel for the Applicant argued that equitable tolling is appropriate and justified in this matter due to Applicant's belief that Attorney James P. Craig had filed a timely PCR application on his behalf. Counsel argued that this PCR action should not be considered successive because the prior Application was dismissed without hearing or effective legal representation so the Applicant reasonably believed Mr. Craig had properly filed that action.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving

a forty-five year sentence. Applicant was indicted by the May 2010 term of the Spartanburg County Grand Jury for assault with intent to kill, assault and battery with intent to kill and murder (2010-GS-42-2874-6). Applicant was represented at trial by Roger Poole, Esquire. Assistant Solicitor, Abel O. Gray, prosecuted the case. Applicant proceeded to trial before the Honorable Roger L. Couch. Applicant was convicted as indicted and given concurrent sentences of forty-five years for murder, twenty years for assault and battery with intent to kill, and ten years for assault with intent to kill.

Applicant appealed his conviction. His appeal was dismissed by unpublished opinion.

State v. Cathcart, Op. No. 2013-UP-052 (S.C. Ct. App filed Jan. 30, 2013). The Remittitur was issued February 21, 2013. The first Post Conviction Relief Application was filed on August 31, 2015. Alleging a conflict of interest, it was dismissed without appointment of counsel or hearing. This Application was filed June 29, 2018. In response to a Conditional Order of Dismissal, the Applicant provided documentation showing evidence that he secured representation for the initial PCR in early 2013. Susannah Ross, Esq. was appointed in the matter and it was set for a hearing on the State's Motion to Dismiss.

TESTIMONY PRESENTED

The Applicant testified that he submitted a *pro se* PCR Application in January 2013 before the remitter of his appeal on February 21, 2013. He said that his family then hired National Legal Professional Services (NLPA) out of Ohio to assist in his PCR action. NLPA referred James P. Craig of the Craig Law Firm in Columbia, South Carolina as local counsel. He submitted a number of letters from NLPA and attorney James P. Craig evidencing that Mr. Craig had been retained in the PCR matter. The Applicant said his delay in filing a PCR Application was because Mr. Craig assured him that he was handling the matter. The Applicant presented

letters from Mr. Craig and NLPA discussing the progress of his PCR action and stating they had been retained for his PCR action by the Applicant's family. He said he was not experienced in the law and that it was only after extensive inquiry that he finally discovered that Mr. Craig was not the attorney of record in his PCR and had never filed the PCR Application. The Applicant then filed this PCR action.

The Applicant's sister, Princess Cathcart, testified that she was familiar with the situation and that her family had paid NLPA twelve thousand dollars (\$12,000) for the Applicant's PCR representation and investigation. She said she had received email updates from them and letters were presented where she was carbon copied. She said she believed the family was paying for effective PCR representation. The Applicant's aunt, Cynthia Cathcart, also testified and presented a receipt from NLPA for a four thousand dollar (\$4000) payment she had made on behalf of the Applicant. The testimony of the witnesses was supported the letters and receipt presented and made exhibits at the PCR hearing.

FINDINGS OF FACT AND CONCLUSION

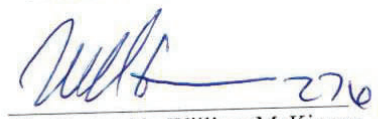
The Court has taken into consideration the arguments of counsel and testimony and exhibits presented. I find the Applicant and his family members retained counsel to represent him in his PCR action in a timely manner. The Applicant offered letters evidencing that counsel was retained to handle the Applicant's PCR matter. Counsel simply failed to assure that a PCR Application was filed in a timely manner. In response to the Applicant's express concerns that filing dates may be missed, counsel gave assurances that he was effectively handling the situation. Upon observing witness testimony and the Applicant's exhibits, I find that the Applicant believed the Craig Law Firm was representing him on his PCR matter and reasonably relied on counsel's advice.

Counsel's failure to submit a timely PCR application should not deny the Applicant a PCR hearing. "A defendant has the procedural right to one fair bite at the apple. That is, every defendant has a right to file a direct appeal and one PCR application." Wilson v. State, 559 S.E.2d 581, 348 S.C. 215 (S.C. 2002). Here, the Applicant was denied his "one bite of the apple" due to the error of counsel retained in the matter and fundamental fairness dictates that the Applicant be afforded the benefit of a PCR hearing.

IT IS THEREFORE ORDERED that Applicant shall be allowed to pursue his action for PCR and a date be scheduled for a full hearing on claims available to him under the Uniform Post Conviction Relief Act, SC Code Section 17-27-20.

IT IS FURTHER ORDERED that this is final Order of the Court on this issue.

AND IT IS SO ORDERED this 20 day of October, 2021.


The Honorable William McKinnon
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)

DARIUS CATHCART,
APPLICANT.

) AMENDED APPLICATION
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2018-CP-42-2286
)
)

This matter comes before the Court by way of application of post conviction relief filed June 29, 2018, alleging ineffective assistance of trial counsel due to a conflict of interest. A Return and Motion to Dismiss for filing the Application outside of the one-year statute of limitations was filed May 28, 2019. A hearing on the matter was held before the Honorable William McKinnon on September 14, 2021, who denied the state's Motion to Dismiss by order filed November 2, 2021. This application amends the original application to add the following allegations:

I. Ineffective assistance of initial trial counsel Turnipseed for:

1. setting up interviews with the solicitor and investigator Lorin Williams that provided information on Antwan Lamar Mack as third party shooter;
2. submitting Applicant to State administered polygraph without first securing an independent polygraph; and
3. moving to be relieved after the Applicant balked as continued interviews without assurances that his cooperation would not be used against him.

II. Ineffective assistance of trial counsel Mr. Poole for:

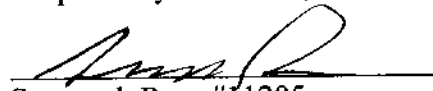
1. proceeding with representation despite a conflict of interest because Mr. Poole and the Seventh Circuit Public Defender's Office represented Antwan Lamar Mack who Applicant said was the third party uncharged shooter in his case and responsible for the arson of his car;
2. failure to conduct independent investigation review trial strategy with applicant;

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SPARTANBURG COUNTY
AMY W. COX

3. failure to move for a severance or challenge motion to exclude third party guilt;
4. failure to interview and subpoena witnesses including lead investigator Lorin Williams, Antwan Mack AKA "Black", Monique Brown, Edward Robinson, Dangelo Williams, and Bralen Morris;
5. failure to present Edward Robinson's and Applicant's statements and photo affidavit as evidence that the shooter was Antwan Mack AKA "Black";
6. failure to request duress instruction or take exception to the jury instructions on murder including inferred malice from the use of a handgun. Record on Appeal pp. 563, l. 11; p. 571, l. 9

III. Due Process Violation due to State promising the Applicant consideration for his extensive cooperation, moving to exclude evidence of third party guilt which is exculpatory, and argues in closing the Applicant tried to destroy evidence by burning his car when the State knew the Applicant was not involved in burning. Record on Appeal p. 438, l. 7.

Respectfully submitted,



Susannah Ross #11205
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Spartanburg, South Carolina

This 2 day of June, 2022

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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
	)	
DARIUS CATHCART,	)	
APPLICANT.	)	ORDER FOR PRODUCTION
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2018-CP-42-2286
_____	)	

This matter comes before the court by way of the Applicant's motion for the production of discovery relevant to his post conviction relief action pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. The motion requested all items in the Seventh Circuit Solicitor's file relating to warrant M086589/ Ind. 2010-GS-42-02875 including all information in the custody, possession, control or knowledge of the State, private parties retained by the State, or any law enforcement agency involved in the investigation of the above captioned case, which may be favorable to the Applicant with regard to the offense with which he has been convicted as well as all items provided by the Seventh Circuit Solicitor's office to Mr. Cathcart's trial attorney J. Roger Poole pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure and Brady. The court finds this request reasonable and grants Applicant's request to view and copy the file as defined above with the caveat that the solicitor may without prejudice object to the production of items it deems to be work product. Such items will then be reviewed by the court *in camera* to determine whether or not they must be produced. The assistant attorney general will also be permitted access to all items released to applicant's counsel in this matter.

AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY

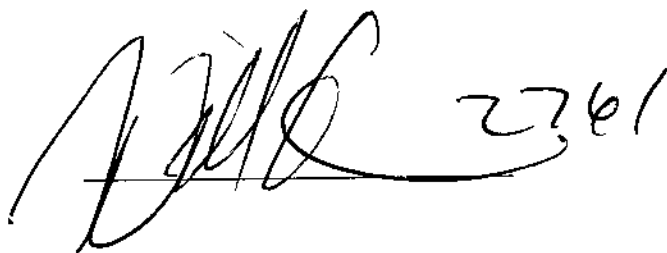
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THEREFORE IT IS ORDERED that the Seventh Circuit Solicitor's office allow Applicant's counsel to view and copy all items relating to warrant M086589/ Ind. 2010-GS-42-02875 as stated above with the caveat that the solicitor may without prejudice object to the production of items it deems to be work product.

IT IS FURTHER ORDERED that the assistant attorney general will also be permitted access to all items released to applicant's counsel.

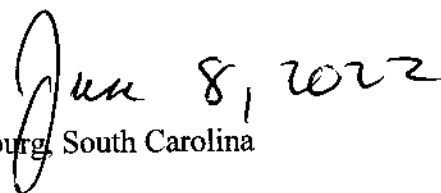
AND IT IS SO ORDERED.



Circuit Court Judge

Dated:

Spartanburg, South Carolina



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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	TENTH JUDICIAL CIRCUIT
	)	
DARIUS CATHCART,	)	ORDER FOR EXPENSES
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2018-CP-42-2286
RESPONDENT.	)	
	)	

THIS MATTER CAME BEFORE me upon a request by Applicant's appointed counsel for fees for the services of a investigator to locate witnesses based upon the following facts:

1. Applicant has filed an application for PCR on June 29, 2018, for his conviction for murder. He was tried sentenced to forty-five years.
2. Applicant states he has a number of witnesses who are material to his case because they substantiate his statements to law enforcement. These witnesses were not presented in his trial though he made his trial counsel aware of them.
3. PCR counsel states that an investigator may assist her in locating these witness.

Upon hearing the arguments of Counsel for the Applicant, it appears and I so find that the services of an investigator are reasonable and necessary for the representation of the Applicant. I further find that, because of the seriousness of the charges for which Applicant was convicted and in light of the circumstances surrounding this case, payment of these services is necessary to ensure effective assistance of counsel and that such payment is appropriate. Finally, even though the total amount of these services exceeds the limit specified in S.C. Code § 17-3-50 (B), I find the excess amount of these services appropriate, pursuant to S.C. Code § 17-3-50(C), based upon the above listed facts upon which this motion was based. Therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Counsel is authorized to expend a reasonable sum in an amount up to \$3000.00 (three thousand) dollars pursuant to the billing statement of the retained investigator without further Order of this Court.

AND IT IS SO ORDERED.

Dated: *June 8, 2022*
Spartanburg, South Carolina

[Signature]
Circuit Court Judge
SPARTANBURG COUNTY
CLERK OF COURT
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
DARIUS CATHCART,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2018-CP-42-2286
RESPONDENT.	)	
_____	)	

This matter comes before the Court by way of application of post conviction relief filed June 29, 2018, alleging ineffective assistance of trial counsel due to a conflict of interest. A Return and Motion to Dismiss for filing the Application outside of the one-year statute of limitations was filed May 28, 2019. A hearing on the matter was held before the Honorable William McKinnon on September 14, 2021, who denied the State's Motion to Dismiss by order filed November 2, 2021. This application amends the original application to add the following allegations:

- I. Ineffective assistance of initial trial counsel Turnipseed for:
 1. setting up interviews with the solicitor and investigator Lorin Williams that provided information on Antwan Lamar Mack as third party shooter;
 2. submitting Applicant to State administered polygraph without first securing an independent polygraph; and
 3. moving to be relieved after the Applicant balked as continued interviews without assurances that his cooperation would not be used against him.
- II. Ineffective assistance of trial counsel Mr. Poole for:
 1. proceeding with representation despite a conflict of interest because Mr. Poole and the Seventh Circuit Public Defender's Office represented Antwan Lamar Mack who Applicant said was the third-party uncharged shooter in his case and responsible for the arson of his car;
 2. failure to conduct independent investigation or review trial strategy with Applicant;

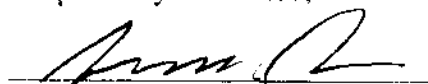
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3. failure to move for a severance or challenge motion to exclude third party guilt;
4. failure to interview and subpoena witnesses including lead investigator Lorin Williams, Antwan Mack AKA "Black", Monique Brown, Edward Robinson, Dangelo Williams, Brandon Glenn, and Bralen Morris;
5. failure to present Edward Robinson's and Applicant's statements and photo affidavit as evidence that the shooter was Antwaun Mack AKA "Black";
6. failure to request duress instruction or take exception to the jury instructions regarding "hand of one" and inferred malice from the use of a handgun. Record on Appeal p. 556, l. 7; p. 563, l. 11; p. 571, l. 9.
7. failure to object to the Solicitor's burden shifting argument and reference to Applicant's burned car as evidence of a cover up. Record on Appeal p. 538, l. 7; 539, l. 17; p. 540, l. 22.

III. Due Process Violation due to State promising the Applicant consideration for his extensive cooperation, moving to exclude exculpatory evidence of third party guilt, making burden shifting comments in closing and arguing that the Applicant tried to destroy evidence by burning his car when the State knew the Applicant was not involved in burning. Record on Appeal p. 438, l. 7.

Respectfully submitted,



Susannah Ross #11205
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Spartanburg, South Carolina

This 7 day of May, 2024

ALL INFORMATION CONTAINED
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DATE 05/15/2024 BY 60322

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)

DARIUS CATHCART,
APPLICANT.

) CERTIFICATE OF SERVICE
) BY ELECTRONIC MAIL
)
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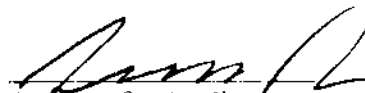
v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE #2018-CP-42-2286
)
_____)

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

RussBarlow@scag.gov


Attorney for Applicant

This 7 day of May, 202~~4~~

11:43 AM
MAY 10 2024

11:43 AM MAY 10 2024

11:43 AM MAY 10 2024

ROSS & ENDERLIN, PA
ATTORNEYS AT LAW

May 14, 2024

Ms. Hope Blackley
Spartanburg Clerk of Court
PO Box 3483
Spartanburg, SC 29304

Dear Ms. Blackley:

Please find the enclosed Amended Applications for Post-Conviction Relief for filing in your office. If you have any questions or concerns, please let me know.

Sincerely,



Susannah Ross
Attorney at Law

enclosures

cc: Russ Barlow, Assistant Attorney General

330 E. COFFEE ST., GREENVILLE SC 29601
PHONE: (864) 242-0029
E-MAIL: SUSANNAH@ROSSENDERLIN.COM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
DARIUS CATHCART,	)	Case No. 2018-CP-42-2286
	)	
APPLICANT.	)	
v.	)	ORDER GRANTING POST
	)	CONVICTION RELIEF
THE STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

This matter is before the Court by way of application for post conviction relief filed June 29, 2018, alleging ineffective assistance of trial counsel due to a conflict of interest. A Return and Motion to Dismiss for filing the Application outside of the one-year statute of limitations was filed May 28, 2019. A hearing on the matter was held before the Honorable William McKinnon on September 14, 2021, who denied the State's Motion to Dismiss by order filed November 2, 2021.

An evidentiary hearing was heard May 20, 2024, in the Spartanburg County Courthouse. The Applicant, Darius Cathcart (Cathcart), was present at the hearing represented by Susannah Ross, Esquire. Assistant Attorney General Shayla Flores represented the State. The Applicant, Michael Crossley, Princess Cathcart, Monique Brown, and Tanisha Cathcart testified on behalf of the Applicant and J. Roger Poole, Esquire, and Abel Gray, Esq., testified during the Respondent's case. The court had before it the trial transcript, the Spartanburg County Clerk of Court records, and the pleadings.

PROCEDURAL HISTORY

The Applicant is incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. He was indicted for

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SPARTANBURG COUNTY
AMY W. COX

assault with intent to kill (2010-GS-42-02874), murder (2010-GS-42-02875), and assault and battery with intent to kill (2010-GS-42-028), based on allegations arising from a March 14, 2009, shooting. On June 24, 2010, Applicant's initial counsel, David Turnipseed (Turnipseed), was relieved. Roger Poole with the Seventh Circuit Public Defender's Office was then appointed and represented the applicant at trial. Seventh Circuit Assistant Solicitor Abel O. Gray prosecuted the case, and the Honorable Roger L. Couch presided. The defendant was convicted on May 12, 2011, and Judge Couch sentenced him to concurrent terms of forty-five (45) years for murder, twenty (20) years for assault and battery with intent to kill, and ten (10) years for assault with intent to kill.

The Applicant appealed the conviction. An Anders brief was filed on the issue of whether the trial judge erred in charging the jury that malice could be inferred by use of a deadly weapon when the judge charged the jury on self-defense. The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. State v. Cathcart, Op. No. 2013-UP-52 (S.C. Ct. App. Filed Jan. 30, 2013). The remitter was issued February 21, 2013.

The Applicant filed an application for post-conviction relief on August 31, 2015, alleging that after his trial the Applicant learned through independent investigation that counsel had a conflict of interest because he represented Antwan Mack, AKA "Black" during the time he represented Applicant. The Respondent argued the application was untimely and a Conditional Order of Dismissal was signed by Judge J. Mark Hayes on November 22, 2016, and the matter was dismissed. The Applicant's second application is before this court.

ALLEGATIONS

An amended application was filed June 6, 2022, with the following allegations:

- I. Ineffective assistance of initial trial counsel Turnipseed for:

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SANTANDRUS COUNTY
ALY W. COX

1. setting up interviews with the solicitor and investigator Lorin Williams that provided information on Antwan Lamar Mack as third party shooter;
2. submitting Applicant to State administered polygraph without first securing an independent polygraph; and
3. moving to be relieved after the Applicant balked as continued interviews without assurances that his cooperation would not be used against him.

II. Ineffective assistance of trial counsel Mr. Poole for:

1. proceeding with representation despite a conflict of interest because Mr. Poole and the Seventh Circuit Public Defender's Office represented Antwan Lamar Mack who Applicant said was the third-party uncharged shooter in his case and responsible for the arson of his car;
2. failure to conduct independent investigation or review trial strategy with Applicant
3. failure to move for a severance or challenge motion to exclude third party guilt;
4. failure to interview and subpoena witnesses including lead investigator Lorin Williams, Antwan Mack AKA "Black", Monique Brown, Edward Robinson, Dangelo Williams, Brandon Glenn, and Bralen Morris;
5. failure to present Edward Robinson's and Applicant's statements and photo affidavit as evidence that the shooter was Antwan Mack AKA "Black";
6. failure to request duress instruction or take exception to the jury instructions regarding "hand of one" and inferred malice from the use of a handgun. Record on Appeal p. 556, l. 7; p. 563, l. 11; p. 571, l. 9.
7. failure to object to the Solicitor's burden shifting argument and reference to Applicant's burned car as evidence of a cover up. Record on Appeal p. 538, l. 7; 539, l. 17; p. 540, l. 22.

III. Due Process Violation due to State promising the Applicant consideration for his extensive cooperation, moving to exclude exculpatory evidence of third party guilt, making burden shifting comments in closing and arguing that the Applicant tried to destroy evidence by burning his car when the State knew the Applicant was not involved in burning. Record on Appeal p. 438, l. 7.

At the hearing's opening remarks, Applicant's PCR counsel stated the allegations, and moved to

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 SEVENTH CIRCUIT
 JURY ROOM
 MAY 11, 2025

conform the pleadings to the testimony pursuant to Love v. State, 428 SC 231, 834 SE2d 196 (2019).

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A) (2014).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and

¹ S.C. Code Ann. §§ 17-27-10 to -160.

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 ARKANSAS COUNTY
 ARIZONA

raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

SUMMARY OF HEARING TESTIMONY

Applicant's Testimony

The Applicant, Darius Cathcart, testified that he filed for PCR because his trial counsel was ineffective and had a conflict of interest. He described how for the first year after the shooting, he was a cooperating witness. His first attorney, Turnipseed, set up meetings with the solicitor and the lead police investigator on the case, Lorin Williams. He said he gave truthful

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statements and information about a third-party, Antwan Lamar Mack AKA "Black" being the shooter. Applicant's Exhibit 1 was an Affidavit of Photographic Identification dated August 24, 2009, where the Applicant identified a photograph of "Black", who was Antwan Lamar Mack, as the person who "shot the Geter boy and who set my car on fire."

Cathcart said he was at Club Dreams for about three hours and as he was leaving, co-defendant, Rashawn Reeder, asked him for a ride. Reeder got in the passenger seat and his friend, who the Applicant knew only as "Black", got in the back seat. They drove around and then "Black", who Applicant later learned was Antwan Mack, directed him to pull alongside another car and hit the lights. Applicant testified that when he hesitated, he heard a gun cock and "Black" said, "You heard what the fuck I said." The Applicant said he was unarmed and scared, so he pulled next to the car as directed and a shoot-out ensued. He said he was not shooting but was shot in the arm as he was covering his head. He said Reeder was also shot so they drove to the hospital where "Black" said to pull in at the Church's across the street and not to talk to the police. "Black" left them at the hospital and drove off in the Applicant's car and that was the last the Applicant saw of his car.

The car was found burned. The applicant testified that he was not involved in the arson and was never charged with burning the car. He said it was unfairly prejudicial when Solicitor Gray argued in closing that the car "mysteriously" burned up because they were trying to destroy evidence. App. 538, l.7. He admitted to initially lying and saying he did not know about what happened because "Black" had his car, his keys, and the registration and the Applicant did not want to endanger his family. He stated that his family hired Turnipseed who advised him to help himself and meet with Investigator Lorin Williams. He said he identified a photograph of Antwan Mack as the person he knew as "Black". The applicant said that the investigator seemed

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to believe him and was familiar with Antwan Mack and suspected he was involved in several homicides in Spartanburg County. Applicant said he believed him to be the same Antwan Lamar Mack in Federal prison.

The Applicant testified that after his conviction, his family hired an investigator who learned that public defender Poole represented Antwan Mack. He provided exhibits from the Seventh Judicial Circuit Public Index showing Mr. Poole and the Seventh Circuit Public Defender's Office as counsel of record for Antwan Mack on a number of charges beginning on September 30, 2010. He said he told Mr. Poole about the uncharged third-party shooter, and Mr. Poole did not investigate Mr. Mack's involvement or follow up with the large number of witnesses the Applicant provided. The Applicant offered a copy of the Defendant's List of Potential Witnesses from his trial signed by Mr. Poole. He said the witnesses supported his defense and many were at the trial even though they were not subpoenaed or interviewed by Mr. Poole. The Applicant provided Edward Robinson's voluntary statement that was witnessed by Investigator Lorin Williams (Applicant's Exhibit 3). It said Antwan Mack confessed to killing the victim and to setting fire to the Applicant's car to get rid of the evidence against him.² The Applicant said that Mr. Poole did not follow up on the statement, investigate the uncharged third party, Antwan Mack, or challenge the State's motion to exclude third-party guilt.

The Applicant said Mr. Poole advised that they should not put up a defense at trial even though there were a number of witnesses who could attest that the Applicant was not involved in an altercation at the club prior to the shooting. At the PCR hearing Applicant's witnesses Mike Crossley, Monique Brown, and Tanisha Cathcart, testified that they were at the club prior to the shooting and while a fight did occur, Cathcart was not involved in the fight. They said they were willing to testify at trial but were told they were not needed. They said Mr. Poole had not

² The deceased victim Duncan Geter was known as AJ. App. 44, l. 12.

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interviewed them or subpoenaed them prior to Cathcart's trial. The Applicant's sister, Princess Cathcart said she and other witnesses who were there at Cathcart's trial were told by Mr. Poole that their testimony would not be needed.

Testimony of Counsel

Abel Gray testified that he prosecuted the case against the Applicant and tried the case jointly with co-defendant Rashawn Reeder. He said he knew the Applicant had given a number of statements, but did not recall meeting with Mr. Cathcart personally. He stated that the evidence showed Cathcart was driving and Reeder was the shooter. He said the Applicant's car was burned and Cathcart was not charged with arson. However, he testified that he could not say one hundred percent that Mr. Cathcart was not involved in the burning of the car.

Mr. Poole testified that in his capacity as assistant public defender, he was appointed to the case prior to the May 12, 2011, trial. He said he did not have an independent recollection of representing Antwan Lamar Mack but admitted he may have and not put together Mack with the nickname "Black" Cathcart referenced. He said that it was a long time ago, but they looked it up in his office and Antwan Mack's case was assigned to him from September 2010 to March of 2011 when another public defender in his office was assigned the case. He said he did not feel he had a conflict of interest. He testified he was prepared for trial and recognized the potential witness list he made for the trial. Though Edward Robinson is listed as witness number nine on the witness list, Mr. Poole had no recollection of interviewing Mr. Robinson, nor did he recall Robinson's statement that Antwan Mack admitted to killing the victim and setting fire to Cathcart's car. He said he did not move for severance because the motion would not likely have been granted and that he did not believe a third-party guilt argument was important in the case. Mr. Poole said he did not interview or subpoena any witnesses because the case was so chaotic

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with conflicting statements. He said he may have advised the Applicant not to testify or present a defense due to conflicting statements. He allowed the record to speak for itself as to whether he requested a duress instruction or objected to the State's Motion to exclude Third Party Guilt, jury instructions, or the State's closing arguments. He said he did not believe such objections pertained to the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014) based upon the evidence presented to the Court. Upon conducting and completing its analysis, this Court finds that Applicant has established constitutional violations or deprivations that require this Court to grant his application for post-conviction relief.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Gonzalez v. State lays out the pertinent law holding that regardless of whether an attorney recognizes an actual conflict of interest, if the conflict adversely affected the attorney's performance, the PCR Applicant is entitled to relief.

A criminal defendant's Sixth Amendment right to effective assistance of counsel includes a right to counsel "unhindered by a conflict of interest." Cuyler v. Sullivan, 446 U.S. 335, 345-50, 355, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980) (quoting Holloway v. Arkansas, 435 U.S. 475, 483 n. 5, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978)). When counsel is burdened by an actual conflict of interest, he "breaches the duty of loyalty, perhaps the most basic of counsel's duties." Strickland v. Washington, 466 U.S. 668, 692, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Due to the seriousness of the breach and the difficulty in "measure[ing]

the precise effect on the defense of representation corrupted by conflicting interests," the Strickland ineffective assistance of counsel standard is modified in actual conflict of interest cases in that the defendant is not required to show prejudice. Strickland, 466 U.S. at 692, 104 S.Ct. 2052 ; see also Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting Cuyler, 446 U.S. at 348, 100 S.Ct. 1708). In other words, a defendant is not required to show prejudice in the traditional Strickland sense, i.e., that there is a reasonable probability the result of the proceeding would have been different. Strickland, 466 U.S. at 692–94, 104 S.Ct. 2052 (citing Cuyler, 446 U.S. at 345–50, 100 S.Ct. 1708). Rather, "prejudice is presumed" if the defendant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance." " Strickland, 466 U.S. at 692, 104 S.Ct. 2052 (quoting Cuyler, 446 U.S. at 350, 100 S.Ct. 1708); see also Duncan, 281 S.C. at 438, 315 S.E.2d at 811 (quoting Cuyler, 446 U.S. at 348, 100 S.Ct. 1708); Lomax v. State, 379 S.C. 93, 102, 665 S.E.2d 164, 168 (2008).

Gonzales v. State, 419 S.C. 2, 9, 795 S.E.2d 835, 839 (S.C. 2017)

Our Supreme Court has reasoned that an actual conflict of interest arises where:

a defense attorney places himself in a situation inherently conducive to divided loyalties. If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Duncan, 281 S.C. at 438, 315 S.E.2d at 811 (quoting Zuck v. Alabama, 588 F.2d 436, 439 (5th Cir. 1979))).

Here, there was an actual conflict and the interests of Cathcart and Mack were clearly adverse. Roger Poole and the Spartanburg Public Defender's Officer simultaneously represented Cathcart and Mack (Applicant's Exhibit 4). Though Mack was not charged with the same crime such that a routine co-defendant scan would identify the conflict, minimal familiarity with the case would have identified Antwan Mack as a third-party whose interests were adverse to the Applicant. At the hospital, both Cathcart and co-defendant Reshawn Reeder independently told the responding officers that they were in the car with a guy they knew as "Black" who drove the car away from the hospital. App. 9, l. 11 & 21, l. 4. Logic would suggest that some third-party

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drove Cathcart's car from the hospital where Cathcart and Reeder were being treated for gunshot wounds. In August of 2009, Cathcart identifies "Black" as Antwon Mack, the person who shot the Geter boy (Applicant's Exhibit 1). In November 2009, Edward Robinson signed a statement that Antwan Mack boasted about killing Geter and burning the evidence, likely admissible evidence of third-party guilt which certainly merited investigation (Applicant's Exhibit 3).

At sentencing, after the guilty verdict at trial, the Applicant and his mother, Patricia Cathcart, both refer to the cooperation with law enforcement. App. 586. Cathcart told how he met with prosecutors Derrick Bulsa and Abel Gray as well as Investigator Lorin Williams who told him he believed Antwan Mack was involved in this and other unsolved homicides but needed Cathcart to try and get a confession out of him. App. 588, l. 13. All this was consistent with the Applicant's PCR hearing testimony which this Court finds to be credible. The Court finds in this situation, the failure to investigate or pursue third party guilt against another client the trial attorney was appointed to represent, was ineffective and evidenced an adverse effect on the attorney's performance. Therefore, this Court finds an actual conflict of interest existed and presume prejudice. While Poole claims to have been unaware of the conflict, "regardless whether an attorney recognizes an actual conflict of interest, if the conflict adversely affected the attorney's performance, the applicant has established his entitlement to relief." Gonzales, 419 S.C. at 13, 795 S.E.2d at 841.

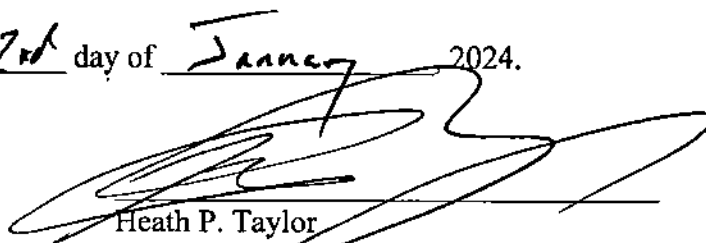
In addition to the conflict of interest, Applicant's trial counsel failed to utilize or investigate the exculpatory statement of Edward Lee Robinson (Applicant's Exhibit 3). Not only did the statement indicate Applicant did not shoot the victim but the statement also positively identified another individual as the shooter. At the hearing, trial counsel claimed to have no recollection of Mr. Robinson's statement. Failure to utilize and present exculpatory evidence of

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this magnitude is unquestionably deficient under the Strickland standard. Additionally, this Court finds and concludes that there is a reasonable probability that but for trial counsel's error, the result of Applicant's trial would have been different. In addition to the conflict issue set forth above, the Court finds and concludes that Applicant is entitled to relief pursuant to Strickland.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the post-conviction relief application is hereby granted, Applicant's case is hereby remanded to the Court of General Sessions.

AND IT IS SO ORDERED this 7th day of January 2024.



Heath P. Taylor
Presiding Judge
Seventh Judicial Circuit

Orangeburg, South Carolina.

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Spartanburg County Sheriff's Office

CHUCK WRIGHT, SHERIFF

AFFIDAVIT OF PHOTOGRAPH IDENTIFICATION

Case Number: 2009030662

Date: 8-24-09

Time: 1051 am

Location: SO CID

I, Darius Cathcart, have viewed a group of 6 photographs this 24 day of August, 2009, from which I have positively identified photograph number 1554283 displayed to me by L. Williams of the Spartanburg County Sheriff's Office as the person who shot the Gater boy and who sat my car on fire

on the 24 day of August, 2009.

Signature: Darius Cathcart

Print Name: Darius Cathcart

Address: 336 Crestview Dr

Spartbg, SC 29306

Phone: (864) 804-1609

SWORN to before me this 24 day of

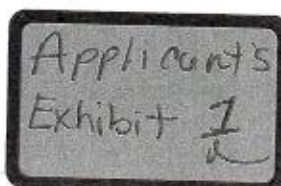
August, 2009.

[Signature]
Notary Public for South Carolina

My commission expires; 8-22-10.

COPY

P.O Box 771 * Spartanburg, SC 29304 * (864) 503-4500 * (864) 503-4509



8/24/09

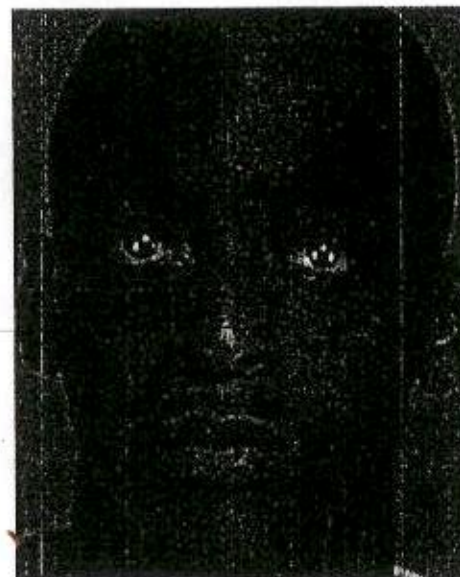
D.C.



1601100



1554283



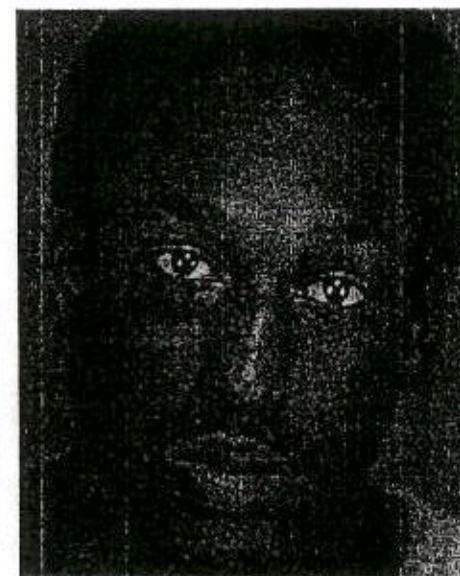
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First

Middle

Last

Race

Age

Sex

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mack

1 Result for search **antwaun mack**

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ANTWAUN LAMAR MACK

Register Number: 22278-171

Age: 38

Race: Black

Sex: Male

Located at: Bennettville FCI

Release Date: 08/11/2026

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Applicant's
Exhibit 2
15



Spartanburg County Sheriff's Office
CHUCK WRIGHT, SHERIFF

AFFIDAVIT OF PHOTOGRAPH IDENTIFICATION

Case Number: 2009030662

Date: 11-11-09

Time: 1530

Location: SO CID

I, Edward Lee Robinson, have viewed a group of 6
photographs this 11 day of Nov, 2009, from which I have positively
identified photograph number 1554283 displayed to me by
L. Williams of the Spartanburg County Sheriff's Office
as the person who I know as Antwan Mack

on the 11 day of Nov, 2009.

Signature: [Signature]

Print Name: Edward Robinson

Address: 136 Oxford Rd

Spartanburg SC 29303

Phone: 864 583 5045

SWORN to before me this 11 day of

Nov, 2009.

David W. Taylor

Notary Public for South Carolina

My commission expires; 04-07-2015.

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P.O Box 771 * Spartanburg, SC 29304 * (864) 503-4500 * (864) 503-4509

Applicants
Exhibit 3

CASE# 2009030662	VOLUNTARY STATEMENT		PAGE / of /
STATEMENT OF: Edward Robinson	AGE: 21	DATE: 11-11-09	
ADDRESS: 138 Oxford Rd			
PHONE # 864 583-5045	DOB: 7-1-88	SSN: 248-75-5688	

Antwan Mack told me Edward Robinson that he did kill AJ and he set fire to Darius' cathcart car. How I found this info out is Antwan Mac and I got into a physical altercation Antwan Mac told me I was nothing to get rid of and he will do me the same way he did the lil nigger from Lakeview morning (CAJ). 2 days after our altercation he wanted to squish beef with me, he says that he has a lot on his mind and its not worth it then we started to converse about what happened the night AJ was murdered he says that he put all kinds of bullets whakes inside the car he was shooting at, then Antwan mac told me he had to burn Darius' car up to get rid of evidence. He told me that at his girl friends house (B's Nick) she lives in crescent Hills apt B building 100 ——— end of statement ———

I have read this statement consisting of 1 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 1450 P. M. on the 11 day of November 20 09

WITNESS: [Signature]

[Signature: Edward Robinson]
Signature of person giving voluntary statement

SWORN to before me this 11

day of NOV, 2009

(Seal)
Notary Public of South Carolina

My Commission expires: 6-9-17

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The State of South Carolina VS Antwan Lamar Mack

Case Number:	M424982	Court Agency:	Spartanburg Magistrate	Filed Date:	09/30/2010
Case Type:	Criminal-Clerk	Case Sub Type:	180 Day Track		
Status:	Scheduled	Assigned Judge:	Turner, David James	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	09/10/2010	Arrest Date:	09/08/2010
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	0000GS42	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Catto, Jason	8045 Howard Street Spartanburg SC 29303				Officer		09/30/2010
Mack, Antwan Lamar	460 E Blackstock Rd A 2 Spartanburg SC 29301	Black	M	02/28/1986	Defendant		09/30/2010
Poole, J Roger	Spartanburg County Public Defenders Offi 366 N. Church Street Spartanburg SC 29305				Public Defender		10/01/2010

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Applicant's
Exhibit 4



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The State of South Carolina VS Antwan Lamar Mack

Case Number:	M118522_Y10	Court Agency:	Spartanburg Magistrate	Filed Date:	09/30/2010
Case Type:	Criminal-Clerk	Case Sub Type:	180 Day Track		
Status:	Scheduled	Assigned Judge:	Turner, David James	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	09/10/2010	Arrest Date:	09/08/2010
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	0000GS42	Waiver Date:	
Probation Case:					

[Case Parties](#) [Charges](#) [Sentencing](#) [Associated Cases](#) [Actions](#) [Financials](#) [Bonds](#)

Click the icon to view associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Mack, Antwan Lamar	460 E Blackstock Rd A 2 Spartanburg SC 29301	Black	M	02/28/1986	Defendant		09/30/2010
Nelson, Louis M	145 West Broad Street Spartanburg SC 29306				Officer		09/30/2010
Pool, J Roger	Spartanburg County Public Defenders Offi 366 N. Church Street Spartanburg SC 29306				Public Defender		10/01/2010

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Case Number:	M423860	Court Agency:	Spartanburg Magistrate	Filed Date:	09/30/2010
Case Type:	Criminal-Clerk	Case Sub Type:	180 Day Track		
Status:	Scheduled	Assigned Judge:	Turner, David James	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	09/10/2010	Arrest Date:	09/08/2010
Law Enf. Case:	06083710	True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	00006542	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Brochin, Timothy W	145 West Broad Street Spartanburg SC 29306				Officer		09/30/2010
Mack, Antwan Lamar	460 E Blackstock Rd A 2 Spartanburg SC 29301	Black	M	02/26/1986	Defendant		09/30/2010
Pool, J Roger	Spartanburg County Public Defenders Offi 366 N. Church Street Spartanburg SC 29306				Public Defender		09/30/2010

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The State of South Carolina VS Antwan Lamar Mack

Case Number:	M424994	Court Agency:	Spartanburg Magistrate	Filed Date:	09/30/2010
Case Type:	Criminal-Clerk	Case Sub Type:	180 Day Track		
Status:	Scheduled	Assigned Judge:	Turner, David James	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	09/13/2010	Arrest Date:	09/09/2010
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	0000G542	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the how to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Kish, William	8045 Howard Street Spartanburg SC 29303				Officer		09/30/2010
Mack, Antwan Lamar	460 E Blackstock Rd A 2 Spartanburg SC 29301	Black	M	02/28/1986	Defendant		09/30/2010
Poole, J Roger	Spartanburg County Public Defenders Offi 366 N. Church Street Spartanburg SC 29306				Public Defender		09/30/2010

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Action Type: All Actions

Date Type	Beginning	Ending

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Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Mack, Antwan	Defendant	K100421	11/22/2006	Disposed	10/02/2007	Criminal-Clerk			General Sessions
Mack, Antwan	Defendant	K100451	11/20/2006	Transferred	11/20/2006	Criminal			Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K100452	12/07/2010	Disposed	03/22/2012	Criminal-Clerk	180 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K100453	12/03/2010	Disposed	03/22/2012	Criminal-Clerk	180 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K100403	03/14/2006	Pled Guilty	12/18/2007	Criminal-Clerk			General Sessions
Mack, Antwan Lamar	Defendant	K100406	03/05/2006	Transferred	03/05/2006	Criminal			Greer Magistrate
Mack, Antwan Lamar	Defendant	K100404	03/05/2006	Disposed	08/08/2006	Criminal			Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K100405	03/05/2006	Disposed	08/08/2006	Criminal			Greer Magistrate
Mack, Antwan Lamar	Defendant	K104352	09/09/2010	Transferred	09/10/2010	Traffic			Bond Court
Mack, Antwan Lamar	Defendant	K104353	09/09/2010	Transferred	09/10/2010	Traffic			Bond Court
Mack, Antwan Lamar	Defendant	K103823	11/22/2006	Disposed	10/02/2007	Criminal-Clerk			General Sessions
Mack, Antwan Lamar	Defendant	K103823	11/20/2006	Transferred	11/20/2006	Criminal			Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K103840	11/22/2006	Disposed	12/18/2007	Criminal-Clerk			General Sessions
Mack, Antwan Lamar	Defendant	K103840	11/20/2006	Transferred	11/20/2006	Criminal			Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K103841	11/22/2006	Disposed	12/18/2007	Criminal-Clerk			General Sessions
Mack, Antwan Lamar	Defendant	K103841	11/20/2006	Transferred	11/20/2006	Criminal			Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K108593	09/10/2010	Pled Guilty	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K108593	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K108593	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K108518	09/10/2010	Disposed	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K108518	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K108518	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K108518	09/10/2010	Disposed	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K108519	09/09/2010	Scheduled		Criminal			Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K108519	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K108520	09/10/2010	Disposed	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K108520	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K108520	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K108522	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K108522	09/10/2010	Disposed	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K108522	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K413850	09/10/2010	Pled Guilty	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K413850	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K413850	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K414282	09/10/2010	Pled Guilty	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K414282	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K414282	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K414282	09/10/2010	Pled Guilty	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K414282	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate
Mack, Antwan Lamar	Defendant	K414282	09/09/2010	Transferred	09/09/2010	Criminal-Clerk			Bond Court
Mack, Antwan Lamar	Defendant	K414282	09/13/2010	Pled Guilty	03/22/2012	Criminal-Clerk	365 Day Track		General Sessions
Mack, Antwan Lamar	Defendant	K414282	09/30/2010	Scheduled		Criminal-Clerk	180 Day Track		Spartanburg Magistrate

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STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)

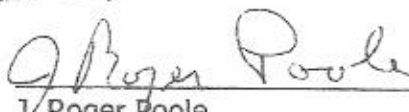
THE STATE,)

DEFENDANT'S
LIST OF POTENTIAL WITNESSES

v)

DARIUS CATHCART, Defendant)

1. Taneisha Cathcart
2. Tiorra Keenan
3. Tanese Shaw
4. Chastity Booker
5. Simone Winn
6. Christian Nash
7. Monique Brown
8. Keith Meadows
9. Edward Robinson *He identified the shooter and wrote a statement*
10. Antwan Mack *actual shooter*
11. Taryn Morris
- ✓ 12. Dangelo Miller *Dude from the other car*
13. Patricia Cathcart
- ✓ 14. Braylon Morris *Didn't subpoena*



J. Roger Poole
Seventh Circuit Public Defender's Office

Applicant's
Exhibit 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Darius T. Cathcart, #303063,	)	CASE NO. 2018-CP-42-02286
	)	
Applicant,	)	
	)	
v.	)	RESPONDENT'S MOTION TO
	)	RECONSIDER, ALTER, OR AMEND
State of South Carolina,	)	PURSUANT TO RULE 59(e), SCRCP
	)	
Respondent.	)	

The matter before this Court is an action for post-conviction relief (PCR) application filed on June 29, 2018, by Darius T. Cathcart (Applicant). Respondent, the State of South Carolina, filed its Return and Motion to Dismiss, on May 28, 2019, requesting Applicant's application be summarily dismissed as untimely, as barred by the statute of limitations pursuant to S.C. Code Ann. § 17-27-45 and as successive pursuant to S.C. Code Ann. § 17-27-90. A conditional order of dismissal was entered, provisionally dismissing the application as time-barred but allowing Applicant twenty days to provide a sufficient reason why the dismissal should not become final. A copy of this conditional order of dismissal is attached.

In response, Applicant filed a memorandum asserting the PCR Counsel he retained to assist him in his initial post-conviction relief action failed to timely file his first action despite being retained before the statute of limitations ran and failed to respond to Respondent's motion to dismiss or the Court's conditional order of dismissal. Thereafter, Respondent moved for a hearing on its motion to dismiss pursuant to Mose v. State, 420 S.C. 500, 511-12, 803 S.E.2d 718, 723 (2017) (holding that the statute of limitation can be equitably tolled if the reason why the application was untimely filed was due to circumstances outside the Applicant's control). Further, Respondent requested the Court instruct the Clerk of Court to appoint counsel to represent

Applicant and requested permission to place this matter on an upcoming roster to determine if Applicant was entitled to equitable tolling as set forth in Mose.

On September 14, 2021, a Mose hearing was held before the Honorable William A. McKinnon at the Spartanburg County Courthouse. Assistant Attorney General William Ray represented Respondent. Applicant was present and represented by Susannah C. Ross, Esquire. At the commencement of the hearing, Respondent argued that the present Application was filed outside of the one-year statute of limitations and was successive, as a prior PCR application had been summarily dismissed. Applicant argued that equitable tolling is appropriate and justified in this matter due to Applicant's belief that Attorney James P. Craig had filed a timely PCR application on his behalf. Applicant argued that this PCR action should not be considered successive because the prior application was dismissed without hearing or effective legal representation, so Applicant reasonably believed Mr. Craig had properly filed that action. Judge McKinnon denied Respondent's Motion by written order, filed on November 2, 2021.

An evidentiary hearing convened at the Spartanburg County Courthouse on May 20, 2024, before the Honorable Heath P. Taylor. Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). Assistant Attorney General Shayla Joan Flores represented Respondent. Applicant testified on his own behalf and presented the testimony of Michael Crossley, Princess Cathcart, Monique Brown, and Tanisha Cathcart. Respondent presented the testimony of J. Roger Poole, Esquire (Trial Counsel), and Abel Orlando Gray, Esquire (Solicitor).

The Court granted relief by filed order on January 14, 2025,¹ finding Applicant established constitutional violations requiring this Court to grant his application for post-conviction relief. (Order Granting Post-Conviction Relief pp. 9-12).

¹ Respondent received notice of filing of the Order Granting Post-Conviction Relief on January 16, 2025.

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Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, would respectfully show the Court:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In May 2010, the Spartanburg County Grand Jury indicted Applicant for assault with intent to kill (2010-GS-42-02874), murder (2010-GS-42-02875), and assault and battery with intent to kill (2010-GS-42-02876). J. Roger Poole, Esquire,² represented Applicant. Assistant Solicitor Able Orlando Gray of the Seventh Circuit Solicitor's Office prosecuted the case.

Prior to trial, Applicant appeared before the Honorable Roger L. Couch on or about March 28, 2011, for a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). On May 9, 2011, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. On May 12, 2011, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to concurrent terms of 10 years' imprisonment for assault with intent to kill, 40 years' imprisonment for murder, and 20 years' imprisonment for assault and battery with intent to kill.

Applicant filed a timely notice of appeal on May 17, 2011, pursuant to Anders v. California, 386 U.S. 738 (1967). On January 30, 2013, the South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished decision. State v. Cathcart, Op. No. 2013-UP-052 (S.C. Ct. App. filed Jan. 30, 2013). The Remittitur was returned to the lower court on February 21, 2013.

FIRST PCR APPLICATION: 2015-CP-42-03695

Applicant filed his *first* application for post-conviction relief on August 31, 2015 (2015-CP-42-03695). He alleged the following grounds for relief in his application, as summarized by

² Applicant was originally represented by David E. Turnipseed, who is now deceased.

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the Respondent:

1. Conflict of interest, in that:
 - a. "After the Defendant was sentenced and through investigation conducted by the undersigned and by his private investigator, it has been learned that the Defendant's trial attorney, Roger Poole, previously and possibly during the time of representation of the Defendant, had represented Black. Mr. Poole never advised the Defendant that he represented Black and the Defendant was never aware that his attorney represented, or had represented, the very witness who could have provided exculpatory evidence for the Defendant and/or upon whom the Defendant was basing his defense."

Respondent made its return and motion to dismiss on November 16, 2016, arguing that the application was untimely. On November 22, 2016, the Honorable J. Mark Hayes, II, issued a Conditional Order of Dismissal. Applicant did not respond to the Conditional Order. On April 3, 2017, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal.

CURRENT ACTION BEFORE THIS COURT

In his *second* and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. Conflict of Interest.

In an amended application for post-conviction relief dated May 7, 2024, Applicant, through PCR Counsel, made the following additional allegations:

1. Ineffective Assistance of Counsel – Turnipseed
 - a. Setting up interviews with the solicitor and investigator Lorin Williams that provided information on Antwan Lamar Mack as third party shooter;
 - b. Submitting Applicant to State administered polygraph without first securing an independent poly graph; and

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- c. Moving to be relieved after the Applicant balked at continued interviews without assurances that his cooperation would not be used against him.
- 2. Ineffective Assistance of Counsel – Mr. Poole
 - a. Proceeding with representation despite a conflict of interest because Mr. Poole and the Seventh Circuit Public Defender's Office represented Antwan Lamar Mack who Applicant said was the third-party uncharged shooter in his case and responsible for the arson of his car;
 - b. Failure to conduct independent investigation or review trial strategy with Applicant;
 - c. Failure to move for a severance or challenge motion to exclude third party guilt;
 - d. Failure to interview and subpoena witnesses including lead investigator Lorrin Williams, Antwan Mack AKA "Black", Monique Brown, Edward Robinson, Dangelo Williams, Brandon Glenn, and Bralen Morris;
 - e. Failure to present Edward Robinson's and Applicant's statements and photo affidavit as evidence that the shooter was Antwaun Mack AKA "Black";
 - f. Failure to request duress instruction or take exception to the jury instructions regarding "hand of one" and inferred malice from the use of a handgun. Record on Appeal p. 556, l. 7; p. 563, l. 11; p. 571, l. 9.
 - g. Failure to object to the Solicitor's burden shifting argument and reference to Applicant's burned car as evidence of a cover up Record on Appeal p. 538, l. 7; 539, l. 17; p. 540, l. 22.
- 3. Due process violation due to State promising the Applicant consideration for his extensive cooperation, moving to exclude exculpatory evidence of third party guilt, making burden shifting comments in closing and arguing that the Applicant tried to destroy evidence by burning his car when the State knew the Applicant was not involved in burning. Record on Appeal p. 438, l. 7.

An evidentiary hearing was held on May 20, 2024, before the Honorable Heath P. Taylor. Applicant was present and represented by Susannah C. Ross, Esquire (PCR Counsel). Assistant Attorney General Shayla Joan Flores represented Respondent. Applicant testified on his own behalf and presented the testimony of Michael Crossley, Princess Cathcart, Monique Brown, and Tanisha Cathcart. Respondent presented the testimony of J. Roger Poole, Esquire (Trial Counsel),

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and Abel Orlando Gray, Esquire (Solicitor). At the close of the evidentiary hearing, this Court took the matter under advisement.

By written order filed January 14, 2024, this Court granted the post-conviction relief and remanded the matter to the Spartanburg County Court of General Sessions for a new trial, finding Trial Counsel ineffective and a reasonable probability that, but for Trial Counsel's deficiencies regarding a conflict of interest and failure to investigate a Edward Lee Robinson's statement, the outcome of Applicant's trial would have been different. This motion to reconsider, alter, and amend pursuant to Rule 59(e), SCRCF, follows.

ARGUMENTS IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden of establishing Trial Counsel was constitutionally deficient and Applicant was prejudiced by Trial Counsel's alleged deficiency.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687–88 (1984); Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "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.

Respondent respectfully asserts this Court's order is based on numerous legal and factual errors. Accordingly, this Court's grant of post-conviction relief should be reconsidered, and relief should be denied.

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***THIS COURT'S ORDER FAILS TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING EACH AND EVERY ONE OF APPLICANT'S ALLEGATIONS***

In ruling on an application for post-conviction relief, "[t]he [PCR] court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." S.C. Code Ann. § 17-27-80. The PCR court's general denial of all claims not specifically addressed in the PCR Court's order "does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law." Fishburne v. State, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) (quoting Simmons v. State, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016)).

In Fishburne, the Supreme Court of South Carolina held as follows:

We do not place the blame on a single party below for an insufficient PCR order. The preparation and finalization of a PCR order is often a collaborative effort. We recognize the prevailing party often prepares a proposed order for the PCR court. See Hall v. Catoe, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) ("[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency."). When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues raised by an applicant. [...]

Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address the appropriate issues. When these steps are ignored on the front end, we find ourselves having to remand a case, as we do today.

Id., 427 S.C. 505, 516, 832 S.E.2d 584, 589–90 (2019). Accordingly, Respondent respectfully submits that this Court should grant Respondent's motion where specific findings of fact have not been made regarding each issue presented.

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***THIS COURT ERRED IN FINDING APPLICANT WAS PREJUDICED BY TRIAL COUNSEL'S ALLEGED
CONFLICT OF INTEREST***

In its order granting relief, this Court found Trial Counsel ineffective for failing to investigate or pursue third-party guilt against another client that he was appointed to represent and that this failure evidenced an adverse effect on Trial Counsel's performance. Respondent respectfully submits that this Court erred in finding Applicant met his burden in proving that Trial Counsel had an actual conflict of interest necessitating relief, where there existed only a *possibility* that Trial Counsel may have had a conflict of interest.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. "Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. "Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690.

"To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representations, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing Jackson v. State, 329 S.C. 345, 495 S.E.2d 768

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(1998); Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984)); see also Cuyler v. Sullivan, 446 U.S. at 350 (“[A] defendant must establish that an actual conflict of interest adversely affected his lawyer’s performance.”).

“When a petitioner premises his ineffective assistance claim on the existence of a conflict of interest, the claim is subjected to the specific standard spelled out in Cuyler v. Sullivan, 446 U.S. 335 (1980), instead of that articulated in Strickland.” United States v. Nicholson, 475 F.3d 241 (4th Cir. 2007) (citing Strickland, 466 U.S. at 692). To establish that a conflict of interest resulted in ineffective assistance, “[m]ore than a mere possibility of a conflict ... must be shown.” United States v. Tatum, 943 F.2d 370, 375 (4th Cir.1991). **The [Applicant] must show (1) that his lawyer was under “an actual conflict of interest” and (2) that this conflict “adversely affected his lawyer's performance.”** Sullivan, 446 U.S. at 348 (emphasis added). Once an actual conflict of interest is shown, applicant does not have to demonstrate prejudice. Thomas, 346 S.C. 140, 551 S.E.2d 254.

In a PCR proceeding, the applicant bears the burden of proving their attorney had an actual conflict of interest necessitating relief. State v. Jordan, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013). “The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction.” State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005). Additionally, the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction. Jackson v. State, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998).

An actual conflict of interest arises where:

[A] defense attorney places himself in a situation inherently conducive to divided loyalties. If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney

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owes a duty to the defendant to take some action that could be detrimental to his other client.

Jordan v. State, 406 S.C. at 449, 752 S.E.2d at 541 (quoting Duncan, 281 S.C. at 438, 315 S.E.2d at 811 (quoting Zuck v. Alabama, 588 F.2d 436, 439 (5th Cir. 1979))).

Here, this Court found that an actual conflict of interest existed based merely on the fact Trial Counsel represented both "Mack" and Applicant at one point. However, this is not sufficient to show an actual conflict of interest, merely the possibility of a conflict. See United States v. Taft, 221 Fed. Appx. 277, 279 (4th Cir. 2007) (holding that defendant's right to effective counsel was not violated when former trial counsel also represented a government witness for a short overlapping period). The mere fact Trial Counsel represented both "Mack" and Applicant for a brief period—in *unrelated cases*—is not sufficient to show an actual conflict of interest as established in Taft, and therefore, Applicant has failed to meet his burden to show an actual conflict of interest existed. Further, this Court failed to properly consider that Trial Counsel was unaware of an existing conflict at the time, did not represent "Mack" for the entirety of the time he represented Applicant, did not do substantive work on "Mack's" case, and did not represent "Mack" during Applicant's trial.³

³ Notably, during the evidentiary hearing Applicant testified that he knew Mr. Antwan Mack by the nickname "Black." (PCR Tr. p. 21, ll. 2-5). Trial Counsel testified that towards the conclusion of his representation of Applicant, Applicant made references to an individual known to him as "Black." (PCR Tr. p. 74, ll. 9-14). Trial Counsel testified that he did not recall having any conversations with Mr. Antwan Mack, nor did he believe his name was affixed to any judicial proceeding involving Mr. Antwan Mack. (PCR Tr. pp. 74, l. 23-75, l. 1; 75, ll. 20-23). Trial Counsel testified that he never had any knowledge of Mr. Antwan Mack's case. (PCR Tr. p. 75, ll. 17-19). Trial Counsel testified that, while he had no recollection of representing Mr. Anwon Mack, he had been provided information by Michael Morin, Chief Public Defender of the Seventh Circuit Public Defender's Office, in preparation for the evidentiary hearing that his name along with another attorney's name were ascribed to unrelated cases of Mr. Antwan Mack from September of 2010 until they were transferred to another attorney in March of 2011. (PCR Tr. pp. 74, l. 7-76, l. 37). Applicant's trial took place on May 9 – 11, 2011. Trial Counsel testified to his belief that his appointment to unrelated cases of Mr. Antwon Mack (Did or did not constitute a conflict?)

Second, even considering there was an actual conflict of interest, this Court's holding negates the second prong of specific standard spelled out in Sullivan, where Applicant failed to show how the conflict adversely affected Trial counsel's representation. In its Order, this Court erroneously found "the failure to investigate or pursue third party guilt against another client the trial attorney was appointed to represent, was ineffective and evidenced an adverse effect on the attorney's performance."⁴ In order to establish that a conflict adversely affected Trial Counsel's representation of Applicant it must comply with the three-part standard set forth by the United States Court of Appeals for the Fourth Circuit in Mickens v. Taylor, 240 F.3d 348 (4th Cir. 2001), aff'd, 535 U.S. 162, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002):

First, the petitioner must identify a plausible alternative defense strategy or tactic that his defense counsel might have pursued. **Second**, the petitioner must show that the alternative strategy or tactic was objectively reasonable under the facts of the case known to the attorney at the time of the attorney's tactical decision. In the language of Tatum, the petitioner must show that the alternative strategy or tactic was "clearly suggested by the circumstances." Tatum, 943 F.2d at 376. **Finally**, the petitioner must establish that the defense counsel's failure to pursue that strategy or tactic was linked to the actual conflict.

This Court found that, under the current circumstances, Trial Counsel was ineffective for failing to investigate or pursue an argument of third-party guilt using Applicant's claims that Mr. Antwan Mack was that actual shooter. This Court further found that Trial Counsel's failure evidenced an adverse effect on his performance, where the individual Applicant identified as the third-party was one whom Trial Counsel had previously been appointed to represent. Using this information this Court found that an actual conflict of interest existed and therefore presumed prejudice. However, Respondent submits that it would not have been objectively reasonable for

constituted a conflict of interest nor did they hinder his representation of Applicant in any way (PCR Tr. pp. 75, l. 24- 76, l. 7).

⁴ Order Granting PCR p. 11.

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Trial Counsel to pursue a trial strategy of third-party guilt against Mr. Antwan Mack, where the State was proceeding under the accomplice liability theory of the “hand of one hand of all,” and Applicant had previously given a statement to investigating officers that he was in the car with Mr. Mack during the shooting.

In State v. Gregory, the Supreme Court of South Carolina adopted the following rule regarding third-party guilt:

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.

198 S.C. 98, 104–05, 16 S.E.2d 532, 534–35 (1941) (emphasis added) (quotations omitted).

In State v. Mansfield, 343 S.C. 66, 85, 538 S.E.2d 257, 267 (Ct. App. 2000), the defendant attempted to argue third-party guilt where an individual who matched the physical description of the perpetrator, lived in close proximity to the victim, and was found at the home on the day in question. The Court of Appeals of South Carolina rejected Mansfield’s arguments as proximity evidence casting “a mere ‘bare suspicion’” on the third party, finding “[t]he fact that [the third party] generally fit the description of the perpetrator and lived in the apartment complex does not show his guilt, nor is it inconsistent with [the defendant’s] guilt. Because the evidence was not inconsistent with [the defendant’s] own guilt, the trial court exercised sound discretion in excluding

it.” Id. at 85–86, 538 S.E.2d at 267; see also Miller v. State, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008) (concluding similar descriptions were not enough to raise a reasonable inference of innocence), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Similarly, here, Applicant’s contentions that Mr. Antwan Mack was actually the shooter are not inconsistent with his own guilt. At trial the State proceeded on the accomplice liability theory of the “hand of one, hand of all.”⁵ Accordingly, Applicant could still have been found guilty of murder, even if it was determined that he was not the shooter, as Applicant has admitted to being in the car with Mr. Antwan Mack during the time frame of the shooting⁶ and has now further testified that Mr. Mack was responsible for the shooting. However, gunshot residue tests support the theory that the Applicant was the shooter. (Trial Tr. pp. 327, l. 1- 329, l. 24).

⁵ Under the “hand of one is the hand of all” theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). “It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.” State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (citations omitted); see also State v. Leonard, 292 S.C. 133, 355 S.E.2d 270 (1987). Under an accomplice liability theory, “a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” State v. Langley, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (quoting State v. Austin, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)). A formally expressed agreement is not necessary to establish the conspiracy. State v. Oliver, 275 S.C. 79, 267 S.E.2d 529 (1980); State v. Fleming, 243 S.C. 265, 133 S.E.2d 800 (1963); State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 (Ct.App.1995). It may be shown by circumstantial evidence and the conduct of the parties. Oliver, 275 S.C. at 80, 267 S.E.2d at 530; Fleming, 243 S.C. at 274, 133 S.E.2d at 805; Bultron, 318 S.C. at 334, 457 S.E.2d at 622. The law to be charged is determined from the evidence presented at trial. State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct.App.2000), cert. denied. A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. Id. If any evidence exists to support a charge, it should be given. State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999).

⁶ On the night of the shooting, while he and his co-defendant were in the hospital, Applicant gave a statement to Officer Leslie Harrell in which he informed them that, once he and his co-defendant were dropped off at Spartanburg Regional, Antwan Mack, whom he only knew by the name “Black” at the time, took the car. The information regarding Mr. Mack was recorded in Officer Harrell’s incident report, but not in the testimony that they stated at trial, presumably to avoid admitting evidence of third-party guilt.

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Importantly, Trial Counsel testified that that he did not see the argument of third-party guilt as important in Applicant's case. (PCR Tr. pp. 79, l. 17 – 80, l. 2). Trial Counsel's testimony is consistent with the record, as he did not object to the State's motion to keep out any evidence concerning a potential third party's guilt in the case. (Trial Tr. pp. 59, l. 12 – 60, l. 16). This would have been a valid trial strategy where Trial Counsel testified that severing Applicant's trial from his co-defendant's did not seem likely and the State was proceeding with the accomplice liability theory of the "hand of one, hand of all." (PCR Tr. p. 79, ll. 10 – 16).

Accordingly, Respondent respectfully requests this Court reconsider its grant of post-conviction relief and deny Applicant's application for failing to meet his burden in establishing that an actual conflict of interest existed, and that Trial Counsel's performance was adversely affected by an existing conflict. Additionally, or in the alternative thereof, Respondent requests this Court alter or amend its Order to include pertinent testimony provided by Trial Counsel at the evidentiary hearing and from Applicant's trial cited by Respondent in this argument and make specific findings concerning the second and third factor in the three-part standard provided in Mickens.

THIS COURT FAILED TO INCLUDE PERTINENT FACTS TESTIFIED TO BY TRIAL COUNSEL IN ITS FINDING THAT TRIAL COUNSEL WAS DEFICIENT AND ERRONEOUSLY FOUND APPLICANT WAS PREJUDICED BY TRIAL COUNSEL'S FAILURE TO PRESENT EDWARD LEE ROBINSON'S EXCULPATORY STATEMENT

In its order granting relief, this Court found Trial Counsel was ineffective for failing to utilize or investigate the exculpatory statement of Edward Lee Robinson (Robinson). This Court held that the failure to utilize and present exculpatory evidence of this magnitude is unquestionably deficient under the Strickland standard. (Order Granting Post-Conviction Relief pp. 11-12). However, this Court failed to include pertinent testimony from Applicant and Trial Counsel in its finding Trial Counsel was deficient. Further, this Court erroneously found that Robinson's

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statement was exculpatory, in failing to provide how the statement would have changed the outcome of Applicant's trial. Respondent respectfully submits that this Court's holding is erroneous where, even if Trial Counsel had been aware of the existence of Mr. Robinson's statement and made the conscience decision not to use it, Applicant cannot meet his burden of establishing prejudice.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different

outcome. Id. (emphasis added) (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Trial Counsel testified to investigating Applicant's case to the best of his knowledge. (PCR Tr. pp. 78, l. 8 – 79, l. 4). Trial Counsel testified to receiving and reviewing with Applicant all of the discovery in Applicant's case. (PCR Tr. pp. 76, l. 14 – 77, l. 10). Trial Counsel testified that he did not recall receiving Mr. Robinson's statement in November of 2009. (PCR Tr. pp. 76, l. 14 – 77, l. 10).⁷ Trial Counsel's contentions are supported by Applicant's own testimony at the evidentiary hearing, that he himself was unaware of the statement's existence until after his trial had concluded and while incarcerated on these charges. (PCR Tr. p. 23, ll. 14-16). Applicant testified that the statement was brought to his attention by a private investigator named Christopher Watkins, whom his family hired to investigate his case after the conclusion of his trial. (PCR Tr. p. 23, ll. 16 – 19). Notably, Mr. Watkins did not appear at the evidentiary hearing to testify on Applicant's behalf about how he uncovered Mr. Robinson's statement. Additionally, Mr. Edward Robinson failed to appear at the evidentiary hearing to testify on Applicant's behalf or authenticate his statement.

During the evidentiary hearing, Applicant introduced Trial Counsel's witness list as Applicant's Exhibit #5 to support his theory that Trial Counsel had knowledge of the existence of the statement of Mr. Robinson, who was listed as Witness Number 9 therein. (PCR Tr. pp. 85, l.

⁷ During Applicant's evidentiary hearing, Applicant introduced the statement of Edward Robinson as Applicant's Exhibit #3 in support of his prejudice claim, wherein Mr. Robinson identified Antwan Mack as the person who drove Cathcart's car, burned the car, and shot the murder victim. (PCR Tr. pp. 21, l. 14 – 22, l. 14).

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10 – 86, l. 6). However, this is the sole evidence Applicant put forward to indicate whether Trial Counsel was ever made aware of the existence of Mr. Robinson's statement. Mr. Robinson also identified Mr. Antwan Mack from a lineup of individuals, meaning that aside from his voluntary statement, Trial Counsel could have placed Mr. Robinson's name on the witness list based on the affidavit of photograph identification. When asked about the appearance of Mr. Robinson's name on that list, Trial Counsel testified that he did not recognize the affidavit of photograph identification for Mr. Robinson as he had no memory of it. (PCR Tr. pp. 85, l. 10 – 86, l. 6).

The testimony of Applicant and Trial Counsel clearly established that neither Applicant nor Trial Counsel has any knowledge of this statement, and the mere fact Mr. Robinson's name was on the witness list does not support that Trial Counsel should have been aware that Mr. Robinson made the statement. Further, as mentioned *supra*, Applicant failed to call the alleged private investigator who discovered the statement and Mr. Robinson himself to authenticate his statement and be available for cross-examination. "It is black letter law that evidence must be authenticated or identified in order to be admissible." State v. Brown, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018); see also State v. Rich, 293 S.C. 172, 173, 359 S.E.2d 281, 281 (1987) (noting prior to the adoption of the rules of evidence that an exception to the hearsay rule does not "absolve the offering party from the usual requirements of authentication").

Further, this Court erroneously found that Trial Counsel's failure to utilize and present exculpatory evidence, where Mr. Robinson's statement reflects that Robinson identified Antwan Mack as the person who drove Cathcart's car, burned the car, and shot the murder victim in line with Applicant's version of events, is unquestionably deficient under the Strickland standard and creates a reasonable probability that, but for Trial Counsel's error, the result of Applicant's trial would have been different. Applicant contends, and this Court has held, that the difference in the outcome of Applicant's trial would have arisen from Applicant's ability to bring a defense of third

party guilt wherein he alleged Mr. Antwan Mack was the shooter. Notably, however, Applicant gave a substantially similar statement to investigating officers, wherein he identified Mr. Antwan Mack as the victim's shooter, which was introduced at the evidentiary hearing as Applicant's Exhibit #1. (PCR Tr. pp. 19, l. 9 – 20, l. 8).

The record reflects that, following an in chambers discussion on the topic, the court refrained from making a ruling on the State's motion to exclude evidence concerning third-party guilt where both Trial Counsel and Counsel for Applicant's Co-Defendant indicated that they did not intend to offer any evidence of that nature. (Trial Tr. pp. 59, l. 12 – 60, l. 16). In its holding in Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006), while specifically discussing the constitutional parameters of the law surrounding the application of rules regulating the admission of third-party evidence proffered by criminal defendants, the Supreme Court of the United States stated as follows:

A specific application of this principle is found in rules regulating the admission of evidence proffered by criminal defendants to show that someone else committed the crime with which they are charged. See, e.g., 41 C.J.S., Homicide § 216, pp. 56–58 (1991) ("Evidence tending to show the commission by another person of the crime charged may be introduced by accused when it is inconsistent with, and raises a reasonable doubt of, his own guilt; but frequently matters offered in evidence for this purpose are so remote and lack such connection with the crime that they are excluded"); 40A Am.Jur.2d, Homicide § 286, pp. 136–138 (1999) ("[T]he accused may introduce any legal evidence tending to prove that another person may have committed the crime with which the defendant is charged [Such evidence] may be excluded where it does not sufficiently connect the other person to the crime, as, for example, where the evidence is speculative or remote, or does not tend to prove or disprove a material fact in issue at the defendant's trial" (footnotes omitted)). Such rules are widely accepted, and neither petitioner nor his amici challenge them here.

Id.

In State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941), the Supreme Court of South Carolina adopted the following rule regarding third-party guilt:

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SOUTH CAROLINA

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.

Id. at 104–05, 16 S.E.2d at 534–535 (emphasis added) (quotations omitted).

While Mr. Robinson’s statement may have opened the door to the potential of some sort of argument regarding third-party guilt, if it could have been discovered, the evidence offered by way of the statement from Mr. Robinson is not inconsistent with Applicant’s guilt. Especially where Applicant gave a statement to investigating officers that was substantially similar to Mr. Robinson’s statement wherein he identified Mr. Antwan Mack as the victim’s shooter.⁸

During the evidentiary hearing, Trial Counsel testified that that he did not see an argument of third-party guilt as being important in Applicant’s case. (PCR Tr. pp. 79, l. 17 – 80, l. 2). Trial Counsel’s testimony is consistent with the record as he did not object to the State’s motion to keep out any evidence concerning a potential third party’s guilt in the case. (Trial Tr. pp. 59, l. 12 – 60, l. 16). This would have been a valid trial strategy where Trial Counsel testified that severing Applicant’s trial from his co-defendant’s did not seem likely and the State was proceeding with the accomplice liability theory of the “hand of one, hand of all.” (PCR Tr. p. 79, ll. 10–16).

⁸ Applicant’s Statement was introduced at the evidentiary hearing as Applicant’s Exhibit #1 (PCR Tr. pp. 19, l. 9 – 20, l. 8).

Testimony was presented during Applicant's trial to indicate that there were at least two guns shot on the night of the crime,⁹ which indicates that there were two shooters in the car with Applicant and his co-defendant. Applicant gave a statement to Officer Leslie Harrell on the night of the shooting while he and his Co-defendant were in the hospital in which he stated that, once he and his co-defendant were dropped off at Spartanburg Regional, Antwan Mack, whom he only knew by the name "Black"¹⁰ at the time, took the car.¹¹ The totality of the evidence compiled from Applicant's own statements suggests that on the night of the shooting there were three individuals in the car himself, his co-defendant, and Mr. Antwan Mack.

Accordingly, as the jury was presented with and the State proceeded on the accomplice liability theory of the "hand of one, hand of all," Applicant could still have been found guilty of murder, even if it was determined that he was not the shooter, as Applicant has admitted to being in the car with Mr. Antwan Mack during the time frame of the shooting and has now further testified that Mr. Mack was responsible for the shooting. However, gunshot residue tests support the theory that the Applicant was the shooter. (Trial Tr. pp. 327, l. 1- 329, l. 24).

Further, in so far as Applicant has alleged and this Court has determined that Trial Counsel was ineffective for failing to utilize the statement and/or testimony of Mr. Robinson at trial, Respondent submits that it would not have been reasonable for Trial Counsel to do so under the circumstances. For the purposes of the claim of ineffective assistance, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has a duty to

⁹ Trial Tr. p. 356, ll. 4-20.

¹⁰ Applicant testified during the evidentiary hearing that he knew Mr. Antwan Mack by the nickname "Black." (PCR Tr. p. 21, ll. 2-5).

¹¹ The information regarding Mr. Mack was recorded in Officer Harrell's incident report, but not in the testimony that they stated at trial, presumably to avoid admitting evidence of third party guilt.

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interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). However, see Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999), which found that counsel was not ineffective for failing to interview victim where she made a statement unfavorable to petitioner at time of crime and her testimony at the PCR hearing did not establish she would have been favorable to petitioner at the time of trial. See also Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (holding Applicant was required to present the witness he alleges Counsel did not properly investigate or subpoena). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

While Trial Counsel did not have an independent recollection of receiving the statement or interviewing Mr. Robinson, Applicant testified that Trial Counsel did mention Mr. Edward Robinson to him as a potential witness before informing him that he was not going to call Mr. Robinson to testify. Applicant testified that Trial Counsel made the decision not to utilize “his” witnesses because he was proceeding to a joint trial. (PCR Tr. p. 30, ll. 9 – 18). Applicant’s testimony further supports the finding that Trial Counsel exercised a reasonable trial strategy in omitting the testimony of Mr. Robinson, which would have further implicated him in the crime where the State was proceeding under the accomplice liability theory of the “hand of one hand of all.”

Accordingly, Respondent respectfully requests this Court reconsider its grant of post-conviction relief and deny Applicant’s application for failing to meet his burden in establishing any ineffective assistance on the part of Trial Counsel or any prejudice flowing therefrom. Additionally, or in the alternative thereof, Respondent requests this Court include and make

findings as to the pertinent testimony concerning this allegation from Applicant and Trial, include pertinent testimony from trial, and make specific findings concerning the exculpatory nature of Mr. Robinson's statement.

CONCLUSION

For all the foregoing reasons, the State asks this Court to reconsider its prior ruling, alter or amend its judgment pursuant to Rule 59(e), SCRPC, and find Applicant failed to meet his burden of proving he was entitled to a grant of relief and deny and dismiss his application.

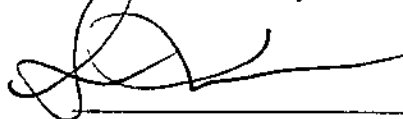
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

January 27, 2025

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

DARIUS CATHCART, #303063,

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

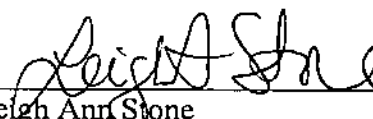
CASE NO. 2018-CP-42-02286

CERTIFICATE 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 Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e)s in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Susannah C. Ross , Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, SC 29601**

DATED this 27th day of January, 2025.


Leigh Ann Stone
Administrative Coordinator for Respondent

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SPARTANBURG COUNTY
SOUTH CAROLINA



ALAN WILSON
ATTORNEY GENERAL

January 27, 2025

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304-3483

Re: Darius Cathcart, #303063 v. State of South Carolina
Case No.: 2018-CP-42-2286

Dear Ms. Cox,

Enclosed please find the original Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCP, with its accompanying attachments, in the above-captioned case, for filing in your office.

If you have any questions regarding this matter, please let me know.

Sincerely,

Shayla J. Flores
Assistant Attorney General

SJF/lis
Enclosure

cc: Susannah C. Ross, Esquire

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 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

Clerk of Court

I want to establish this issue on record. The State has filed their motion outside of the mandated 10 days the SCKCP Rule 59(e) allows. Respectfully I ask that you would file a "Motion to Object" to the State's untimely filing of their motion to alter or amend pursuant to the SCKCP Rule 59(e) which allows 10 days to file from the date order is signed by the Judge. Judge signed order on Jan. 2, 2025, State appealed Feb. 5, 2025

In South Carolina law, a party has 10 days to file a Rule 59(e) motion to alter or amend a judgement after receiving written notice of the order, meaning the PCR is over; this is a strict deadline according to the South Carolina Rules of Civil Procedure

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SPARTANBURG COUNTY
AMY W. COX

Darius Cathcart

March 8, 2025

Case No. 2018-CP-42-2286

I, the applicant in the above captioned post-conviction case, respectfully objects to the untimely filed motion to Reconsider/Amend. SCRCP is clear & concise to the number of days a party has to file motions of any kind.

The Honorable Heath P Taylor granted the Applicants Post Conviction Relief on January 2, 2025 & clock stamped on January 14, 2025 (The start of the 10 days a party has to file a motion to Reconsider, Alter, &/or Amend Pursuant to Rule 59 SCRCP). January 14, 2025, until January 24, 2025, is the 10 days allowed to file the motion to Reconsider, Alter, & Amend. January 24, 2025, at 11:59pm was the State's deadline to file the motion to Reconsider, & etc.

The State filed their motion to Reconsider, Alter, & Amend on January 27, 2025, which was 3 days late. (Calendar days are essential & used pursuant to the S.C Rules of Court). The State's motion was clock stamped on February 3, 2025. E-Filing is the method used with todays technology for efficiency & timely filings. Additionally, being that the State filed outside of the timely window & without showing good cause as to why the motion was untimely, this failure to comply with the mandates to Rule 59 SCRCP. The actual clock to appeal this Honorable Courts decision starts on January 14, 2025, to the S.C Supreme Court for Writ of Certiorari & that 30-day period in which to appeal ended on February 13, 2025, at 11:59pm.

The State has filed an untimely motion to Reconsider which is deemed void by default & has failed to the timely file an appeal with any good cause reasoning.

In 2018, the S.C Court of Appeals dismissed a Post Conviction Relief (Swofford v. State) because the applicants Post Conviction Relief Counsel untimely filed a motion to Reconsider (6 days late). After the Honorable Court ruled on the motion, the time had elapsed to timely file a motion for writ of certiorari to the S.C Supreme Court. This is the same untimely filed situation; however, the State is in default.

This letter is to prevent a waste of this Honorable Court's time as well as the S.C Supreme Courts time. The untimely filing will only delay the applicant to continue to gain the relief already granted. I thank you for your assistance in this matter. A copy of this letter has respectfully been forwarded to all parties involved to avoid ex parte communication.

CC: Honorable Judge Heath Taylor

Assist A.G Shayla Flores

Attorney Susannah Ross

Clerk of Court office

AMY W COX
SPARTANBURG COUNTY
CLERK OF COURT

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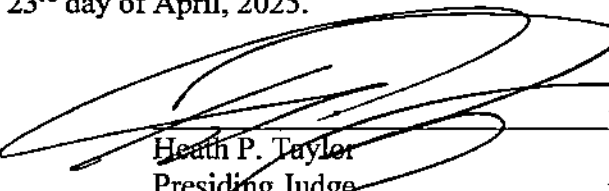
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
DARIUS CATHCART,	)	Case No. 2018-CP-42-2286
	)	
APPLICANT.	)	
v.	)	AMENDED ORDER DENYING
	)	MOTION TO RECONSIDER
THE STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

This matter is before the Court on Respondent's Motion to Reconsider, Alter or Amend pursuant to Rule 59 (e), SCRCF. Respondent acknowledges receiving the order in this matter on January 16, 2025. (See Respondent's Motion to Reconsider, Alter or Amend pursuant to Rule 59 (e), SCRCF, p. 2 at footnote 1). The motion presently before the Court was filed February 3, 2025. Motions pursuant Rule 59 (e) must be filed within ten (10) days of the receipt of written notice of the filing of an order. Rule 59, SCRCF. Because more than ten (10) days elapsed between Respondent's receipt of the order in this matter, Respondent's Motion to Reconsider, Alter or Amend is hereby denied as untimely filed. *Hassell v. City of Columbia*, 430 S.C. 620, 627, 846 S.E.2d 373, 377 (Ct. App. 2020)("Rule 59 does not apply because the motion was *filed* after the ten-day limitation of Rule 59.")(emphasis added).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Respondent's Motion to Reconsider, Alter or Amend is hereby denied.

AND IT IS SO ORDERED this 23rd day of April, 2025.

Columbia, South Carolina


Heath P. Taylor
Presiding Judge
Seventh Judicial Circuit

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SPARTANBURG COUNTY
AMY W. COX

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STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
Heath P. Taylor, Post-Conviction Relief Court Judge

Case No. 2018-CP-42-02286

Darius T. Cathcart, SCDC #303063,..... Respondent,
v.
State of South Carolina,.....Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Heath P. Taylor's amended order denying Petitioner's Rule 59(e), SCRCP, motion as untimely filed. Respondent served a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP, on January 27, 2025. That motion was denied by Judge Taylor by signed order on April 23, 2025, and filed on May 7, 2025. Counsel for Respondent received written notice of the entry of this order on May 9, 2025. Due to the atypical circumstances and the improper application of the provisions outlined in Rule 59(e), SCRCP, Petitioner has sent for filing and service a Rule 59(e), SCRCP, motion on Judge Taylor's denial of the first Rule 59(e), SCRCP. Out of an abundance of caution, pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986), Petitioner is filing this Notice of Appeal in conjunction with the service of the second Rule 59(e), SCRCP, on Judge Taylor. A copy of the order granting post-conviction relief, a copy of the Rule 59(e), SCRCP motion, a copy of the order denying Respondent's 59(e), SCRCP, motion, and a copy of the second Rule 59(e), SCRCP, motion and its attachments are attached hereto.

[SIGNATURE PAGE FOLLOWS]

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SPARTANBURG COUNTY
AMY W. COX

May 14, 2025,

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR PETITIONER
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Other Counsel of Record:

Susannah C. Ross
330 East Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Respondent

cc: Honorable Amy W. Cox, Spartanburg County Clerk of Court
Honorable Heath P. Taylor, Post-Conviction Relief Judge

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
Heath P. Taylor, Post-Conviction Relief Court Judge

Case No. 2018-CP-42-02286

Darius T. Cathcart, SCDC #303063,..... Respondent,

v.

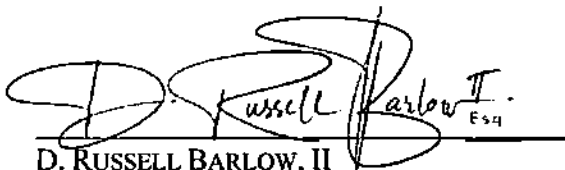
State of South Carolina,.....Petitioner.

PROOF OF SERVICE

Pursuant to Rule 262, SCACR, as amended on May 6, 2022, the undersigned hereby certifies that a true copy of the notice of appeal has been served upon the counsel of record for Respondent at Counsel's primary e-mail address as listed in the Attorney Information System:

Susannah C. Ross, Esquire
susannah@rossenderlin.com

I further certify that all parties required by Rule to be served have been served this 14th day of May, 2025.



D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General
S.C. Bar No. 105228
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner

FILED
2025 MAY 19 PM 1:00
CLERK OF COURT
SPARTANBURG COUNTY
AMY M. COX



ALAN WILSON
ATTORNEY GENERAL

May 14, 2025

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Darius T. Cathcart, #303063 v. State of South Carolina
Case No: 2018-CP-42-02286

Dear Ms. Cox:

Enclosed, please find a copy of the Notice of Appeal of the Petitioner in the above-captioned case for filing in your office.

Please forward proof of service to the parties below and a certified copy back to our office for our file.

Sincerely,

D. Russell Barlow, II
Senior Assistant Deputy Attorney General

DRB/jh

cc: The Hon. Heath P. Taylor
Susannah C. Ross, Esquire

Enclosures

FILED
 2025 MAY 19 PM 1:00
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Darius T. Cathcart, #303063,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)

) CASE NO. 2018-CP-42-02286
)

) **RESPONDENT'S MOTION TO**
) **RECONSIDER, ALTER, OR AMEND**
) **PURSUANT TO RULE 59(e), SCRPC**
)
)
)
)
)
)

The matter before this Court is an action for post-conviction relief (PCR) application filed on June 29, 2018, by Darius T. Cathcart (Applicant). An evidentiary hearing was convened at the Spartanburg County Courthouse on May 20, 2024, before the Honorable Heath P. Taylor. The Court granted relief by filed order on January 14, 2025,¹ finding Applicant established constitutional violations requiring this Court to grant his application for post-conviction relief. (Order Granting Post-Conviction Relief pp. 9-12).

Respondent made its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, by serving the Court and PCR Counsel by email and USPS mail on January 27, 2025.² On March 31, 2025, Respondent received correspondence from this Court containing a signed order that denied the Respondent's Rule 59(e), SCRPC, motion. The Court concluded that the motion was untimely, as it was required to be filed within a ten-day period. On the same day, Respondent contacted this Court to seek guidance and/or a hearing and indicated that Respondent

¹ Respondent received notice of filing of the Order Granting Post-Conviction Relief on January 16, 2025.

² Respondent received notice of the filing of the order on January 16, 2025, establishing that a Rule 59(e), SCRPC, motion would be due for service on or by January 26, 2025. Given that January 26, 2025, fell on a Sunday, Respondent effected service on January 27, 2025, which was that Monday.

SPARTANBURG COUNTY
COMMON PLEAS COURT
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would not take any further action until guidance from the Court was provided. (See Attachment 1). On April 23, 2025, Respondent was informed that the Court had issued a signed Amended Order Denying Motion to Reconsider, which stated that the Respondent had not filed the Rule 59(e), SCRCP, motion within the ten-day time period required by the Rule, thereby rendering it untimely. Respondent received notification of the filing of the Amended Order Denying Motion to Reconsider on Friday, May 9, 2025.

In light of the atypical circumstances and the improper application of the provisions outlined in Rule 59(e), SCRCP, the present Motion to Reconsider, Alter, or Amend is submitted in accordance with Rule 59(e), SCRCP.³

ARGUMENTS IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its decision and to adequately consider Respondent's properly and timely served original Rule 59(e), SCRCP, motion.

This Court erred in dismissing Respondent's Rule 59(e), SCRCP, motion, finding it was untimely because it was not filed within ten days as required by Rule 59, SCRCP. In support, this Court cites to Hassell v. City of Columbia, 430 S.C. 620, 627, 846 S.E.2d 373, 377 (Ct. App. 2020), wherein this Court cites in its order that "Rule 59 does not apply because the motion was filed after the ten-day limitation of Rule 59." (Amended Order Denying Motion to Reconsider p. 1).

However, the South Carolina Supreme Court has decided the very issue Respondent raised in its correspondence with the Court that the requirement for a timely Rule 59(e), SCRCP, motion is service of that motion within ten days and not filing within ten days. See Diamond Jewelers,

³ In light of the exceptional circumstances and the improper application of the provisions outlined in Rule 59(e), SCRCP, Respondent is concurrently submitting a Notice of Appeal along with this Motion to Reconsider, Alter, or Amend, in accordance with Rule 59(e), SCRCP, and pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986).

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SOUTH CAROLINA

Inc. v. Naegele Outdoor Advertising Co., 290 S.C. 260, 349 S.E.2d 888 (1985) ("Rules 52(b) and 59(b) and (e), SCRCP, require these post-trial motions to be served not later than ten days after entry of judgment [W]e hold that under the Rules of Civil Procedure a party has ten days from receipt of the clerk of court's notice of judgment to serve these post-trial motions.") (emphasis added); see also Curtis v. Blake, 381 S.C. 189, 191-92, 672 S.E.2d 576, 577-78 (2009) (holding "a motion for a new trial is timely so long as it is served within the time period allotted by the trial judge" and indicating other motions under Rule 59 requiring service within a proscribed period are timely if placed in the mail within that time); Reese v. State, 441 S.C. 392, 395 n. 1, 894 S.E.2d 295, 296 (Ct. App. 2023), reh'g denied (Nov. 21, 2023) (finding the PCR court erred in finding the Rule 59(e), SCRCP, motion was untimely because it was not *filed* within ten days of Reese receiving notice of the PCR court's denial of her petition and noting the Court's holding in Curtis) (emphasis added); Norris v. Earley, No. 8:21-CV-3353-MGL-WSB, 2025 WL 714153, at 11 (D.S.C. Jan. 30, 2025), report and recommendation adopted, No. CV 8:21-3353-MGL, 2025 WL 798883 (D.S.C. Mar. 13, 2025) ("A Rule 59(e) motion is timely if the motion 'was placed in the mail to opposing counsel' within the ten day period.") (citing Curtis, *supra*).⁴

In this case, Respondent served its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, by email and USPS mail on this Court and opposing counsel within the time proscribed by our South Carolina Supreme Court and Rule 59(e), SCRCP. Accordingly, Respondent respectfully requests this Court to reconsider and vacate its previous Amended Order Denying Motion to Reconsider and rule on the merits of Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, that was timely served on January 27, 2025.

⁴ In contrast, the federal version of Rule 59(e) requires explicit filing rather than service.

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SOUTH CAROLINA

CONCLUSION

For the foregoing reasons, the State asks this Court to reconsider its prior ruling and vacate its Amended Order Denying Motion to Reconsider and to rule on the merits of Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, that was timely served on January 27, 2025.

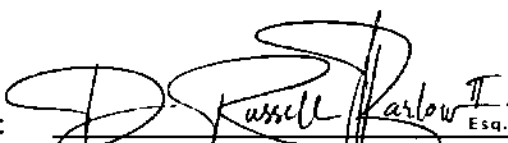
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

By:  Esq.
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

May 14, 2025

FILED
2025 MAY 19 PM 12:54
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Darius T. Cathcart, #303063,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

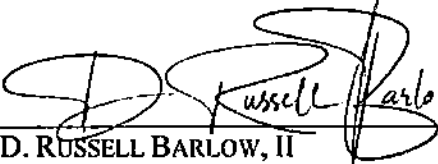
) CASE NO. 2018-CP-42-02286

**CERTIFICATE 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 this is a proper circumstance of service by mail.
3. I have this day served a copy of **Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCP**, in the above-captioned matter on the following person by depositing the same in the United States mail, postage prepaid:

**Susannah C. Ross, Esq.
Ross & Enderlin, PA
330 East Coffee Street
Greenville, SC 29601**

DATED this 14th day of May 2025.


D. RUSSELL BARLOW, II
SENIOR ASSISTANT DEPUTY ATTORNEY GENERAL
Attorney for Respondent

FILED
2025 MAY 19 PM 12:55
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX



ALAN WILSON
ATTORNEY GENERAL

May 14, 2025

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Darius T. Cathcart, #303063 v. State of South Carolina
Case No: 2018-CP-42-02286

Dear Ms. Cox:

Enclosed, please find **Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCP**, in the above-captioned case for filing in your office.

Please forward proof of service on the parties below and a certified copy back to our office for our file.

Sincerely,

D. Russell Barlow, II
Senior Assistant Deputy Attorney General

DRB/jh

cc: The Hon. Heath P. Taylor
Susannah C. Ross, Esquire

Enclosures

FILED
 2025 MAY 19 PM 12:54
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
DARIUS CATHCART,	)	Case No. 2018-CP-42-2286
APPLICANT,	)	
v.	)	SECOND AMENDED ORDER
THE STATE OF SOUTH CAROLINA,	)	DENYING MOTION TO
RESPONDENT.	)	RECONSIDER

This matter is before the Court on Respondent's Second Motion to Reconsider, Alter or Amend pursuant to Rule 59 (e), SCRCP filed May 19, 2025 which is hereby granted. This Court hereby vacates its order filed May 7, 2025. *See, Swing v. Swing*, 445 S.C. 340, 352, 914 S.E.2d 158, 165 (2025) ("Today we clarify that 'timely' as that term is used in Rules 203(b)(1) and 59(f), means the Rule 59(e) motion was served on the opposing parties within ten days from the date of receipt of written notice of the entry of the order the merits of which the motion purports to address). Respondent's initial Motion to Reconsider, Alter or Amend filed February 3, 2025 was timely served.

After careful consideration of the substantive issues raised in Respondent's Motion to Reconsider, Alter or Amend filed February 3, 2025, the motion is hereby denied without oral argument as permitted by Rule 59(f), SCRCP.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Respondent's Motion to Reconsider, Alter or Amend filed February 3, 2025 is hereby denied.

AND IT IS SO ORDERED this 29th day of May, 2025

Columbia, South Carolina

Heath P. Taylor
Presiding Judge
Seventh Judicial Circuit

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2025 MAY 30 AM 10:17
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
Heath P. Taylor, Post-Conviction Relief Court Judge

Appellate Case No: 2025-000936
Lower Case No: 2018-CP-42-02286

Darius T. Cathcart, SCDC #303063, ...Respondent,
v.
State of South Carolina, ...Petitioner.

AMENDED NOTICE OF APPEAL

The State of South Carolina amends the Notice of Appeal and appeals all of the Honorable Heath P. Taylor's orders to include the order granting post-conviction relief filed on January 14, 2025, the amended order denying motion to reconsider filed on May 7, 2025, and the second amended order denying motion to reconsider filed on May 30, 2025. After receiving notice of the order granting post-conviction relief on January 16, 2025, Petitioner served a timely motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP, on January 27, 2025. That motion was denied by Judge Taylor in a signed order on April 23, 2025, and was filed on May 7, 2025. Counsel for Petitioner received written notice of the entry of this order on May 9, 2025. Due to the improper application of the provisions outlined in Rule 59(e), SCRCP, Petitioner timely served a second Rule 59(e), SCRCP, motion on Judge Taylor's denial of the first Rule 59(e), SCRCP, and filed the Notice of Appeal pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986). On May 29, 2025, Judge Taylor signed a second amended order denying motion to reconsider that was filed on May 30, 2025, and Petitioner received notice of its entry that same day. A copy of the order granting post-conviction relief, a copy of the Rule 59(e), SCRCP motion, a copy of the order denying Respondent's 59(e), SCRCP, motion, a copy of the second Rule 59(e), SCRCP, motion, a copy of the second amended order denying motion to reconsider and its attachments are attached hereto. This Amended Notice of Appeal is being served today, June 9, 2025, which is within thirty days of receipt of written notice of entry of Judge Taylor's amended second order denying motion to reconsider.

[SIGNATURE PAGE FOLLOWS]

June 9, 2025,

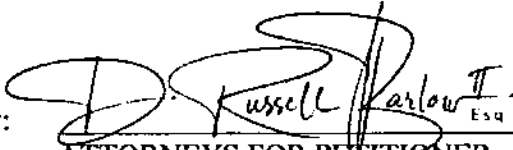
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

By:  Esq.
ATTORNEYS FOR PETITIONER
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Other Counsel of Record:

Susannah C. Ross
330 East Coffee St.
Greenville, SC 29601
(864) 242-0029
Attorney for Respondent

cc: Honorable Amy W. Cox, Spartanburg County Clerk of Court
Robert M. Dudek, Esquire

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas
Heath P. Taylor, Post-Conviction Relief Court Judge

Appellate Case No: 2025-000936
Lower Case No: 2018-CP-42-02286

Darius T. Cathcart, SCDC #303063, ...Respondent,

v.

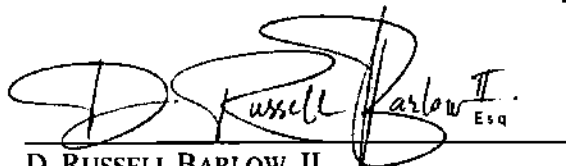
State of South Carolina, ...Petitioner.

PROOF OF SERVICE

Pursuant to Rule 262, SCACR, as amended on May 6, 2022, the undersigned hereby certifies that a true copy of the **Amended Notice of Appeal** has been served upon the counsel of record for Respondent at Counsel's primary e-mail address as listed in the Attorney Information System:

Susannah C. Ross, Esquire
susannah@rossenderlin.com

I further certify that all parties required by Rule to be served have been served this 9th day of June, 2025.



D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General
S.C. Bar No. 105228
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for the Petitioner



ALAN WILSON
ATTORNEY GENERAL

June 9, 2025

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Darius T. Cathcart, #303063 v. State of South Carolina
Case No: 2018-CP-42-02286

Dear Ms. Cox:

Enclosed, please find Respondent's **Amended Notice of Appeal** in the above-captioned case for filing in your office.

Sincerely,

D. Russell Barlow, II
Senior Assistant Deputy Attorney General

DRB/jh

cc: Susannah C. Ross, Esquire

Enclosures

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 DARIUS T. CATHCART,) TRANSCRIPT
5 APPLICANT,) OF
6 VS.) RECORD
7 STATE OF SOUTH CAROLINA,)
8 RESPONDENT.) 2018-CP-42-2286

9
10 May 20th, 2024

11
12 B E F O R E:

13 THE HONORABLE HEATH P. TAYLOR, Judge.
14

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

16 SUSANNAH C. ROSS
17 ESQ.
Attorney for the Applicant

18 SHAYLA J. FLORES
19 ASSISTANT ATTORNEY GENERAL
20 Attorney for the State

21
22
23 Pamela E. Green
24 Circuit Court Reporter
25

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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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P R O C E E D I N G S

THE COURT: All right. Y'all ready to call the first case?

MS. FLORES: Yes, sir.

May it please the Court?

THE COURT: Yes, ma'am.

MS. FLORES: Yes, sir. Sorry.

THE COURT: No, go ahead.

MS. FLORES: A little over eager.

THE COURT: That's all right.

MS. FLORES: Just waiting for the applicant.

THE COURT: I guess so.

(WHEREUPON, the applicant comes into the courtroom at this time.)

THE COURT: Yes, ma'am.

MS. FLORES: May it please the Court.

Assistant Attorney General Shayla Flores on behalf of the State of South Carolina.

This is a post-conviction, conviction relief matter of Darius T. Cathcart versus the State. Case Number 2018-CP-42-02286 out of Spartanburg County.

During the May, 2010 term, the Spartanburg County Grand Jury indicted applicant for assault with intent to kill, 2010-GS-42-02874, murder, 2010-GS-42-02875, assault

1 and battery with intent to kill, 2010-GS-42-02876.

2 Applicant was represented by J. Roger Poole, Esquire.

3 Trial counsel, trial counsel, Seventh, Seventh Circuit

4 Assistant Solicitor Abel Orlando Gray, Esquire, prosecuted
5 the case.

6 On May 9th, 2011, applicant proceeded to trial. On
7 May 12th, 2011, the jury found applicant guilty of assault
8 with intent to kill, murder, and assault and battery with
9 intent to kill, and he was sentenced to an aggregate
10 sentence of 40 years imprisonment.

11 Following an Anders review on direct appeal, the
12 Court of Appeals affirmed applicant's convictions and
13 issued its remittitur on February 21st, 2013. Applicant
14 then filed his first PCR application on August 31st,
15 2015, which was summarily dismissed as barred by the
16 Statute of Limitations pursuant to SC Code 17-27-45.

17 On June 29th, 2018, applicant filed the incident
18 post-conviction relief application. In response, the
19 State filed return and motion to dismiss seeking summary,
20 summary dismissal of the application as barred by the
21 Statute of Limitations pursuant to South Carolina Code
22 17-27-45 and as successive pursuant to South Carolina Code
23 17-27-90.

24 A conditional order of dismissal was entered
25 provisionally dismissing the application as time barred

1 but allowing applicant 20 days to provide sufficient
2 reason why the dismissal should not become final. A copy
3 of this conditional order has been included in the court
4 packet.

5 In response, applicant filed a response asserting
6 that the counsel he retained was system -- in his initial
7 post-conviction relief action failed to timely file his
8 first action despite being retained before the Statute of
9 Limitations ran and failed to respond to the State's
10 motion to dismiss or the Court's conditional order of
11 dismissal. Thereafter, the State moved to -- for a
12 hearing on its motion to dismiss pursuant to Moes v.
13 State.

14 On September 14th, 2021, a Moes hearing was held
15 before the Honorable William McKinnon in Spartanburg,
16 South Carolina. Representing the State was William Ray,
17 Esquire of the South Carolina Attorney General's Office.
18 The applicant was present and represented by Susannah
19 Ross, Esquire.

20 At the commencement of the hearing, counsel of the
21 State argued that the present application was filed
22 outside the one year Statute of Limitations and was
23 successive as a prior PCR application has been summarily
24 dismissed. Counsel for the applicant argued that
25 equitable tolling is appropriate and justified in this

1 matter due to applicant's belief that Attorney James B.
2 Craig had filed a timely PCR application on his behalf.

3 Counsel argued that this PCR action should not be
4 considered successive because of the prior application was
5 dismissed without hearing or effective legal
6 representation. On November 2nd, 2021, the Court filed
7 its order denying the State's motion to dismiss
8 applicant's application and allowing him to proceed in
9 this matter.

10 Applicant re -- requests relief of the Court, of this
11 Court vacating his sentences and granting him a new trial.
12 Before this Court are the Spartanburg County Court --
13 Clerk of Court records, applicant's record regarding his
14 subject convictions, applicant's SCDC records, applicant's
15 appeals records which include the entire trial transcript
16 in reference of this PCR action.

17 At this time we would ask Ms. Ross to state for the
18 record which alle -- allegations she intends to move
19 forward with.

20 THE COURT: Ms. Ross.

21 MS. ROSS: Thank you, Your Honor.

22 May it please the Court.

23 I filed an, an amended application and I would move
24 forward with the allegations in that amended application.
25 But I'd also ask to conform the pleadings or move to

1 conform the pleadings to the evidence as it -- what comes
2 up during this hearing, if necessary, pursuant to Love v.
3 State, which is 834 S.E.2d 196. I think that Ms. Flores
4 gave a good accounting of the long history of this case.

5 We'd also add that Mr. Cathcart's family had retained
6 David Turnipseed around -- you know, soon after the 2009
7 shooting and David Turnipseed was working with
8 Investigator Lorin, Lorin Williams for quite some time
9 providing information, discussing the case. He was, he
10 was gonna be a witness in this case all along or that was
11 his, his understanding and then suddenly the -- he wasn't.
12 Mr. Turnipseed was relieved and the Public Defender's
13 Office was appointed at that point.

14 It does look like, from public records, that Mr.
15 Poole, who represented Mr. Cathcart through the Public
16 Defender's Office, also represented a man named -- I
17 believe it's Antwan Mack who Mr. Cathcart had alleged was
18 a third party in this car where there was a, a shootout
19 between two cars. And Mr. Cathcart, from the beginning,
20 was saying Antwan Mack was the, the party in the car who
21 was armed, threatening him, and that was he -- his, his
22 position on the case and what he continued to tell law
23 enforcement.

24 So, while Mr. Mack was not formally charged as a
25 codefendant, his -- he was -- there was an active conflict

1 of interest in the Public Defender's Office representing
2 these two, two men and I will address more summary
3 arguments at the end of the hearing if that's okay with
4 the Court.

5 THE COURT: Yes, ma'am.

6 MS. ROSS: All right. Then, at this point, I would
7 move for -- I would ask that Mr. Cathcart's shackles be
8 removed. He's got a lot of materials he'd like to, to
9 look at and I'd ask he be called to the stand to testify.

10 THE COURT: Okay. I don't, I don't have a problem
11 with his hand shackles being removed.

12 MS. ROSS: Thank you, Your Honor.

13 MS. FLORES: All right. Mr. Cathcart, sir, please
14 raise your right-hand for me.

15 DARIUS CATHCART, being first duly
16 sworn, testified as follows:

17 THE COURT: All right. I got -- need to tell you
18 something too.

19 When you ask for post-conviction relief, there are
20 two things that can happen.

21 THE WITNESS: Yes, sir.

22 THE COURT: If I find you're entitled to
23 post-conviction relief, you'll have to serve or, I'm
24 sorry, you're not entitled, you'll have to serve the
25 remainder of your sentence.

1 THE WITNESS: Yes, sir.

2 THE COURT: If I grant your application, we would
3 vacate your conviction and sentence and send the case back
4 for further proceedings that will start from the
5 beginning. That means if any charges were dropped or, or
6 dismissed as a result of plea negotiations, you could be
7 facing the original charges all over.

8 Do you understand all that?

9 THE WITNESS: Yes, sir.

10 THE COURT: You want to proceed?

11 THE WITNESS: Yes, sir.

12 THE COURT: Very good.

13 Ms. Ross.

14 DIRECT EXAMINATION

15 BY MS. ROSS:

16 Q. Good morning.

17 A. Good morning.

18 Q. Darius, you've done a, a lot of work and it -- I mean
19 actively involved in this case.

20 Is that correct?

21 A. Yes, ma'am.

22 Q. Well, let's start with can you -- did you ever
23 testify at your trial?

24 A. No, ma'am.

25 Q. Had you been giving statements to, to law enforcement

1 and Lorin Williams about what happened that night?

2 A. Yes, ma'am.

3 Q. Can you tell, tell us today what happened?

4 A. I was at a club. I was at a club, Club of Dreams,
5 and I was there for probably about three hours. And when
6 I left the club, I remember a dude from my neighborhood
7 named Rashaun, he asked me for a ride from the club. He
8 say him and that -- the dude that he came to the club
9 with -- I guess the person they was riding with left.

10 So, I told him I'd give him a ride because they, they
11 had some in the parking lot. And so I stopped at the
12 store, and when I was -- I got gas. When I left -- when I
13 was leaving the store, they asked me can I take them to
14 get some weed. I said yeah.

15 I took them to get some weed. We went to -- we went
16 to Lakeview Manor. When we went there, we pulled in
17 front, in, in front of the dude house. I blew the horn.
18 The dude ain't never come. So, I had to go to work the
19 next morning. I was like, man, I'm about to go.

20 So, when we got on the main road when we left the
21 community, we was driving down the road cause it's, it's a
22 narrow road. We was driving down the, down the street and
23 I know the dude in the back seat name. I knew him by
24 Mack. I mean Black. He kept on doing like some, some,
25 some moving.

1 So, I, I looked at my rearview mirror. I say you
2 straight and he said nah. He said do me a favor. Pull up
3 beside that car up there and hit your lights. I said man,
4 you crazy as hell and then he said, man, you heard what
5 the fuck I said but I didn't see no gun. But that's when
6 he had -- I heard him cock it back.

7 So, I did as he said, and when I pulled beside,
8 beside the car at the stop way, they, they start shooting,
9 both of dudes out my car. They started shooting at the
10 other car. The other car returned shots and I got shot in
11 the arm when I was trying to cover my head and it seemed
12 like he---

13 Q. Show me, show me where you were shot and how you were
14 trying to cover your---

15 A. I was shot in the arm and I had covered my head.
16 That's how I got shot in the arm.

17 Q. So you're in the driver's seat?

18 A. I'm in the driver's seat.

19 Q. And were -- was the other car on your side?

20 A. The other car was on the right side.

21 Q. On the passenger side?

22 A. Yeah. Me and my car was on the wrong side of the
23 road.

24 Q. Okay.

25 A. And so they start, they start shooting. It seemed

1 like it went on for probably about two minutes and it
2 seemed like everything ceased at one time. And it was no
3 movement from no car. No car -- it seemed like everybody
4 just stop shooting.

5 And so we just -- I start driving fast and they start
6 to chase me and they still shooting. And that's when I
7 realized the dude on my passenger side, he was shot in the
8 wrist.

9 Q. Who was that?

10 A. Reeder.

11 Q. Okay.

12 A. So, I panic. I'm -- I panic cause I'm -- I was --
13 the whole time I was saying like I, I didn't want it to go
14 through. So, we got, we got on the highway.

15 Q. Well, why'd you---

16 A. We was---

17 Q. One question.

18 why'd you do it in the first place?

19 why'd you pull up on him?

20 A. Cause I was directed to do that.

21 Q. Well, why didn't you slam on brakes or turn around?

22 A. If a guy is telling you to turn off the lights and
23 pull beside a car and he have a gun, I mean what am I
24 suppose -- what am I to do?

25 I was unarmed cause I don't carry guns.

1 Q. Were you afraid?

2 A. Yeah.

3 Q. What were you afraid of?

4 A. I mean initially when he said it at first, I thought
5 he was, he was just talking. But when he say do it and
6 then I heard -- cause I don't even know this cat. I don't
7 even know the dude. So when he said it, I ain't have no
8 choice.

9 So, when I did it, and after -- like when I -- once
10 he, once he said it, that's when Reeder pulled out his gun
11 out his coat.

12 Q. So you were the only one who's unarmed in your car?

13 A. Yes, ma'am.

14 Q. Okay. I'm sorry I interrupted you. But going back
15 to where you were. So they're chasing you.

16 What---

17 A. And they---

18 Q. You pull off and where -- what, what happened next?

19 A. I pull off and, the guy in the back seat, he was
20 still shooting and they was shooting still and we went to
21 the hospital. I guess that's when the car veered off and
22 he said -- Mack say don't pull in front of -- he said pull
23 in front of Church's Chicken cause Church's Chicken is
24 across the street. He said don't pull into the hospital.

25 So, when I got out the car, he said don't say nothing

1 to the police if they come up there.

2 So, we ran over there. We ran to -- in the hospital.
3 That's the last time I saw my car. And, when we came, the
4 police asked us questions. They had did a GSR.

5 Q. Did you leave keys in the car or---

6 A. Yeah.

7 Q. ---how---

8 A. The car was on everything.

9 Q. So, y'all just got out---

10 A. And---

11 Q. ---and walked into the hospital?

12 A. Yeah. We left in the hospital and---

13 Q. How'd you get home from the hospital?

14 A. I had left with the, the sheriff.

15 Q. Okay. All right.

16 A. Cause when they was performing their GSR, they said I
17 had to go to the sheriff office.

18 Q. Okay. Okay. Well then what happened?

19 A. I went to the sheriff office. They had questioned me
20 about what happened. I was there for probably like two
21 hours and then I was released.

22 Q. Did you tell the truth when you were questioned
23 initially?

24 A. When I had -- when I talked to them, I didn't tell
25 them what happened. I told them I didn't know what

1 happened.

2 Q. Did, did you ever -- did you ever change that?

3 A. No, I never did that and my reasoning -- my reason
4 for not saying nothing was because this dude had my car
5 and inside my car I had my ID in there, my bill of sale,
6 my proof of, proof of insurance and registration and it
7 all had my family address on it.

8 Q. So you were what?

9 A. I didn't --.

10 Q. What did you think he would do with that information
11 or what were -- what was the problem?

12 A. I mean, like I said, I don't -- I ain't really know
13 him and I wasn't gonna put my, my family in danger.

14 Q. Okay. What initially happened to the car --

15 A. Well---

16 Q. -- or eventually happened to the car?

17 A. Well, I was -- they said that it was, it was caught
18 on fire.

19 Q. Were you involved in that at all?

20 A. No, ma'am.

21 Q. Was that at your direction at all?

22 A. No, ma'am.

23 Q. Were you ever charged with arson?

24 A. No, ma'am.

25 Q. Now, soon you did talk more to law enforcement,

1 correct?

2 A. Yes, ma'am. Well, we hired, we hired attorney Roger
3 Poole and I, and I pretty much --.

4 Q. Did you hire Roger Poole or --?

5 A. I mean David Turnipseed. My -- I apologize.

6 Q. Okay. And then what happened?

7 A. Well, when I hired David Turnipseed, I pretty much
8 told him the entire tale, the whole situation, from
9 beginning to the end. And David Turnipseed said well,
10 you, you don't have no -- it seem like you don't have no
11 reason to lie. He said you got to help yourself.

12 So, I'm gon' get with Lorin Williams and we gon' tell
13 him what the situation is.

14 Q. And Lorin Williams was the lead investigator?

15 A. Yes, ma'am.

16 Q. Okay. And let me show you --.

17 THE COURT: Ms. Ross, I want to make sure I
18 understand.

19 MS. ROSS: Sure.

20 THE COURT: Lorin Williams -- you, you said Lorin
21 Williams---

22 THE WITNESS: Yes, sir.

23 THE COURT: ---was the lead investigator for the
24 Sheriff's Department?

25 THE WITNESS: For the Sheriff's Office.

1 THE COURT: Okay. I, I thought when you were telling
2 me, when you were giving me a summary, that Lorin Williams
3 was an investigator Mr. Turnipseed hired. So, I'm just
4 gon' make sure I had things correct in my mind.

5 okay?

6 MS. ROSS: Thank you. I'm sorry to be --

7 THE COURT: No problem.

8 MS. ROSS: -- unclear.

9 Okay. I'm gonna show you this and can you tell --
10 tell us what that is.

11 A. This is the, the statement that was given to me at
12 the sheriff's -- Sheriff Office when my, my attorney told
13 me to talk to Lorin Williams.

14 Q. All right. And did you pick someone out of a lineup?

15 A. Yes, ma'am.

16 Q. Okay. Who did you pick?

17 A. An, an -- Antwan Mack.

18 Q. And did you ever give a written statement or a
19 recorded statement to law enforcement?

20 A. Nah, it was, it was written.

21 Q. Okay. So that's a -- that's the statement right
22 there?

23 A. Yes, ma'am.

24 MS. ROSS: All right. I'd offer this as Applicant's
25 Exhibit 1.

1 THE COURT: Any objection from the State?

2 MS. FLORES: No objection, Your Honor.

3 MS. ROSS: And I'd move that to be admitted.

4 THE COURT: All right. It will be admitted as
5 Applicant's 1.

6 (WHEREUPON, the affidavit of identification was
7 marked as Applicant's Exhibit No. 1 and received into
8 evidence at this time.)

9 Q. Now, do you, by any chance, know or have been told
10 where Antwan Mack is now?

11 A. He's in the Feds.

12 Q. Okay. And do you recognize this?

13 Not recognize it.

14 Do you know what that is?

15 A. Yes, ma'am.

16 Q. And what does that show?

17 A. His location.

18 Q. In the Bureau of Prison in federal---

19 A. Yes, ma'am.

20 MS. ROSS: We offer this as Applicant's Exhibit 2.

21 THE COURT: Any objection from the State?

22 MS. FLORES: No objection, Your Honor.

23 THE COURT: It will be admitted as Applicant's 2.

24 (WHEREUPON, the inmate lookup form for Antwan Mack
25 was marked as Applicant's Exhibit No. 2 and received into

1 evidence at this time.)

2 Q. Now, when you talked about Antwan Mack being -- or
3 Black I think was his nickname.

4 Is that right?

5 A. Yes, ma'am.

6 Q. Being involved -- what was Lorin Williams response?
7 was he familiar with that person?

8 A. Oh, yes, he was, he was familiar with him. Lorin
9 Williams said he's believed to be involved in several
10 homicides in Spartanburg County.

11 Q. So, he seemed to think that your, your statement was
12 credible?

13 A. Yes, ma'am.

14 Q. Now, did anyone else mention Mr. Mack or pick out Mr.
15 Mack?

16 A. Oh, oh, yes, ma'am. A guy named Edward Robinson.

17 Q. All right. Do you recognize this?

18 A. Yes, ma'am.

19 Q. What is that?

20 A. It's a statement by Edward Robinson.

21 Q. And what does it say?

22 A. Edward Lee Robinson. I know as the -- I know as
23 Antwan Mack. Antwan Mack told me, Edward Robinson, that
24 he did kill A.J. and he set fire to Darius Cathcart car.
25 How I found this info out is Antwan Mack and I got into a

1 physical altercation.

2 Mack told me I am nothing to get rid of and he would
3 do me the same way he did the little nigga from Lakeview
4 Manor meaning A.J. Two days after our altercation, he
5 wanted to squash beef with me. He says that he has a lot
6 on his mind and it's not worth it.

7 Then he started conversating with me about what
8 happened the night A.J. was murdered. He says that he put
9 all kinds of bullet holes inside the car we was shooting
10 at. Then Antwan Mack told me he had to burn Darius car to
11 get rid of evidence. He told me this at his girlfriend
12 house, Big Nick. She lives in Crescent Hills Apartment, F
13 Building 100, and it's signed by Lorin Williams. And I
14 didn't, I didn't know this, this statement initially.

15 Q. What was the date of that statement?

16 A. The statement was November the 11th, 2009.

17 Q. And that's prior to your trial, correct?

18 A. That was prior to my trial.

19 MS. ROSS: We'd offer this as Applicant's Exhibit 3.

20 THE COURT: Any objection from the state?

21 MS. FLORES: No objections, Your Honor.

22 THE COURT: All right. It will be -- Mr. Robinson's
23 statement will be Applicant's 3.

24 (WHEREUPON, the statement of Edward Robinson was
25 marked as Applicant's Exhibit No. 3 and received into

1 evidence at this time.)

2 Q. Would you have wanted Mr. Mack to be charged in this,
3 in this case and brought to trial as well?

4 A. Oh, yes, ma'am.

5 Q. Do you think that that would of helped your case in
6 anyway?

7 A. It definitely would of.

8 Q. Now -- but that never happened, did it?

9 A. No, ma'am.

10 Q. Would having that statement have helped your trial
11 or---

12 MS. FLORES: Objection, Your Honor. Leading.

13 THE COURT: I'll allow it.

14 A. Of course it would of helped me because I never even
15 knew the statement existed until after I went to trial
16 when I was already incarcerated. My family had hired
17 Christopher Watkins, private investigator, and he was able
18 to obtain it -- information because I had never -- I never
19 knew that existed.

20 Q. And if it did -- would you have wanted Mr. Poole to,
21 to question or bring that up in your trial if you'd known
22 it had existed?

23 A. Of course.

24 Q. Just going a little bit.

25 Did -- what else did Chris Watkins, your

1 investigator, discover?

2 A. Chris -- Mr. Watkins had did a, a public case index,
3 and with that public case index, it shows that my trial
4 attorney represented the uncharged shooter, Antwan Mack,
5 at the same time of his representation of myself and --.

6 (WHEREUPON, there was a pause while the attorneys
7 conferred.)

8 A. I was telling you, and, and through phone records, he
9 showed that I wasn't around when my car was burned.

10 Q. Okay. Well -- and you weren't charged with that
11 anyways. So that's --

12 A. No, ma'am.

13 Q. -- neither---

14 A. It was kind---

15 Q. ---neither here nor there.

16 A. It was brought up at trial.

17 Q. Right.

18 Oh, we -- well, just go into that really quickly.

19 A. Okay.

20 Q. So it was brought up at trial.

21 would you consider that presidential -- prejudicial
22 to the jury?

23 MS. FLORES: Objection, Your Honor. Leading.

24 THE COURT: All right.

25 MS. ROSS: I, I apologize.

1 THE COURT: Well --.

2 A. It was---

3 THE COURT: I'll allow the question. It seems like
4 that's more of a matter of law.

5 But go ahead.

6 A. Of course. Because, during trial, it was said that I
7 had burned my car to destroy evidence. So, yeah, it was
8 brought up at trial in closing.

9 Q. And I can refer you to that page in a, in a minute.
10 Just showing you those, what, what, what did I just
11 hand you?

12 A. The Spartanburg County Public Case Index.

13 Q. And what does it show?

14 A. It shows that my trial attorney represented Antwan
15 Mack prior to representing me and at the same time on
16 unrelated charges.

17 Q. Did you ever know of that when you were down at the
18 law enforcement center?

19 A. No, ma'am.

20 Q. Was there a, a --.

21 A. Okay.

22 MS. ROSS: I'm gonna mark that as Applicant's Exhibit
23 4.

24 (WHEREUPON, the public index information was marked
25 as Applicant's Exhibit No. 4 for identification purposes

1 only at this time.)

2 MS. ROSS: And ask App -- Applicant's Exhibit 4 be
3 moved into evidence.

4 THE COURT: What is it?

5 MS. ROSS: It is the public index search.

6 THE COURT: Okay.

7 MS. ROSS: And it's an old one. There's a newer one
8 that does not have Roger Poole listed as counsel. They
9 switched to another attorney in the Public Defender's
10 Office.

11 THE COURT: Any objection to Exhibit 4?

12 MS. FLORES: No objection, Your Honor.

13 THE COURT: All right. It will be admitted as
14 Applicant's 4.

15 (WHEREUPON, Applicant's Exhibit No. 4 was received
16 into evidence at this time.)

17 Q. Okay. How many times did you meet -- once -- what
18 happened with David Turnipseed in, in your case?

19 Did he -- he didn't take it to trial, did he?

20 A. No, ma'am.

21 Q. Okay. What happened there?

22 A. I just -- I remember he came to see me. He said that
23 he, he wanted to be relieved as counsel. So, I got a, a
24 paper just saying that I was -- that he wanted to be
25 relieved as counsel. But we never, we never had a hearing

1 because David Turnipseed, along with Solicitor Able Gray,
2 and they went to chambers and was released in chambers.

3 Q. And so you were appointed to be represented by the
4 Spartanburg Public Defender's Office?

5 A. Yes, ma'am.

6 Q. Specifically Roger Poole?

7 A. Yes, ma'am.

8 Q. And how often -- did he meet with you at the jail or
9 go over discovery, discuss that a little bit?

10 A. Well, I, I met with Roger Poole -- I met Roger Poole
11 like a week prior to me going to trial and I explained to
12 him everything that happened in my, in my case. So, when
13 he came the next day, he, he say well, I just need you to
14 testify and just tell the truth.

15 So, he came to see me the next day. I went over it
16 again and let him know everything that took place, and
17 when he was leaving, he said well, I'm about to go and
18 talk to Antwan Mack and it kind of caught me off guard.

19 I said you talking about Antwan Mack, the one that
20 was in my car that did the shooting and the one that
21 threatened me and he said yeah. But he said that's
22 protocol.

23 Q. So Antwan Mack was in the jail at the same time you
24 were?

25 A. Yeah, I found out he was in, in the jail at the same

1 time on unrelated charges.

2 Q. And he was never charged with this incident?

3 A. No, ma'am.

4 Q. Now, just going on, did -- do you think Mr. Poole
5 conducted an independent investigation in your case?

6 A. No, ma'am.

7 Q. What's this?

8 A. That's my witness list, everybody that was willing to
9 come to court and testify on my behalf.

10 Q. And did many of them come to court and testify or to
11 testify on your behalf?

12 A. Yes, ma'am.

13 MS. ROSS: Offer this as Applicant's Exhibit 5.

14 (WHEREUPON, the witness list was marked as
15 Applicant's Exhibit No. 5 for identification purposes only
16 at this time.)

17 MS. ROSS: I offer this as Applicant's Exhibit 5.

18 MS. FLORES: No objections from the State, Your
19 Honor.

20 THE COURT: All right. That will be admitted as
21 Applicant's 5.

22 (WHEREUPON, Applicant's Exhibit No. 5 was received
23 into evidence at this time.)

24 Q. All right. Did, in fact, any of your witnesses
25 testify at your trial?

1 A. No, ma'am.

2 Q. What would they have testified to do you think?

3 A. Well, it was alleged that---

4 MS. FLORES: Objection to speculation, Your Honor.

5 THE COURT: I'll allow it.

6 A. Well, it was alleged that a fight happened in the
7 club and these individuals involved. So, my witnesses was
8 here to testify that I had nothing to do with no fight.

9 Q. Did you have anything to do with the fight?

10 A. No, ma'am.

11 Q. Why didn't you testify?

12 A. Well, I had option to, to testify when I did go to
13 court. But my attorney advised me that it'd do more harm
14 than good if I testified and I know I had the right to
15 testify. But I was just listening -- getting advice from
16 my attorney.

17 Q. Did your codefendant testify?

18 A. My, my alleged codefendant did not testify.

19 Q. All right. As far as -- you had alleged, do you
20 know, another person was there and coerced you?

21 A. Yes, ma'am.

22 Q. Did your trial attorney object or challenge the
23 State's motion to exclude third party guilt?

24 A. No, ma'am.

25 Q. In fact, he just -- he had no objection to the motion

1 and said we're not, we're not bringing up third party
2 guilt.

3 Is that --?

4 A. No, ma'am.

5 Q. Okay. How, how about did he move for a severance to
6 have you tried separately from Mr. Reeder?

7 A. No, ma'am, the -- we was actually -- I know when he
8 was telling me just to tell everything that took place
9 when I had -- that happened at -- as far as shout out. On
10 morning of the trial, that's when my attorney had pulled
11 me in the room and he said that I was having a joint
12 trial.

13 So, he said he was not gon' use none of my witnesses
14 from the club and, actually, Roger Poole did mention that
15 Edward Robinson. But I never, I never saw the statement
16 until after I was incarcerated. But he said he was not
17 gonna -- he wasn't gonna call Edward Robinson to the
18 stand. So actually he did not subpoena him.

19 Q. Do you know if he subpoenaed any witnesses?

20 A. No witnesses were subpoenaed.

21 Q. Did witnesses appear for your trial date however?

22 A. They did.

23 Q. Okay. And do you know if he interviewed those
24 witnesses?

25 A. He did not interview my witnesses.

1 Q. Now, as far as instruction of -- jury instructions,
2 did, did he request a duress instruction?

3 A. No, ma'am.

4 Q. Did he take exception to any of the jury's
5 instruction?

6 Did he object to them?

7 Do you recall?

8 A. No, ma'am.

9 Q. And -- now, as far as closing, did your attorney
10 object to any during the State's closing argument?

11 A. No, ma'am.

12 Q. You talked about the arson.

13 What was -- what did you think was the problem with
14 referring to the arson of the car?

15 A. I mean I guess it was in gest because you giving --
16 it was given to the jury as if I was actually in concert,
17 concert with the whole situation because it's like, in
18 closing, the State said that I burnt my car to get rid of
19 evidence in which, prior to trial, my trial attorney said
20 that my car wasn't even gonna be mentioned, the burning of
21 the car. So, no, he did not object to it in closing.

22 Q. And I'm gonna just briefly reference you to Page 424,
23 Line 10. This is Mr. Gray's closing.

24 What does he say about the car?

25 A. They tried their best to get rid of the evidence and

1 they did.

2 Q. And that was referenced to burning the car?

3 A. Yeah, it say -- well, actually the car use to be
4 green. But, mysteriously, the car they were driving burnt
5 up. But Mr. Williams there still did a job to ID.

6 Q. And taking you down to Line 16 --

7 A. Uh-huh. (Affirmative).

8 Q. -- in the closing, what does he say about who he
9 believes -- why is the hand of all and who believes the
10 shooter was?

11 A. Cause it, cause it was plain Mr. Cathcart was the
12 driver and Reeder was the shooter.

13 Q. And then he said why is this hand of one, hand of all
14 because---

15 A. Uh-huh. (Affirmative).

16 Q. ---it was plain and that's Line 16?

17 A. Yes, ma'am.

18 Q. Do you recall him making reference to why the
19 defendants didn't call Lorin Williams in his closing, and,
20 if not, that's okay.

21 It's just --?

22 A. No, ma'am.

23 Q. And I believe in this case, just real quick, that
24 were you charged with -- I've got two cases this morning.
25 I'm getting this mixed up.

1 were you charged with assault and battery with intent
2 to kill?

3 A. Yes, ma'am.

4 Q. Now, did your attorney or anyone object to the jury
5 instructions on that or state that that charge requires a
6 specific intent to kill when a shooting's done?

7 A. No, ma'am.

8 Q. And do you recall, in the instructions, them talking
9 about inferred malice?

10 Do you know --

11 A. Yes, ma'am.

12 Q. -- what I'm talking -- did -- so there was -- was
13 that an instruction, that the jury could infer malice from
14 the use of a handgun?

15 A. Uh-huh. (Affirmative).

16 Q. And there was no objection to that?

17 A. It was no objection to it, inferred malice.

18 Q. Is there anything else you'd like to put on the
19 record in your case?

20 I know you've done this -- it's been a long time.
21 Done a lot of work.

22 A. Well, I know but for my counsel's adverse and
23 deficient performance, the probability and the possibility
24 a trial would of been different had he told -- had he not
25 represented Antwan Mack on unrelated charges, and had we

1 had a severance because like I was having second -- by us
2 having joint trial, it's like if -- my, my defense was
3 taken away because he was basically telling me that, if I
4 took the -- if I took the stand in my defense, it'll do
5 more harm than good because if I was -- if the alleged
6 codefendant was found guilty, I would automatically get
7 found guilty for the hands of one hands of all.

8 So, it was one of those situations that you want
9 justice to be done on one hand. But, at the same time,
10 you want to protect the dude so you won't be found guilty.

11 Q. And, and he was saying, if you testified, you'd tell
12 the truth like you did today or---

13 A. Of course.

14 Q. ---that's what you'd say?

15 A. And I feel like the -- I'm just assuming that the
16 reason why none of my -- the people from the club was
17 subpoenaed, you know, why he said he didn't need their
18 testimony because I don't know if it -- if -- when the
19 fight did break out in the club, if they happened to see
20 the alleged codefendant or the uncharged shooter, it will
21 kind of make things difficult.

22 Q. And when -- while you had Turnipseed, were you
23 talking to Lorin Williams about actively seeking the, the
24 third party shooter, Antwan Mack?

25 A. Oh, yes, ma'am.

1 Q. And what did he say about why couldn't -- why didn't
2 you get him?

3 A. Well, Lorin Williams, his -- every time I see him, he
4 be like I you a -- you got to find Antwan Mack and get him
5 to incriminate himself. But --.

6 Q. Was he attempting to get you to wear a wire?

7 A. Yeah, he asked me to do that. I told him I didn't
8 feel comfortable doing that.

9 Q. And why not?

10 A. Because this dude threatened me one time and it's a
11 possibility he could of did it again and, and just a -- to
12 go off of that, I waited till I had my attorney to tell
13 him about the situation with Antwan Mack. But I can just
14 imagine if I did not have an attorney like at the
15 hospital, if I would of told him about the situation,
16 nothing would of happened because they have -- they didn't
17 even apprehend him or they didn't even go and look for him
18 for questioning.

19 Q. And, and they had you and Mr. Reeder because y'all
20 were in the hospital shot. So they---

21 A. That's right.

22 Q. ---had y'all for sure.

23 And, and did Mr. Poole ever make any efforts to go
24 after Antwan Mack?

25 A. No, ma'am.

1 Q. Even when his office was representing Antwan Mack,
2 Mack and knew where he was, did Mr. Poole ever say let's
3 go interview Antwan Mack and try to get him?

4 A. Nah. It was just at one time when he -- when I saw
5 him at the county jail prior to my trial where he said he
6 was going to talk to him and I didn't know nothing about
7 the law at the time.

8 But I knew that sounded crazy because, if you my
9 attorney, why is you going to talk to the uncharged
10 shooter?

11 Q. And did you, did you tell Mr. Poole that was the
12 uncharged -- that---

13 A. Of course.

14 Q. ---Antwan Mack?

15 A. Of course. That's why he told me that he was going
16 to talk to him.

17 Q. All right. Okay. Anything else?

18 A. That's it for right now.

19 MS. ROSS: All right. I have no further questions.

20 THE COURT: Cross-examination by the State.

21 CROSS-EXAMINATION

22 BY MS. FLORES:

23 Q. Morning, Mr. Cathcart.

24 How are you today?

25 A. Good morning.

1 How you doing?

2 Q. I'm good.

3 Do you recall about how long you were represented by
4 Mr. Turnipseed?

5 A. Me?

6 Q. (WHEREUPON, there was no audible response.)

7 A. I was -- probably about six, seven months.

8 Q. And was he retained or appointed?

9 A. Retained.

10 Q. He was retained?

11 A. Yes, ma'am.

12 Q. And about how many times did you meet Mr. -- with
13 Mr. Turnipseed about your case?

14 A. Probably about weekly.

15 Q. Weekly?

16 A. Yes, ma'am.

17 Q. And would you guys -- would you say you guys had a
18 good working relationship?

19 You felt like --

20 A. Yes, ma'am.

21 Q. -- you guys were working well together?

22 A. Yes, ma'am.

23 Q. Now, in your first allegation case that
24 Mr. Turnipseed was ineffective for setting up these
25 interviews with the solicitor and Investigator Lorin

1 williams, did you ask that he do so?

2 A. Oh, no, ma'am. It was -- he de -- he decided that it
3 was best for us.

4 Q. I see.

5 And were you meeting with the solicitor and the
6 investigator at the same time or separately?

7 A. At the same time.

8 Q. At the same time?

9 A. Yes, ma'am.

10 Q. And do you know about how many times you met with the
11 investigator and the solicitor?

12 A. Probably about several, several times.

13 Q. And can you elaborate a little bit about your
14 recollection of those meetings, what was discussed?

15 I know you waited until you were represented to tell
16 them about Antwan Mack.

17 But was there anything else that was discussed?

18 A. Nah. It, it, it was really the situation that
19 everything that took place and then it, it always led back
20 to Antwan Mack.

21 Q. And where did those meetings occur?

22 Were they happening at your attorney's office?

23 A. It was happening at the courthouse.

24 Q. At the new courthouse?

25 A. Yes, ma'am.

1 Q. And were you made any explicit offers for
2 participating in these meetings?

3 A. Well, no. But I can say that Lorin Williams told me
4 that, if I was to take a polygraph test, and if I was to
5 pass, that the charges would be dropped.

6 Q. And did you take a polygraph test?

7 A. I took a polygraph test, test.

8 Q. And did you pass that polygraph test?

9 A. I don't know what I did because, when I took the
10 polygraph test, Lorin Williams said that I failed and
11 David Turnipseed came to talk to me. He said that I
12 passed and he said we gon' see about getting these charges
13 dropped. So, I don't know what it was.

14 Q. So, Mr. Turnipseed was there when the test was
15 conducted?

16 A. No, ma'am.

17 Q. Okay.

18 A. He was not there.

19 Q. Okay. So he just received the results of that
20 testing later on?

21 A. Yes, ma'am.

22 Q. And did you request that your attorney be present for
23 that polygraph?

24 A. I actually thought he was gonna be there. It's just
25 when I got there he wasn't there.

1 Q. And in your allegation you say that Mr. Turnipseed
2 was ineffective for not -- for submitting you to a, a
3 private polygraph test.

4 Did you ever request that he do so?

5 A. No, ma'am.

6 Q. No.

7 And about how long before your, your trial date did
8 Mr. Turnipseed motion to be relieved as your counsel?

9 A. It was around September. September is when he got
10 off of my case I wanted -- I think. I -- it was around
11 that time but -- and I went to trial in May.

12 Q. Did he give you a reason why he was motioning to be
13 relieved?

14 A. He did not give me a reason. He just said -- what it
15 was is when we was, when we was meeting with the, the --
16 Lorin Williams, the investigator, I kept telling
17 Turnipseed, I said, we keep on talking to these people and
18 ain't nothing in black and white and it's like -- I said
19 I'm a victim too. I said but they treating me like a
20 suspect and I said I don't want to meet with them no more.
21 And that's when he told me that he wanted to get off my
22 case. And he was relieved in counsel -- I mean in
23 chambers.

24 Q. Did you ever -- did he ever make any assurances that
25 your statements in those meetings would be used against

1 you?

2 A. No, he didn't.

3 Q. And was your cooperation used against you?

4 A. Yes, ma'am.

5 Q. How so?

6 A. It was used against me because the solicitor kept
7 saying that I did it. He kept on -- I know you -- they
8 kept saying that they know I was the shooter and, and I --
9 when I told him everything that took place, like when the,
10 when the shooting happened, and when I covered up my arm,
11 I mean, seriously, they used all that.

12 Q. And I know you said that, when you switched over you
13 were represented by Mr. Poole, he came to the jail and
14 told you that he was going to meet with Mr. Mack.

15 Can you tell us a little bit about that conversation?

16 How that came up?

17 A. Oh, I was in the county jail and I pretty -- well, we
18 was prepping for trial and he said that he need me to tell
19 my side of the story. And I told him everything that took
20 place in the car. And, before he left, he said that he'll
21 get back with me next week because he said right now
22 about -- he's about to go in another pod of the county
23 jail to talk to Antwan Mack.

24 And that's when he threw me off because I ain't even
25 know this dude was, was, was locked up and I didn't know

1 what he was locked up for. So he just kind of caught me
2 off guard.

3 If you my attorney and I'm telling you about this
4 alleged uncharged shooter, why would you go and see him?

5 Q. And did you ever have any conversations with Mr. Mack
6 while the two of you were incarcerated together?

7 A. Nah. We was in different pods.

8 Q. And how do you feel that this alleged conflict with
9 your attorney affected the outcome of your trial?

10 A. I was prejudiced because my attorney had divided
11 loyalties. I didn't -- I never, I never knew that he
12 represented him. So, the guy, Edward Robinson, that was
13 gonna testify about Antwan Mack, my attorney did not use
14 him.

15 Q. Did your, your attorney ever give you a reason why he
16 didn't use him?

17 A. No, he didn't. He didn't give me a reason. The only
18 thing he said that he, he needed none of my witnesses,
19 that we was having a joint trial. So, on the purpose of
20 us having a joint trial, I felt like that -- well, it, it
21 comes off as if me and Reeder was in cahoots.

22 Q. And about how long do you recall Mr. Poole
23 representing you?

24 A. Mr. Poole represented me -- I was -- I was signed up
25 whenever my attorney got off my case. That's probably

1 around September. In -- so, I was with the sol -- I was
2 with the Public Defender's Office. But my first time
3 meeting with Roger Poole was in May, a week prior to me
4 going to trial.

5 Q. And so how many times in that week did you meet with
6 Mr. Poole?

7 A. Probably twice.

8 Q. Twice?

9 A. Yes, ma'am.

10 Q. So, did he go over the, the State's evidence against
11 you during those meetings?

12 A. He, he, he, he did. But it was more so of what was
13 in my case.

14 Q. And what do you mean by that?

15 A. Oh, well, like it's pretty much of the witnesses.
16 Like everybody did -- we wanted to come to trial.

17 Q. And did he go over the charges against you, the
18 elements that the State would need to prove with those
19 charges?

20 A. Yes, ma'am. Yeah, he did that.

21 Q. Okay. Did he ever discuss any potential trial
22 strategies with you?

23 A. Only trial strategy that we discussed was tell the
24 truth.

25 Q. So, in what ways do you think he should of further

1 investigated your case?

2 A. If he, if he further -- let me see.

3 Can you repeat that again?

4 Q. Oh, I'm sorry.

5 what ways do you think he should of further
6 investigated your case?

7 A. Well, of course, he should of spoke to my witnesses,
8 and I think in being that I told him about the uncharged
9 shooter, but the -- I feel like that his failure to pursue
10 this evidence is evidence that either Mr. Poole was aware
11 of the conflict of interest or he failed to act in due
12 diligence to investigate. And if Mr. Poole was aware of
13 the conflict of interest, then clearly, adversely -- that
14 adversely affected his performance. And if Mr. Poole was
15 not aware of this conflict of interest, then it raised the
16 issue of failure to investigate.

17 Q. And how do you think that that additional
18 information, if the Court would of heard it, would of
19 affected your trial?

20 A. Can you repeat again?

21 Q. Yeah. Sorry.

22 How do you think that that additional information, if
23 the jury would have heard it, how do you think that would
24 of affected the outcome of your trial?

25 A. Well, I think that, that, that would also coincide

1 with us not having -- if we had a severance too because I
2 would of been able to tell what happened, and then I would
3 of had my witnesses, and I would of had Edward Robinson to
4 come and say what Mr. Mack told him.

5 Q. And---

6 A. So---

7 Q. Oh, sorry.

8 A. Go ahead.

9 Q. Did you ever discuss Mr. Robinson's statement with
10 your counsel prior to going to trial?

11 A. No, ma'am, I didn't even know the statement existed
12 until my private investigator found it while I was already
13 incarcerated. Well, when I was already convicted and
14 incarcerated, that's the first time I saw the statement
15 and the photo affidavit lineup.

16 Q. And just going back to the severance issue, did you
17 ever request that Mr. Poole sever your trial of your
18 codefendant -- your alleged codefendant?

19 A. That's what -- I was under -- I was under that
20 assumption that that -- that was gonna take place because
21 he never even told me we was having a joint trial until
22 the morning of trial.

23 Q. And why do think Mr. Poole was ineffective for not
24 severing that trial?

25 A. Well, you -- he left me in the blind and I found out

1 on the morning of because our whole strategy was just to
2 tell the truth and -- about everything that took place and
3 have my witnesses in order. So to just hear on the
4 morning of trial that we having a joint trial, and after I
5 spoke to him, I, I do recall his co-counsel, the alleged
6 codefendant lawyer, said that well, we gon' have a good
7 day today because we all on the same team and nobody's
8 testifying on nobody.

9 Q. And so pivoting a little bit now to the third party
10 guilt allegations.

11 Did you ever discuss with Mr. Poole those allegations
12 and maybe presenting them to the Court?

13 A. What allegations?

14 Q. About Mr. Mack being involved in the shooting?

15 A. Of course.

16 Q. And did he give you a reason for not wanting to
17 pursue that trial strategy?

18 A. I was under the as -- that's what I thought we was
19 gonna do up until the morning of trial. He said we wasn't
20 gonna do that and he -- in fact, he said that Antwan Mack
21 was not gon' be mentioned.

22 Q. And did you have any relationship to Mr. Robinson
23 whose testimony we've talked about today?

24 A. I don't even know, know.

25 Q. Okay. So you never met Mr. Robinson?

1 A. No, ma'am.

2 Q. And why do you feel that Mr. Poole should have
3 requested a duress instruction on your behalf?

4 A. He should of requested a duress because, like I said,
5 Ra -- Rashad -- the alleged codefendant and I was not in
6 concert with the whole issue, and, of course -- and, of
7 course, when we was in the car -- when he cocked the gun,
8 that was enough when he said you heard what the hell I
9 said. So, that's why I think he should of did it because
10 I was not aiding or nor was I abetting to the act that
11 took place.

12 Q. And how do you feel that the solicitor's statements
13 in his closing argument were burden shifting?

14 A. It was burden shifted because they performed the
15 GP -- they -- we had a witness to testify about the GSR
16 and, the alleged codefendant, he had it on, on his hands
17 and I had it on my palm meaning there was -- I ain't have
18 it on the back meaning it was consistent with me touching
19 a, a gunshot -- I mean touching a wound.

20 So, with that being said, if you got a guy shooting,
21 and you got me in the car, and then, when you talk about
22 the car getting burnt, it look like I did try to destroy
23 evidence. So, it really do -- it was burden shifting
24 because it looked like we was both in cahoots with the
25 situation. So it was burden shifting.

1 Q. And I'm not expecting any kind of legal argument here
2 but on what grounds do you think that he should of
3 objected to those statements?

4 A. He should of objected to the burning of the car
5 because when he said that I allegedly burnt my car to
6 destroy evidence, it was in the jury mind that, that I
7 burnt the car to get rid of evidence and there was a
8 cover-up.

9 Q. And now in your due process violation allegations,
10 you state that there was a due process violation because
11 the State promised you consideration for your con --
12 cooperation.

13 Can you tell us a little bit about what that
14 consideration was looking like that you were promised?

15 A. Well, they said -- well, like I said, it was -- the
16 lie detector test and they did say they was just telling
17 me basically only thing that I needed to do was get Mack
18 and they wasn't, they wasn't gonna charge me because it's
19 one of those situations where I just felt like -- you
20 know, I see, I see people have false imprisonments. I
21 just didn't think it'd happen to me because I felt like,
22 long as I tell the truth, it's all gon' come out and which
23 it didn't. It was used -- everything was used against me.

24 Q. And were you ever offered a plea deal for your
25 statements?

1 A. Not that I know of.

2 Q. And so what exculpatory evidence of third party
3 guilt, beyond what we've seen here today, would you like
4 to have been presented to the Court at your trial?

5 A. One second if you don't mind.

6 I would say -- I would just say that when trial
7 counsel failed to conduct a proper pretrial investigation
8 in this matter and, and that when counsel failed to
9 investigate and call exculpatory, exculpatory witnesses
10 and the witness that could have actually exonerated me. I
11 don't know if I answered your question.

12 Q. Absolutely. And now just one last question.

13 You say in your final allegation that the State knew
14 that you were not involved in the burning of your car.

15 why do you believe that the State had no -- had
16 reason to know that you were a 100 percent not involved?

17 A. Well, cause I, I, I expressed to them that I wasn't
18 involved and I know that's not enough but -- and I feel
19 like had the State did -- what my private investigator
20 discovered was that I wasn't even in the location when the
21 car was burnt.

22 MS. ROSS: No further questions, Your Honor.

23 THE COURT: Anything on redirect, Ms. Ross?

24 MS. ROSS: Briefly.

25 REDIRECT EXAMINATION

1 BY MS. ROSS:

2 Q. And that's cause of your phone records?

3 A. Yes, ma'am.

4 Q. And also there was no car at the hospital.

5 A. Yes.

6 Q. So someone had to take your car---

7 A. That's true.

8 Q. ---away from the hospital?

9 A. Yes, ma'am.

10 Q. All right. Just briefly, on Page 539 at Line 12,
11 what is this closing argument about?

12 what did they say about you being able to subpoena
13 people and you being able to put up witnesses?

14 A. Now I understand Mr. Brown's enthusiasm. That's the
15 co-counsel and I appreciate it. The fact he thinks I do a
16 pretty good job at and Detective Williams controls
17 everything. But, for quality sake, Mr. Brown, Mr. Poole
18 have subpoena powers also as you saw today when
19 Investigator Tallanges took the stand.

20 Q. So he's basically saying they could of called some
21 witnesses, right?

22 A. Of course.

23 Q. How about on the next page where I've marked around
24 --

25 A. Which one?

1 Q. -- 540, Line 21?

2 A. Don't give the -- don't give them the benefit of the
3 doubt. Don't give them that reasonable doubt cause we
4 know this evidence shows beyond a reasonable doubt.

5 Q. All right. Did you find about the subpoena powers at
6 all, that that sort of shifts the burden that suggests you
7 have a duty to call a witness?

8 A. Exactly.

9 MS. ROSS: All right. No further questions.

10 MS. FLORES: No further questions, Your Honor.

11 THE COURT: All right. Mr. Cathcart, you can step
12 down.

13 THE WITNESS: Yes, sir.

14 MS. ROSS: We'll start with Princess Cathcart.

15 MS. FLORES: Objection, Your Honor. The State had no
16 notice of this witness.

17 THE COURT: Okay. Yes -- yes, sir, Mr. Cath --
18 Yeah, when all the witnesses are complete---

19 THE WITNESS: Okay. Thank you.

20 THE COURT: ---Ms. Ross will address that.

21 Yes, Ms. Flores.

22 MS. FLORES: Objection, Your Honor. We just had no
23 notice of this witness. So, we haven't been prepared to
24 cross-examine this witness on --.

25 THE COURT: Okay. All right. Well, at -- I will

1 certainly note your objection. But as I'm sure you're
2 aware, Allstate versus Brown, I believe it is -- says that
3 in a nonjury setting the Court is to receive all the
4 evidence and then evaluate it on its own merits in making
5 a decision.

6 So, since this is nonjury, I'll hear it and certainly
7 note your objection and may or may not consider it in my
8 decision.

9 MS. FLORES: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. ROSS: We call Princess Cathcart.

12 THE COURT: And also for just as far as -- just so
13 I -- the record is clear, in, in mid -- on your objection,
14 did y'all send any interrogatories or request for
15 production or anything like that?

16 MS. FLORES: No, Your Honor.

17 THE COURT: Okay.

18 DIRECT EXAMINATION

19 BY MS. ROSS:

20 Q. Can you give your name and birthdate for the record?

21 A. Princess Cathcart. May 11th, 1983.

22 Q. And how are you related to Derrick?

23 A. I'm his sister.

24 Q. All right. And were you there or were you there for
25 his trial?

1 A. Yes, I was.

2 Q. And you were there to support him as his sister but
3 why else were you there?

4 A. We also was there to ask Roger Poole some questions
5 before trial. So, we was there for support and to talk to
6 the attorney.

7 Q. Were you able to talk to the attorney?

8 A. Yes, ma'am, me and my mom spoke to him.

9 Q. And what did he tell you about your testimony and the
10 testimony of other witnesses who were there?

11 A. We pulled him aside before trial and asked like we
12 got witnesses here. Do you need to speak to any of them
13 and he said no. The witnesses won't be needed at this
14 time. He said they won't be needed.

15 Q. Did he explain why not?

16 A. He didn't say. He -- they were there and he just say
17 he didn't need them.

18 MS. ROSS: No further questions.

19 THE COURT: All right.

20 MS. FLORES: The State has no questions, Your Honor.

21 THE COURT: Very good.

22 Ms. Cathcart, you can step down.

23 Was she -- I'm sorry.

24 Was she sworn?

25 MS. FLORES: I'm not sure.

1 THE COURT: Okay. I'm used to a clerk -- having a
2 clerk here.

3 MS. Cathcart, do you swear or affirm that everything
4 you just told the Court is the truth?

5 THE WITNESS: Yes.

6 THE COURT: Okay. I'll try to be more diligent on
7 that. Normally there's a clerk---

8 MS. ROSS: I'll try to---

9 THE COURT: ---to swear them in.

10 MS. ROSS: ---think of that too.

11 THE COURT: Okay. You can step down, ma'am. I'm
12 sorry about that.

13 MS. ROSS: All right. We'd call Monique Brown.

14 DIRECT EXAMINATION

15 BY MS. ROSS:

16 Q. Ms. Brown, can you give your name and birthdate for
17 the record please?

18 A. Monique Brown, 4/3/87.

19 THE COURT: All right. Ms. Brown, if you'd raise
20 your right-hand for me?

21 THE WITNESS: Yes.

22 MONIQUE BROWN, being first duly
23 sworn, testified as follows:

24 THE COURT: All right. Thank you.

25 CONTINUED DIRECT EXAMINATION

1 BY MS. ROSS:

2 Q. Now, do you know Darius Cathcart?

3 A. I do.

4 Q. How do you know him?

5 A. My son's father is his cousin.

6 Q. Okay.

7 A. Yeah.

8 Q. Now, you know he was charged with the, with the --
9 murder among other charges?

10 A. Yeah.

11 Q. And that it -- there was a let -- allegations that
12 there was a fight at a club beforehand.

13 A. Uh-huh. (Affirmative).

14 Q. Can you tell any -- anything about that?

15 A. It was a fight at the club but Darius wasn't
16 fighting. He was dancing with my home girl.

17 Q. Okay. Were you at that club?

18 A. I was at the club.

19 Q. So, you witnessed a fight?

20 A. Yes.

21 Q. And you knew---

22 A. I would---

23 Q. ---Darius?

24 A. Yes. He actually helped us skedaddle on. Like move
25 out the way.

1 Q. Okay. And were you available to testify for---

2 A. I was. But nobody ever subpoenaed me.

3 Q. All right. But you had talked to the family and
4 knew---

5 A. Uh-huh. (Affirmative).

6 Q. All right. No further questions.

7 MS. FLORES: Court's indulgence, Your Honor.

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 MS. FLORES: Permission to approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. FLORES:

14 Q. Good morning, Ms. Brown.

15 A. Hey.

16 Q. Now, you were with Mr. Cathcart at the club prior to
17 the incident, correct?

18 A. Right.

19 Q. Correct.

20 were you with him for the entirety of that evening?

21 A. No.

22 Q. Okay. Were you with him at the scene of the
23 shooting?

24 A. No.

25 Q. Okay. No further---

1 A. Only at the club. Like I wasn't with him at the
2 club. We just also happened to be at the club at the same
3 time.

4 Q. Oh, okay. So --

5 A. Right.

6 Q. -- were there any moments when you guys were at the
7 club together that you didn't see him?

8 A. I mean I feel like I was all over the club. So,
9 yeah. I didn't just stay with one group. Like I was
10 here. I was there. I was everywhere. So, yeah.

11 Q. And if there had been a -- an altercation that
12 happened, was the club small enough that you would be able
13 to see every part of it and know what was happening?

14 A. I have no idea. Like in, in the middle of something
15 happening, like you not gon' turn around and look and see
16 this right here. I just made sure I grabbed my cousin and
17 we was out.

18 Q. Absolutely.

19 A. Yeah.

20 MS. FLORES: No further questions, Your Honor.

21 THE COURT: All right.

22 MS. ROSS: Just brief in redirect.

23 REDIRECT EXAMINATION

24 BY MS. ROSS:

25 Q. You said that, that Darius helped you skedaddle out

1 of there. So --?

2 A. Like when the fight broke out I guess or whatever, he
3 just made sure we all was okay to keep moving with the
4 crowd. Nobody got stepped on. Nobody got pushed over.
5 Nobody got nothing.

6 Q. And did you leave at that point, the club?

7 A. I think we did leave after that.

8 MS. ROSS: All right. No further questions.

9 MS. FLORES: Nothing on recross, Your Honor.

10 THE COURT: All right. You can step down, Ms. Brown.

11 THE WITNESS: Thank you.

12 MS. ROSS: We call Mike Crossley to the stand.

13 DIRECT EXAMINATION

14 BY MS. ROSS:

15 Q. Can you give your name and date of birth for the
16 record?

17 A. Michael Crossley. 9/27.

18 THE COURT: Mr. Crossley, will you raise your
19 right-hand for me?

20 MICHAEL CROSSLEY, being first duly
21 sworn, testified as follows:

22 THE COURT: You can put your hand down.

23 CONTINUED DIRECT EXAMINATION

24 BY MS. ROSS:

25 Q. All right. You've, you've heard the questions today.

1 were you at the club the night in question that,
2 that, that---

3 A. Yes, ma'am.

4 Q. ---ended up with a shooting?

5 And do you know Darius Cathcart?

6 A. Yes, ma'am.

7 Q. How do you know him?

8 A. He's a father of my God sister's daughter.

9 Q. And, and you -- are you familiar with that club and
10 the, the---

11 A. Yes, ma'am.

12 Q. ---layout?

13 Did you witness a fight that night?

14 A. Yes, ma'am.

15 Q. Was Darius Cathcart involved in that fight?

16 A. No, ma'am.

17 Q. And what happened?

18 A. Arriving at the club, we walked in. I got there kind
19 of late. Me and one of my other friends, we got there
20 kind of late.

21 We, we walked in the entrance. In Club Dream, when
22 you -- after you pay, you walk straight -- it's the bar
23 area on the right-hand side. Maybe I was in there a few
24 minutes. I seen Darius cause we had spoken earlier about,
25 you know, going out and I, I seen him. I think, you know,

1 he actually got me a drink, you know, from the bar and we
2 was all together. It was some females and us together
3 when the fight broke out.

4 I wasn't in the club maybe, you know, 30, 40 minutes
5 before the fight broke out. And the way the club is set
6 up, they have a inside like outside portion --

7 Q. Uh-huh. (Affirmative).

8 A. -- and that's kind -- after the fight broke out,
9 everybody kind of got pushed out of, of the like inside
10 outside portion of the club. And, after that, I, I -- we
11 was outside. I seen Darius. I was like you straight, you
12 good. He asked me was I good. I was like yes. I was
13 like well, we gon', we gon' get out of here. You know, we
14 gon' go.

15 And, after that, maybe 30 minutes later, I received a
16 call saying that he had got shot and immediately I called
17 him and he was on the phone panicking. You know, he say
18 he was shot. You know, he was driving and I was telling
19 him to calm his, you know, breather down because I have
20 asthma. I know, when you panicking, you know, it's kind
21 of hard to breathe.

22 Q. And did---

23 A. And I didn't know exactly where he got shot at. But
24 I was like all right.

25 I got off the phone because he say somebody else was

1 calling him. I went to the hospital. I was -- I talked
2 to my god sister. They was -- she was saying that he was
3 I think going to Spartanburg Regional.

4 when I got to the, the hospital, I -- they let me go
5 to the back and they actually -- they tested my hands for
6 gun residue also.

7 Q. All right.

8 A. So, aft -- after that, that night, you know, I didn't
9 really hear too much, you know, after that. But weeks on
10 end I spoke with plenty the investigators I guess or
11 people that called me and I told them my side of the story
12 over and over, you know, and, you know, I was never
13 subpoenaed.

14 Q. And -- but you were at trial ready to testify,
15 weren't you, or you were just never subpoenaed?

16 A. No, I was never subpoenaed.

17 Q. All right. And you talked to a lot of people about
18 how---

19 A. Yes, ma'am.

20 Q. ---Darius didn't start the fight?

21 A. As far as I can recall, and this should be all on,
22 you know, record, like I say, they tested my hands for gun
23 residue. But, if I'm not mistaken, I did go to the
24 Sheriff's Department that night after and they, they held
25 me in there for a while and I left.

1 Q. But you saw a fight that night and Darius wasn't
2 involved?

3 A. No, was not involved.

4 Q. No further questions.

5 A. He was no where near the fight.

6 CROSS-EXAMINATION

7 BY MS. FLORES:

8 Q. Hi, Mr. Crossley.

9 How are you?

10 A. I'm all right.

11 Q. Good.

12 Now, you weren't at the scene of this shooting,
13 correct?

14 A. No, ma'am.

15 Q. Okay. You said that Mr. Cathcart called you on his
16 way to the hospital?

17 A. No, he didn't call me.

18 Q. Okay.

19 A. I, I received a call from somebody else. I called
20 him.

21 Q. Oh, okay.

22 A. Yes, ma'am.

23 Q. Did he tell you about the events that had transpired?

24 A. No, all -- he said that he was shot and he was just,
25 you know, he was going crazy. I was just trying to get

1 him to calm down and just make it to where, excuse me,
2 make it to where he was trying to, you know, get to and he
3 kept saying, you know, my sister or somebody. His
4 sister -- somebody was calling and he -- the phone hung up
5 and I, I got in contact with my, my god sister, Toren, and
6 they let me know that he was going to Spartanburg
7 Regional. And that's why I hurried up and got in my car
8 and I went to Spartanburg Regional.

9 Q. And when you were on the phone with him, did you hear
10 the voice of anybody else in the car?

11 A. It was loud. It was, it was a lot going on with me
12 trying to figure out what he had going on and what was --
13 you know, was he okay and just a -- the messages and
14 everything. It was just a lot. I didn't hear nobody. I
15 knew that -- you know, just a lot going on. I was just
16 trying to make sure that he was okay.

17 Q. And -- I'm sorry to interrupt.

18 A. No, that's it.

19 Q. Okay. And how about at the hospital, did he give you
20 a rundown of what happened?

21 A. No. No, I basically just went back after they let me
22 go back, and, you know, he was sitting on the bed and, you
23 know, he was -- you know, I was like good -- like yeah and
24 then the, the police that was inside, you know, they came
25 in, was questioning me like I had something to do with it

1 and I was like no. They was like well, you're not willing
2 to test your hands for gun residue. I was like yes and we
3 went through that and that was it.

4 MS. FLORES: Court's indulgence, Your Honor.

5 (Pause.)

6 MS. FLORES: We have nothing further. Thank you.

7 THE COURT: Anything on redirect?

8 MS. ROSS: No, Your Honor.

9 THE COURT: All right. Mr. Crossley, you can step
10 down. Thanks for being here.

11 MS. ROSS: I would call Taneshia Cathcart.

12 DIRECT EXAMINATION

13 BY MS. ROSS:

14 Q. Can you state your name for the record?

15 A. Taneshia Cathcart.

16 THE COURT: Okay.

17 MS. FLORES: Objection.

18 THE COURT: Ms. Cath---

19 MS. FLORES: Oh, sorry.

20 TANESHIA CATHCART, being first duly
21 sworn, testified as follows:

22 THE COURT: Yes, ma'am---

23 MS. ROSS: All right.

24 THE COURT: ---Ms. Flores.

25 MS. FLORES: Sorry, Your Honor. I was just gonna

1 remind you to swear her in.

2 THE COURT: Okay.

3 CONTINUED DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q. Were you at the club that night?

6 A. I was.

7 Q. And how do you know Darius Cathcart?

8 A. That is my older brother.

9 Q. All right. Did you witness him in a fight?

10 A. No, I did not.

11 Q. All right. Did you see a fight at all?

12 A. I did.

13 Q. And what happened after the fight?

14 A. There was a lot going on. But, like she said, I'm
15 not use to seeing my brother out in any kind of social
16 thing and, for me to see him, that was not kind of like
17 what are you doing here.

18 Q. Uh-huh. (Affirmative).

19 A. And after that fight happened, you know, as a brother
20 would, y'all need to go ahead and leave and we left. We
21 didn't even see him afterwards. I'm not one of the people
22 that like to be out like that. So, when the fight broke
23 out, we left immediately.

24 Q. Were you available -- were you at Darius's trial?

25 A. Yes.

1 Q. And available to testify?

2 A. Absolutely.

3 Q. And what were you told?

4 A. They -- I didn't get subpoena---

5 Q. All right.

6 A. ---at all. I was there throughout the whole thing.

7 Q. Did Mr. Poole interview you at all?

8 A. No.

9 MS. ROSS: No further questions.

10 CROSS-EXAMINATION

11 BY MS. FLORES:

12 Q. Hello, Ms. Cathcart.

13 A. Hello.

14 Q. You -- when you left the club, did you leave with
15 Mr. Cathcart?

16 A. No, I was with my own set of people there.

17 Q. And did you see each other anytime immediately after
18 leaving the club?

19 A. I saw him right after the club. But it was like at
20 the gas station. And, like I say, I just had a baby and I
21 don't usually see him out like that. So, I went home to
22 my grandmother's house until I realize that, you know, he
23 had got shot.

24 Q. So, you weren't at the scene of the shooting,
25 correct?

1 A. No, at all.

2 Q. Thank you.

3 No further questions, Your Honor.

4 THE COURT: Anything on redirect?

5 MS. ROSS: No, Your Honor.

6 THE COURT: You can step down, ma'am. Thank you for
7 being here.

8 THE WITNESS: Thank you.

9 MS. ROSS: Judge, I had one more witness, Chris
10 Watkins, who's an investigator from Columbia who was
11 retained by the family to investigate the case. I had
12 subpoenaed him. He -- he's not here that I've seen so
13 far. So, I would just ask that the, the record could
14 remain open---

15 THE COURT: Okay.

16 MS. ROSS: ---for his testimony. I think we probably
17 proceed without it. I think, through Mr. Cathcart, we got
18 out most of the information he would of presented.

19 THE COURT: Okay.

20 MS. ROSS: So, what that means then, we have no
21 further witnesses.

22 THE COURT: Have you heard anything from him?

23 MS. ROSS: You -- I talked to him Friday and sent
24 him, you know, a subpoena and he was willing to come, and
25 then I didn't have it served on him. I emailed it,

1 service.

2 My understanding was he was gonna be here. I told
3 him probably not until 10:00. He could be out somewhere
4 lost for all I know. Just -- so, I have not heard from
5 him. He did send me some information over the weekend but
6 that's the extent of it.

7 THE COURT: Okay. But we'll -- yeah, I -- what's the
8 State's position on that?

9 MS. FLORES: The State has no objections to that.
10 We've discussed it with opposing counsel. It, it doesn't
11 seem to be anything that you would be too prejudicial that
12 came out on our side.

13 THE COURT: Okay. All right. Well, I'll leave --
14 how -- first of all, is that all the witnesses you're
15 gonna have, Ms. Ross?

16 MS. ROSS: Yes, Your Honor.

17 THE COURT: The State calling any witnesses?

18 MS. FLORES: Yes, Your Honor. We're calling two
19 witnesses.

20 THE COURT: All right. I would leave the record open
21 for Mr. Watkins testimony if he arrives.

22 MS. ROSS: Thank you, Your Honor.

23 THE COURT: All right. So that's the Applicant's
24 case.

25 State ready?

Abel Gray - Direct examination
By Ms. Flores

1 MS. FLORES: Yes, Your Honor.

2 At this time---

3 THE COURT: Go ahead.

4 MS. FLORES: ---the State calls Mr. Abel Orlando
5 Gray.

6 ABEL GRAY, being first duly
7 sworn, testified as follows:

8 THE COURT: All right.

9 DIRECT EXAMINATION

10 BY MS. FLORES:

11 Q. Good morning, Mr. Gray.

12 A. Good morning.

13 Q. So about how long have you been practicing law?

14 A. Almost 30 years.

15 Q. And what's your relation to this case that we're
16 discussing today?

17 A. I was the original prosecutor on the case.

18 Q. And how long were you with the Solicitor's Office?

19 A. Twenty-two years.

20 Q. So, do you have any recollection of the State's
21 evidence in this case?

22 I know it's been a while.

23 A. Some recollection, yes.

24 Q. Can you tell us a little bit about what you remember?

25 A. I remember there were statements given. There was

1 a -- some video evidence in this case and there was GSR.

2 Q. And do you have any recollection of having any
3 meetings with Mr. Turnipseed and Mr. Williams and the
4 applicant?

5 A. No.

6 Q. Okay. Regarding the applicant's allegation, were you
7 in the courtroom to hear the applicant's allegations of---

8 A. Yes.

9 Q. So, did you have any knowledge or evidence in -- to
10 your recollection that would prove to you a hundred
11 percent that applicant had nothing to do with burning of
12 his car?

13 A. No.

14 Q. State has -- oops.

15 Court's indulgence, Your Honor.

16 (Pause.)

17 MS. FLORES: Nothing further, Your Honor.

18 THE COURT: All right. Anything on
19 cross-examination?

20 CROSS-EXAMINATION

21 BY MS. ROSS:

22 Q. Were you aware that Lorin Williams had met with
23 Mr. Cathcart a number of times?

24 A. Yes.

25 Q. And were you aware that the State gave him a

1 polygraph?

2 A. Yes.

3 Q. And as far as the arson, was he ever charged with
4 arson?

5 A. No.

6 Q. So, if -- there was never a warrant for arson brought
7 up at---

8 A. No.

9 Q. ---Mr. Cathcart at all?

10 And would that be because there was insufficient
11 evidence that he actually burned the car?

12 A. No, ma'am, we were pursuing other charges.

13 Q. All right. So, you were saying if there was -- even
14 if there was evidence, you just would not of bothered with
15 the arson charge---

16 A. Yes, ma'am.

17 Q. ---if there was evidence that he did it?

18 A. Yes, ma'am.

19 MS. ROSS: All right. No further questions.

20 MS. FLORES: Nothing on redirect, Your Honor.

21 THE COURT: All right. Mr. Gray, you can step down.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you for being here.

24 MS. FLORES: Your Honor, at this time we ask that the
25 witness be released from court. He has other obligations

1 this afternoon before the Court.

2 THE COURT: Certainly he can be excused.

3 No objection from the applicant?

4 MS. ROSS: No objection.

5 THE COURT: Okay. He's excused.

6 MS. FLORES: At this time, the State calls Mr. J.

7 Roger Poole.

8 THE COURT: Okay. Mr. Poole, would you raise your
9 right-hand for me?

10 ROGER POOLE, being first duly
11 sworn, testified as follows:

12 THE COURT: All right.

13 DIRECT EXAMINATION

14 BY MS. FLORES:

15 Q. Good morning, Mr. Poole.

16 A. Good morning.

17 Q. So, about how long have you been practicing law?

18 A. Forty-five years.

19 Q. Okay. And about how much of that has been in
20 criminal law?

21 A. A great proportion of it during the entire 45 years.

22 Q. And what is your relation to this case today?

23 A. I represented Mr. Cathcart at trial.

24 Q. And were you appointed or retained?

25 A. I think it was 2010 I think.

1 Q. And do you recall about how long before his trial you
2 were retained by Mr. Cathcart?

3 A. A few months. A few months it was.

4 So, I -- when the great recession came in 2008, 2009,
5 I closed down my private practice and came on board with
6 the Public Defender's Office. So, that was my move in
7 that regard. So I was just still relatively new in the
8 Public Defender's Office at that time.

9 Q. And do you recall anything about how you came to
10 represent Mr. Cathcart?

11 I know Mr. Turnipseed was before you.

12 A. Before me, I didn't know anything about Mr. Cathcart
13 until we get the file.

14 Q. And did you have any opportunity to see
15 Mr. Turnipseed's file?

16 A. No.

17 Q. And did Mr. Cathcart ever tell you about anything
18 with any meetings between him and the solicitor and
19 Mr. Williams?

20 A. There was some discussion of that and I, I didn't
21 really know the nature of it to the best of my
22 recollection. You know, this has been 14 years ago and --
23 but my impression was that it didn't go, go too good for
24 Mr. Cathcart because the cases had not changed in -- from
25 their original charge. Nothing had been dismissed or any

1 consideration extended by the State.

2 Q. And I was just about to ask you about any
3 consideration.

4 So there was no consideration extended to Mr.
5 Cathcart?

6 A. Correct.

7 Q. So, did you have any discussions with him about a, a
8 Mr. Antwan Lamar Mack in this case?

9 A. It came to my attention after my representation was
10 basically over that he kept referring to an individual
11 known as Black, B-L-A-C-K, and I took that to mean some
12 sort of street nickname or something like. And I asked
13 him who was Black and he told me he did not know his name.
14 Just know him -- knew him as Black.

15 So, it appeared that I did -- and this information
16 comes from Michael Morin, the Chief Public Defender in our
17 office, that I -- my name was ascribed to Mr. Mack's cases
18 from September of 2010 until March of 2011. My name,
19 along with Robert Hall, were representing him. Apparently
20 he has several cases.

21 Then the -- Mr. Mack's cases were ascribed to Matthew
22 Shealy in our office after -- during the month of March of
23 2011 and I do not remember Mr. Mack. I do not remember
24 how -- any conversations with Mr. Mack. I don't think my
25 name is affixed to any judicial proceeding involving Mr.

1 Mack.

2 Q. Okay. And were you in the room for applicant's
3 testimony?

4 A. Pardon me?

5 Q. I'm sorry.

6 Were you in the room for applicant's testimony?

7 Were you able to hear everything?

8 A. Yes, uh huh. (Affirmative).

9 Q. Do you recall ever having a conversation with
10 applicant stating that you were going to leave to speak
11 with Mr. Mack?

12 A. I don't remember anything like that. Now, you know,
13 if I, if I said it, I said it completely not knowing who
14 Black was vis a vie Antwan Mack.

15 You see what I'm trying to say?

16 Q. Yes, sir.

17 So you -- have you ever -- just to clarify.

18 So you've never had any knowledge of Mr. Mack's case?

19 A. No, I don't remember anything.

20 Q. And, and have you ever appeared on his behalf at any
21 proceedings that you can remember?

22 A. I can't recall and don't think my name is ascribed to
23 any proceeding involving him.

24 Q. And do you feel that your actions with Mr. Mack
25 constituted a conflict of interest?

1 A. No.

2 Q. Do you feel that they hindered your representation of
3 the applicant in any way?

4 A. I don't think so. We've always been -- tried -- we
5 try to be, as much as we can in the Public Defender's
6 Office, to be as conscientious about that as much as
7 possible cause it's so important.

8 Q. And so do you -- about how many times were you able
9 to meet with the applicant?

10 A. I don't remember. A few times.

11 Q. All right. And do you recall any of the discussions
12 that you two had during your meetings?

13 A. No, I do not.

14 Q. Did you have an opportunity to obtain all the
15 discovery in this matter?

16 A. That's right.

17 Q. Do you recall ever receiving any of the statements of
18 Mr. Eric Robinson that had been discussed here?

19 A. Who?

20 Q. Mr. Eric Robinson today -- that have been discussed
21 here?

22 THE COURT: I think it was---

23 A. No.

24 THE COURT: ---Edward Robinson.

25 MS. FLORES: Edward Robinson. I'm -- my apologies,

1 Your Honor.

2 THE COURT: No problem.

3 A. Edward Robinson?

4 Q. Yes.

5 A. I don't recall anything about that.

6 Q. Did you have an opportunity to review all of this
7 discovery that you received with---

8 A. Yes.

9 Q. ---the applicant?

10 A. Uh-huh. (Affirmative).

11 Q. And were you able to create a trial strategy based
12 off that discovery?

13 A. Well, to the extent that we could. This, this was an
14 all -- very chaotic mess, all right, starting out at this
15 club, which, by reputation, I think is pretty chaotic, and
16 then continuing on into the street with -- cars were --
17 carloads of at least three occupants each exchanging
18 gunfire.

19 And so -- and statements were given almost
20 immediately by a lot of people. And they ended being
21 contradictory and all kind of things.

22 So it, it -- it was just hard to develop something
23 with that and usually you might have to go to the default
24 position of defense, criminal defense, where you say the
25 State must prove their case or else, you know, be found

1 innocent. And that's what we basic -- basically argued,
2 the State could not prove its case beyond a reasonable
3 doubt.

4 Q. And did you discuss that trial strategy with
5 applicant before you guys proceeded to trial?

6 A. I don't recall doing that but that would of been
7 done.

8 Q. And did you -- do you feel that you adequately
9 investigated applicant's case to the best of your
10 knowledge?

11 A. Yes.

12 Q. And do you have any recollection of the State's
13 evidence in this case?

14 A. I---

15 Q. I know---

16 A. Of some.

17 Q. Can you, can you elaborate for the Court a little bit
18 about what it was?

19 A. What the State had?

20 Q. Yes, sir.

21 A. Okay. In the vehicle which the decedent, the
22 decedent was found, there were a lot of bullet holes,
23 several, a lot, on the side and no weapons were found as
24 far as I can remember and the -- there were spent shell
25 casings and I think some live ammunition found in the car

1 where the decedent was and it's been so long I can't
2 recall much --

3 Q. Okay.

4 A. -- other than that.

5 Q. I'm sorry.

6 And how about anything involving around a burned car?

7 A. I don't recall.

8 Q. All right. And did you -- just moving to his
9 Allegation Number 3.

10 Did you move for a severance in applicant's case?

11 A. No.

12 Q. Did you see any reason to do so?

13 A. No, no. Rarely have I seen a motion for severance to
14 be successful -- success -- be successful, excuse me, and
15 I'd already talked to Michael Brown and we'd formulated
16 some sort of basic strategy so to speak.

17 Q. And do you recall whether or not you challenged the
18 State's motion to exclude third party guilt?

19 A. I don't recall. But that's standard that, that -- at
20 that, at that point in time it was standard for the State
21 to make that type of motion and it was standard to go
22 along and concede, concede that.

23 Q. Did you think it was important to object to that?

24 A. No. Since -- no, I did not.

25 Q. Did you see an argument of third party guilt as being

1 important in this case?

2 A. No.

3 Q. And did you interview or subpoena any of the
4 individual -- any of the individuals that we've heard from
5 today?

6 A. Pardon me?

7 Q. I'm sorry.

8 Did you interview or subpoena any of the witnesses
9 that we've heard from today?

10 A. No. No, ma'am.

11 Q. Did you see a reason to do so?

12 A. No, I did not at that time.

13 Q. And did applicant request that you interview or
14 subpoena any of the witnesses?

15 A. I don't recall that.

16 Q. Did you see any reason that a duress instruction
17 should be requested in this case from your recollection?

18 A. Once again?

19 Q. Oh, I'm sorry.

20 Do you recall any reason that a duress instruction
21 would of been necessary in this case?

22 A. Duress?

23 Q. Uh-huh. (Affirmatively).

24 A. No, since no evidence was going to be presented in
25 that regard.

1 Q. And did you see a reason to take exception to the
2 hand of one hand of all instruction that the jury (sic)
3 gave --

4 A. No.

5 Q. -- to the jury?

6 A. Not at the time.

7 Q. How about the inferred malice of -- the inferred
8 malice jury instruction?

9 A. I did not see it then.

10 Q. Do you feel as though the jury being instructed on
11 either of those things would of changed the outcome of
12 applicant's case?

13 A. I don't think so.

14 Q. Do you -- have, have you had a chance to hear today
15 the statements that applicant is taking issue with
16 regarding the solicitor's comments?

17 A. I heard that, yes.

18 Q. And do you feel as though those arguments were burden
19 shifting?

20 A. Well, I -- it could -- I, I don't know if it goes to
21 that level and I don't exactly remember the comment that
22 was made by the State. I think it was a, a vague pronoun
23 like they burned the car. Now, who they was I'm not sure
24 who, who that could be referring to. But I don't think
25 Mr. Cathcart was mentioned specifically.

1 Q. And do you stand by your representation of Mr.
2 Cathcart?

3 A. Yes.

4 Q. And just one more time for, for -- just to make sure
5 I've covered it.

6 A. Sure.

7 Q. Do you have any recollection of the State promising
8 Mr. Cathcart any sort of consideration for his cooperation
9 in this case?

10 A. No, there was none.

11 Q. Thank you.

12 Court's indulgence, Your Honor.

13 THE COURT: Okay.

14 (Pause.)

15 MS. FLORES: Sorry, Your Honor.

16 THE COURT: All right.

17 Q. Just a few more questions. I promise.

18 So, do you recall why you didn't think it was
19 important to call those witnesses?

20 A. I'm sorry. I'm hard of hearing. You have to
21 speak---

22 Q. No, no, no. I'm sorry. I'm quiet too. So I'll,
23 I'll speak up.

24 Do you recall why you didn't feel that it was
25 important to call those witnesses that we've heard from

1 today?

2 A. I just didn't -- I was focusing -- I was trying to
3 look at what was going on in the street.

4 Q. Uh-huh. (Affirmative).

5 A. And I was not really looking at what was happening in
6 the, in the bar before and or otherwise. I, I just had
7 the impression that whatever was going on in the bar was,
8 was chaos that just spilled out into the street and that
9 was my impression. I did not see the importance of really
10 bringing all this who caused what and who involved in
11 this, that, and the other as maybe going too far into the
12 weeds so that speak. That's about my best thing I could
13 say I think.

14 Q. And just one last question. Now, applicant has said
15 today that he did not testify on your advice.

16 Do you recall giving him advice that he should not
17 testify at his own trial?

18 A. Oh, yes, that's -- we do that all the time.

19 Q. And do you recall the reasons why specifically you
20 didn't think that he should testify at his trial?

21 A. Well, I just knew that my opinion of the whole entire
22 complexion of the case that it would be best if he did
23 not, you know, you know, due to certain inconsistent
24 statements, et cetera.

25 Q. Thank you.

1 No further questions, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. ROSS:

4 Q. I'm gonna jump around and start backwards like I
5 often do.

6 But wasn't their testimony there would -- two
7 survivors in the other car, right, the -- where the
8 decedent was?

9 A. I think that's right.

10 Q. DeAngelo Miller I think and maybe Bryant Miller and,
11 and one of them testified, on Page 101, Line 7, you were
12 able to elicit that the, the basis of one of their's
13 opinion that, that Darius Cathcart was involved in a
14 fight, he heard it from someone else. It was hearsay.

15 Do you recall that at all from 14 years ago?

16 A. I see this part in the transcript. As far as
17 recalling it after I look at it, I, I -- it's there.
18 Can't say otherwise.

19 Q. All right.

20 A. But -- okay.

21 Q. And then -- and, and from that, and other
22 codefendant, the State presented a theory of the case that
23 Darius Cathcart was involved in an altercation in the club
24 that moved out into the street.

25 A. Uh-huh. (Affirmative).

1 Q. And that testimony was that, that Darius, the
2 applicant here, was involved, you know, in that fight?

3 A. Right.

4 Q. Now, moving on. So, with them, it, it, it went to
5 jury instructions, different things, as far as the way you
6 look at self-defense, whether someone brought on the
7 altercation by being in the fight.

8 It was relevant about the fight?

9 A. Yes.

10 Q. Now, just going back to the, the public -- I'm sorry.
11 I'm skipping around.

12 Beg the Court's indulgence.

13 (Pause.)

14 MS. ROSS: If I could approach and look at these
15 exhibits?

16 THE COURT: Yes, ma'am.

17 Q. Do you recognize this, Applicant's Exhibit 5?

18 A. Yes, that's mine.

19 Q. Okay. And it's the witness list and who is witness
20 Number 9 on that list?

21 A. Edward Robinson.

22 Q. All right. And this is the affidavit defendant --
23 identification.

24 Do you recognize that at all?

25 A. I see but I don't, I don't know if I remember it.

1 Q. All right. But it's a statement from Edward
2 Robinson?

3 A. Right.

4 Q. All right. And he was a witness who also identified
5 this Black character, Antwan Mack?

6 A. Okay.

7 Q. Just going to Page -- on, on Page 564, Line 9, would
8 you just trust me you didn't object or take exceptions to
9 the, the jury charge or would --?

10 A. Pardon me?

11 Q. Did you take objection -- I mean did you object or
12 take exception to the judge's jury charge?

13 A. No, I did not.

14 Q. All right. And then, on Page 564, for instance, the
15 Line 9, there was a testimony on, sorry, instruction on
16 assault and battery with intent to kill and it says --
17 that's at Line 9. It, it says that assault and battery
18 with intent to kill is an assault with malice.

19 A. Uh-huh. (Affirmative).

20 Q. And it doesn't instruct the, the proper instruction
21 on it that it must be with specific intent to kill, does
22 it?

23 A. I think you're right.

24 Q. All right. And there were also instructions of
25 inferred malice from use of a handgun.

1 Do you recall that?

2 A. Not really.

3 Q. On Page 571, would you trust me that the record can
4 speak for itself and that is no longer good law?

5 A. Right.

6 Q. And while -- Burdette's a, a later opinion, there was
7 also Belcher was an opinion out there at the time saying
8 that inferred malice can not be -- malice can not be
9 inferred from the use of a handgun?

10 A. Right. And, and the State has to prove the absence
11 of self-defense.

12 Q. Correct.

13 A. Well, that -- I don't know when all that changed
14 during the course of the case law development.

15 Q. All right. And, and y'all had a 608 list here in
16 Spartanburg, correct, for conflict cases or is there a
17 list where conflicts are --?

18 A. Sure.

19 To send the cases elsewhere?

20 Q. Yes.

21 A. Yes.

22 Q. All right. And that's within the whole office. It's
23 not just one person, person. It's with -- within the
24 whole Public Defender's Office.

25 A. Right.

1 MS. ROSS: All right. Beg the Court's indulgence.

2 (Pause.)

3 MS. ROSS: No further questions.

4 MS. FLORES: No redirect, Your Honor.

5 THE COURT: No redirect.

6 Okay. Very good.

7 You can step down, sir.

8 THE WITNESS: Thank you.

9 MS. FLORES: And, Your Honor, the witness asked that
10 he be excused for other obligations in the Court.

11 THE COURT: Any objection?

12 MS. ROSS: No objection, Your Honor.

13 THE COURT: All right. Counsel, you can be excused.

14 THE WITNESS: Thank you.

15 MS. FLORES: The State has no further witnesses, Your
16 Honor.

17 THE COURT: Okay. All right. Happy to hear any
18 closing arguments y'all may want to be, be heard on.

19 MS. ROSS: And, judge, just briefly going through,
20 you -- this -- you know, the case went south from the
21 beginning due to ineffective of can -- of counsel.

22 This is a case -- I'm getting a number of cases like
23 this where, once you have a cooperating witness, that
24 needs to, to go all the way even to the point of getting
25 an independent polygraph that -- and looked like

1 Mr. Turnipseed relied on the State's polygraph given by
2 Investigator Lorin Williams who left. I, I believe he was
3 terminated from -- there's -- from the force based on some
4 allegations of misrepresentations on subpoenas and such.

5 So, it started out with working with him, given a
6 polygraph without assurance of a deal, and then just
7 moving to be relieved and stepping away and allowed the
8 public---

9 THE COURT: Well, is there an order on -- I -- it may
10 or may not matter. At least I'm curious.

11 Was there an order issued relieving him as counsel
12 or -- and why?

13 MS. FLORES: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. FLORES: It is.

16 THE COURT: Is it in here?

17 MS. FLORES: Yes, sir.

18 MS. ROSS: And actually I've got it marked on my --
19 right here.

20 THE COURT: Is it in the record on appeal maybe?

21 MS. ROSS: I don't know. This is just --.

22 MS. FLORES: I have it right here, Your Honor---

23 MS. ROSS: Okay.

24 MS. FLORES: ---if you'd like to see.

25 THE COURT: What page?

1 Can you tell me?

2 MS. FLORES: It is -- it's just easier if I bring it
3 up to you if you don't mind.

4 Permission to approach?

5 THE COURT: Yeah.

6 MS. FLORES: Just cause they're not explicitly
7 numbered.

8 THE COURT: All right. I'll see if I can get to it
9 in my copy now.

10 MS. FLORES: Yes, it says it right there.

11 MS. ROSS: And Mr. Turnipseed's deceased. So we
12 couldn't have him as a witness.

13 MS. FLORES: You need anything further?

14 THE COURT: No, I got it here.

15 MS. FLORES: Thank you.

16 THE COURT: Okay. Go ahead. It doesn't say much.

17 MS. ROSS: All right. And then, you know, I've got
18 a -- there's extensive case law on conflict of interests.
19 States minute (phonetic) right to effective assistance of
20 counsel includes the right to counsel unhindered by a
21 conflict of interest. There's no requirement to show
22 prejudice in those cases. Prejudice is presumed. An
23 actual conflict of interest arises where a defense
24 attorney places himself in a sit -- situation inherently
25 conducive to divided loyalties.

1 The interest of the other client and the defendant
2 are sufficiently adverse if it's shown that the attorney
3 owes a duty to the defendant to take some action that
4 could be detrimental to his other client and that's
5 Gonzales v. State. Seven -- 795 S.E.2d 835. An actual
6 conflict, again, occurs where an attorney owes a duty to a
7 party whose interests are adverse to the defendant.

8 Here, that was true. There was a lack of
9 investigation into the person that said, you know, that
10 Darius said was the shooter who threatened him. While I
11 concede duress is not a defense to murder --.

12 THE COURT: Well, let me ask you that now. We might
13 can clear that up here.

14 Was there any evidence of duress cause I -- if he
15 didn't testify, how are -- how would there be any evidence
16 in the record of duress such that the judge should of
17 charged on it?

18 I agree if, if he testified to what he said here
19 today, he was probably entitled to some sort of a charge
20 of that nature but not --

21 MS. ROSS: Correct.

22 THE COURT: -- if there's no evidence.

23 MS. ROSS: And it's difficult as well because duress,
24 you know, it's not a defense to murder, which I, I don't
25 really understand under the hand of one hand of all

1 theory. It becomes sort of a legal Catch-22 situation.

2 But that, that -- I would concede that.

3 THE COURT: Okay.

4 MS. ROSS: The independent in -- investigation, that
5 goes into finding this third party who was supposedly
6 available in the jail.

7 Failing to move for a severance, we'd just argue that
8 the extensive work that the applicant did with Lorin
9 Williams, the investigator, all through the prior, you
10 know, prior to trial, would give rise to a severance
11 because these two parties were in very different
12 positions. The codefendant, Rashaun Reeder, you know,
13 hadn't cooperated with law invest -- enforcement at all
14 and then that gets into sort of another situation where,
15 based on the State's theory of the case, Rashaun Reeder,
16 was known to be the shooter.

17 I mean his -- stated in closing argument, Mr. Gray
18 said we know Mr. Reeder was the shooter and we know that
19 Mr. Cathcart had his hands up. That was based on their
20 conversations. And with that theory of the case, we would
21 argue that that doesn't give rise to hand of one hand of
22 all.

23 If you know that that's more of a situation where
24 they're, you know, two people -- someone's shot with a
25 gun -- we don't know who shot him. That's sort of where

1 accomplice liability comes in under the legal theory, and
2 once---

3 THE COURT: Well, couldn't he be, under that theory,
4 by virtue of driving the car?

5 MS. ROSS: If there was a meeting of the minds on
6 that and that -- and that's what would of been required,
7 the showing of meetings of the minds, again, bringing up
8 the necessity for a, a, a severance and then just creating
9 a situation where Mr. Cathcart felt like he could not
10 testify because of the -- their positions of no one's
11 saying anything.

12 You heard the witnesses that we put up that weren't
13 presented. That certainly was part of it because
14 self-defense came to play. I don't believe there was a
15 instruction on the State's duty to disprove self-defense.

16 I'm just going down the list.

17 THE COURT: Was that required at that point?

18 MS. ROSS: I'm not sure. I'll leave that up to you.

19 As far as the, the instruction on the State's duty to
20 disprove state -- self-defense, I would argue it should
21 have been. You've heard my argument failing to take---

22 THE COURT: Right.

23 Where, where I'm going with that I guess is how --
24 and it, and it may be. That's gon' be something we'll
25 have to look into.

1 But if, if the case law had not changed, you know,
2 these things evolved, and if, if that wasn't part of a --
3 what a jury -- a judge should charge at that point, I'm
4 not sure how that's fair on the judge or defense counsel.

5 MS. ROSS: And I didn't look up the year for the --
6 that -- that's -- that instruction. I, I thought that was
7 something that, that always existed, that the State had to
8 disprove self-defense beyond a reasonable doubt. But I'm
9 not sure about that.

10 Then that goes to the ABWIK argument. State v. King
11 came out in 2017 and that's where the Court specifically
12 addressed that assault and battery with intent to kill was
13 a specific intent crime. I believe that law was changed
14 before this trial.

15 THE COURT: Well, now -- and I---

16 MS. ROSS: I'm not---

17 THE COURT: And, again, I'm going through this record
18 as we're, we're talking.

19 MS. ROSS: Sure.

20 THE COURT: But that issue was actually appealed,
21 wasn't it, and that was in the appellate brief?

22 So, was, was it not the law at that time cause they
23 dismissed it on basically an Anders order?

24 MS. ROSS: Uh-huh. (Affirmative).

25 well, with the Anders order, it can't be -- if

1 there's no objection, there's no basis for the appeal.
2 You need to have that objection to preserve the record in
3 order to effectively appeal those issues and that's -- and
4 we'd---

5 THE COURT: Okay.

6 MS. ROSS: We'd argue that's why they did an Anders
7 because it wasn't properly preserved.

8 THE COURT: Well, they don't say that, do they?

9 MS. ROSS: I don't -- I haven't looked at the
10 opinions since I didn't do ineffective assistance of
11 appellate counsel.

12 THE COURT: Okay.

13 MS. ROSS: But I have -- I did speak to Wanda Adams
14 last Friday about this, and I think she had another case,
15 talking about having to do an Anders brief, because there
16 was no objection or proffer of evidence, that left her---

17 THE COURT: Okay.

18 MS. ROSS: ---in a place where they needed to do an
19 Anders brief.

20 State v. Belcher, which sort of begins this malice
21 can't be inferred with the use of a handgun, came out in
22 2009 before this though Burdette, the later case, was more
23 recent -- the, the case law, the ideas were, were there.

24 THE COURT: Okay.

25 MS. ROSS: And we'd just argue, you know, had

1 Darius's attorney objected, he could of been that person
2 who got reversed based on that.

3 And then as far as the -- we'd argue that the
4 solicitor's argument in closing about they could of called
5 that witness was burden shifting and that it was improper
6 to insinuate that applicant burned the, the car when there
7 was no evidence he, he did that or had access to the car.
8 In fact, at -- someone had to drive the car away from the
9 hospital that wasn't him or his codefendant.

10 Again, that goes to support of their -- the third
11 party argument where third party guilt was not just
12 pointing to someone else in this case. It -- there was
13 real evidence of another person who also had crimes that
14 were similar who -- someone had to be driving the car away
15 from the hospital, and the way Mr. Cathcart was saying it,
16 the guilt of Mr. Mack was adverse to his guilt because he
17 was saying Mr. Mack was threatening him to do this. So,
18 that would be our argument there.

19 THE COURT: well, talk, talk to me because I'm, I'm
20 gonna ask Ms. Flores a lot about the third party guilt
21 stuff too.

22 But is there any allegation that this statement by
23 Mr. Robinson was withheld in discovery or anything of that
24 nature?

25 Because I mean I -- ironically, I had one very

1 similar, another PCR, which but for some procedural issues
2 I probably would of granted because this appears somewhat
3 exculpatory.

4 MS. ROSS: Yes. And, and I don't know.

5 THE COURT: And certainly, at, at least me as a trial
6 judge, had I seen this, I, I would of let third party
7 guilt in.

8 MS. ROSS: Correct. And that, that -- I don't know.

9 THE COURT: And that---

10 MS. ROSS: That's another interesting issue in this
11 case, which I had an order from production of the State's
12 file issued in 2022. I've sent probably 15 emails back
13 and forth to the Solicitor's Office and -- demanding that
14 trial. That file was never produced.

15 And so I don't have that file. That's why I wanted
16 it to, to see what was handed over and all that
17 information. But I can only assume that it was part of
18 the discovery that was provided to Mr. Cathcart and he
19 provided it to me.

20 But -- no?

21 He's telling me no.

22 Did your investigator get that?

23 MR. CATHCART: My investigator found it. I found --
24 we had got it after I was convicted.

25 THE COURT: Yeah, I remember his testimony that he,

1 he personally did not see this statement---

2 MS. ROSS: Correct.

3 THE COURT: ---at trial.

4 MR. CATHCART: You're right.

5 MS. ROSS: And that's where Mr. Watkins would
6 certainly be helpful here because he found out that the
7 information about potential conflict of interest, which,
8 again, I'd argue it's the same office. This is a murder
9 case. That was a -- that was a conflict of interest and
10 then the fact that Mack was never pursued and represented
11 by the same office is, is prejudiced we'd argue.

12 THE COURT: Okay. Anything else?

13 MS. ROSS: I, I don't think so. I might stand up if
14 I hear something from Ms. Flores or afterwards. But I
15 think that covers most of the points.

16 I had -- I believe you're correct about the duress
17 argument, that, that would just go to ineffective
18 assistance of counsel by advising Mr. Cathcart not to
19 testify to his defense, which was a truth defense.

20 THE COURT: Okay. Ms. Flores, happy to hear from
21 you.

22 MS. FLORES: Yes, Your Honor, and just starting with
23 we were looking for the comments about State v. Belcher in
24 the Anders brief. I have that page that I pulled up right
25 there if you'd like to see it. It's in your packet as

1 well.

2 It's---

3 THE COURT: Yeah, I see. I have the Anders brief.

4 MS. FLORES: If you look on the last page in the last
5 paragraph, it discusses the, the defense's argument or the
6 petitioner's argument at that time of why they believe
7 that this is prejudicial to the applicant.

8 THE COURT: Okay.

9 MS. FLORES: And State v. King, because that was
10 decided in 2017, that wouldn't have been the law at the
11 time because this case happened in 2011 and we're bound in
12 PCR, at least we're bound by the law at the time.

13 THE COURT: Absolutely.

14 Okay.

15 MS. FLORES: And in their order, they did discuss
16 exactly why they just dismissed after review pursuant to
17 Anders.

18 THE COURT: Right.

19 MS. FLORES: And that's in your packet as well.

20 THE COURT: Yeah, I've, I've seen that.

21 MS. FLORES: And just moving forward, Your Honor, the
22 State just requests that this application be dismissed as
23 applicant has not established that he -- that counsel --
24 trial counsel was deficient in his representation or that
25 he was prejudiced by the representation.

1 In looking at the conflicts allegation, the State,
2 the State says that there's no actual conflict here. The
3 testimony of trial counsel was that he never represented
4 Mr. Mack in any substantial way. He never was present at
5 a hearing, never met with him, never knew the details of
6 his case, and he did not feel that, that his being noted
7 on the record as representing Mr. Mack had any prejudice
8 on his representation of applicant.

9 And moving forward to the severance issue, applicant
10 himself testified to being informed by his codefendant's
11 counsel that he was receiving the benefit of neither party
12 providing any testimony that could of been detrimental to
13 either one of them in their case. We submit that the hand
14 of one hand of all instruction was proper given the
15 information that was relayed to the Court in this case.

16 And if the Court has any questions for me
17 specifically?

18 THE COURT: Well, well, what is -- do you have any
19 indication that the, the statement of Mr. Robinson was
20 produced?

21 MS. FLORES: Your Honor, I don't have any---

22 THE COURT: I mean I got -- I, I guess I have -- I'm
23 hung up on two things, either it wasn't produced and
24 that's a problem, or it was produced and it wasn't
25 considered and used.

1 Like I said, I mean I, I think if I'm sitting as, as
2 the trial judge, you know, it's, it's not incredibly high
3 standard and it is difficult to just willy nilly, if you
4 will, admit third party guilt. But I think this statement
5 is enough for them to admit third party guilt and Mr.
6 Poole said on -- I think his, his -- he said he doesn't
7 remember the third party guilt issue. But it -- standard
8 not to expose -- not to oppose a motion to exclude third
9 party guilt, which is also standard.

10 What do you think about that?

11 MS. FLORES: Your Honor, it was also trial counsel's
12 testimony that he didn't see any strategic reason that
13 substantially the third party guilty -- the third party
14 guilt defense as a trial strategy would be proper in this
15 case. I think that it's also been 14 years since he's had
16 a chance review this.

17 So, this---

18 THE COURT: Yeah, I under -- I understand that. But,
19 you know, Mr. Rober -- Robinson, at least ostensibly, is
20 an independent witness who is identifying Mr. Mack as the
21 shooter.

22 MS. FLORES: Yeah.

23 And, and, Your Honor, I would just point again to
24 trial counsel's testimony that he said there were many
25 witnesses that came forward directly after the shooting

1 and they all had conflicting testimony. Again, he did
2 have Mr. Robertson -- it's Robertson, correct?

3 I don't want to be wrong.

4 THE COURT: Robinson.

5 MS. FLORES: Robinson.

6 Yes, he did have Mr. Robinson on his witness list and
7 took him off his witness list. I think -- I know it's,
8 it's -- feels like a vague assumption based on that. But
9 it is evidence that there was a trial strategy behind his
10 decision not to bring forward this information.

11 THE COURT: Okay. All right.

12 MS. FLORES: And also, Your Honor, it is important to
13 note that Mr. Robinson isn't here to testify today to give
14 this Court any further information about his statements.

15 THE COURT: Okay. Anything else?

16 MS. FLORES: Nothing further, Your Honor.

17 THE COURT: Ms. Ross.

18 MS. ROSS: Just briefly.

19 I was not able to locate Mr. Robinson. So, that's
20 true. But I do think that statement is enough to give the
21 indication of, of something about the -- certainly going
22 to the third party guilt.

23 And I believe the testimony of Mr. Poole was that he
24 had heard nothing about Mr. Mack where he put Mr.
25 Robinson. He must have known about it cause he put it on

1 the witness list in the first place.

2 THE COURT: Well, yeah, the evidence would certainly
3 or the witness list would certainly suggest he knew who
4 Mr. Robinson was.

5 MS. ROSS: And, and would think that he would know
6 of, of, of that statement. But he said he did not know of
7 that statement.

8 So, I -- and I'm not sure where we are with that.
9 That's sort of an either way.

10 And, and just on the -- I'm concerned on the
11 appellate issue. I would ask if, if you are hung up on
12 the issue of why there was an Anders brief, as far as I
13 can recall Kat Hudgens or get an affidavit of statement.
14 I'm fairly confident that the reason that was an Anders
15 brief is because there was no objection to preserve the --
16 her argument on the record.

17 THE COURT: Okay.

18 MS. ROSS: So, if, if that's a question, I'd just ask
19 that be remained open and I'll be happy to talk to Kat
20 Hudgens about that.

21 THE COURT: All right.

22 MS. ROSS: Nothing further.

23 THE COURT: Anything else, Ms. Flores?

24 MS. FLORES: Just briefly, Your Honor.

25 THE COURT: Sure.

1 MS. FLORES: You know, as it is the applicant's
2 burden to prove their case in PCR, and there's no
3 authentication, and Robinson's not here today to testify
4 nor is Officer Williamson (sic), who was the one who took
5 that statement, I think it's important to just note that
6 for the record and especially in light of Butler v. State
7 where the applicant's mere speculation to what the
8 testimony of a witness would of been is not enough to
9 establish their burden.

10 THE COURT: All right. Anything else?

11 MS. FLORES: Nothing further, Your Honor.

12 THE COURT: All right. How long do you think --
13 sorry.

14 I'm gonna take this under advisement.

15
16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for 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 Nonjury for Spartanburg County, South Carolina, on the 20th day of May, 2024.

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

June 19th, 2024



PAMELA E. GREEN, Court Reporter