

**VOLUME II OF II**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Bamberg County

S.C. SUPREME COURT

Honorable Brian M. Gibbons, Circuit Court Judge

LEON AMOS JASON JAMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000984

APPENDIX

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1       beyond a reasonable doubt. If you're not firmly  
2       convinced that he's guilty, it's your duty to return  
3       a verdict of not guilty. Each and every one of you  
4       has heard all of the evidence. Each and every one  
5       of you has an opinion. Each and every one of you  
6       has to be firmly convinced of his guilt. And I  
7       believe the State has failed to meet that burden,  
8       and I ask you to return a verdict of not guilty.  
9       Once again, I thank you all for your attention.

10       THE COURT: All right. Mr. Solicitor.

11       MR. MILLER: Thank you, Your Honor. May it  
12       please the Court. Mr. Kazmierski.

13       Ladies and gentlemen of the jury, the Judge has  
14       told you on a couple of different occasions that the  
15       evidence in this case comes from the witness stand.  
16       And hearing Lewis Garvin's testimony as I sat here  
17       and hearing Mr. Kazmierski characterize that  
18       testimony, it's important that we remember that the  
19       testimony comes from the witness stand.

20       Lewis Garvin said he had no knowledge, he  
21       didn't recall, he didn't know. Chris Wilson said a  
22       man with a gun in the car forced the robbery.  
23       That's not testimony from the witness stand, that's  
24       testimony from the lawyer. Mr. Kazmierski stands up  
25       and says he testified that the defendant had no

1 knowledge of a robbery. No.

2 Ladies and gentlemen, if there's a discrepancy  
3 between what you heard there and what we say out  
4 here, this lady who's been taking down everything  
5 that's been said can read that testimony back for  
6 you. Don't let the lawyers testify for you. Don't  
7 let what they want the case to be become the case to  
8 be become the case that they try to convince you  
9 that you heard. Because the fact is this: When you  
10 consider all of the evidence in this case, what  
11 evidence is there that there was a fourth person  
12 involved in this robbery at all? At all?

13 Three people show up on video, three people run  
14 from the car, three people get arrested. Well, what  
15 about all that stuff in the car with unknown DNA on  
16 it? What about all this stuff in the car with  
17 unknown DNA? Let's say we found somebody's DNA on  
18 this red cup right here. Do they go get arrested?  
19 What involvement do they have with the crime? Well,  
20 their DNA was on a cup inside the car. So? That  
21 doesn't mean because your DNA was on a cup inside  
22 the car that you committed a robbery. What that  
23 means is that your DNA is on a cup that's inside of  
24 a car.

25 Circumstantial evidence would lead you to

1 believe that the person whose DNA is on the cup  
2 might have been in the car at some point in time.  
3 But that's not necessarily true, there's got to be  
4 more than that. There's got to be more than just  
5 somebody's DNA on a cup.

6 There has to be more than Darrell Lassiter's  
7 driver's license being in the car. Let's think  
8 about it. Why didn't the police go chase down this  
9 perfectly innocent man from North Carolina and  
10 decide whether they wanted to charge him with the  
11 armed robbery of a bank in Denmark? Well, what did  
12 the police know? What the police knew was we have  
13 four IDs. And you'll have them all back there. You  
14 can go through them.

15 Here is the South Carolina identification card  
16 of Lewis Garvin who lives on Fox Fire Drive in  
17 Columbia, South Carolina. Here is the South  
18 Carolina identification card of Leon Amos Jason  
19 James who is the defendant who lives in Irmo, South  
20 Carolina. Here is the identification card of Homer  
21 Arthur James who lives in Monetta. Okay. Here's  
22 what the police know -- here's Darrell Lassiter,  
23 commercial driver's license for a guy from  
24 Greensboro, North Carolina.

25 Here's what the police know: There are three

1 people that appear on the video in the bank that  
2 might be -- might be connected to the robbery.  
3 First one is easy, the defendant. A, he doesn't  
4 disguise himself either time he comes in; B, we have  
5 his driver's license sitting on the front driver's  
6 seat of the vehicle, sitting there in the seat; C,  
7 it turns out when we track down the vehicle that it  
8 belongs to Renee Greathouse who testified and says  
9 it was in his possession. Here's part of the  
10 reasons why the police think that he was connected  
11 with the robbery: He was inside the bank twice that  
12 day before the robbery actually occurred.

13 Okay. Well, let's move on to the next license,  
14 Homer Arthur James. I'm not a SLED agent, but if I  
15 see Homer Arthur James' ID and Leon Amos Jason  
16 James' ID, I think I might question whether or not  
17 they were related. Don't know if they are or if  
18 they aren't, but they have the same last name.

19 Okay. And what else have we got? We've got  
20 the surveillance video where the people ran into the  
21 bank. And looking at Homer Arthur James, you see,  
22 at one point in time, he lifts up the mask. On the  
23 camera he lifts up the mask. That seems kind of  
24 important. You can see what kind of clothing he's  
25 wearing on the camera, you can see what kind of

1 pants he's wearing, you can get some idea of his  
2 build.

3 Okay. How about Lewis Garvin? Same thing.  
4 You got a guy who his ID is found in the car.  
5 That's questionable to start with. But he's got on  
6 distinctive clothing. You've got video of someone  
7 in the bank -- the robbers inside the bank. And you  
8 know that at the time when you're collecting all of  
9 this evidence out here somewhere, the dog team is  
10 tracking from the vehicle. They're trying to track  
11 these guys down. The investigation is ongoing.

12 How about Darrell Lassiter? Well, let's see.  
13 He doesn't live in the same state, this is a  
14 commercial driver's license, nobody's ever heard of  
15 this guy. We'll -- he's still a suspect. Make no  
16 mistake, he's a suspect. But he's 6-foot-4. That  
17 would be out of place on the video. But he's still  
18 a suspect, somebody that you're going to think  
19 about.

20 So you go in and you're working on the  
21 investigation and you're processing the evidence,  
22 and lo and behold, the next night these guys get  
23 captured. They get captured the next night going  
24 into the following morning. And Lewis Garvin is  
25 still wearing the same pants with the distinctive

1 logo on the back pocket that he was wearing when he  
2 stepped on that counter, and Lewis Garvin is still  
3 wearing the same shoes that left the footprint on  
4 the teller counter. Lewis Garvin was the person  
5 inside the bank when it was robbed.

6 So you look at Homer James. Well, Homer's ID  
7 was found in the front passenger floorboard of the  
8 car with the money sitting on top of it. And shoved  
9 down in between the edge of the car and the front  
10 passenger's seat was what appeared to be the gun  
11 that was used in the robbery. And outside on the  
12 ground -- outside the front passenger door -- and  
13 there are photos of all of this -- is the yellow rag  
14 that was in his hand when he was carrying that gun  
15 around inside the bank.

16 And here in State's Exhibit 30, if you look  
17 closely, you see the money bag, and right there you  
18 can also see the gun. That's the gun. They robbed  
19 the Enterprise Bank with a BB gun. More  
20 specifically, they robbed the Enterprise Bank with  
21 that BB gun. Looks pretty real. The people in the  
22 bank told you they thought it was real. This is the  
23 gun that was used to rob the bank.

24 So Homer James from Monetta is arrested after  
25 this robbery in Bamberg County, no shirt on, running

1 through the woods from SLED. Leon James is arrested  
2 in Bamberg County with no shirt on, hiding in the  
3 woods in the hedgerow by SLED. So we got three  
4 people on video, we got three people in the car.  
5 What, again, is the reason that Darrell Lassiter is  
6 getting charged with anything?

7 Agent Williams has been a SLED agent for 30  
8 years -- or been involved in law enforcement for  
9 over 30 years. He didn't know why this guy's  
10 driver's license was in the car, but he didn't have  
11 anything to connect this guy to these defendants  
12 other than this driver's license. And, actually, he  
13 didn't waste time on tracking it down. That's the  
14 truth.

15 And so when it was tracked down, what did we  
16 find out? You heard from Darrell Lassiter  
17 yesterday. Agent Williams was right, he was right  
18 all along, Darrell Lassiter didn't have anything to  
19 do with this. He wasn't even in the State of South  
20 Carolina when this robbery occurred. He didn't have  
21 a thing to do with this.

22 But that doesn't meet the Defense's theory.  
23 They got to find somebody. First it was going to be  
24 Darrell Lassiter that was supposedly hold ing a gun  
25 to their client, now they don't know who it was.

1           Credibility.   Believability.

2                   Why -- if Leon James was going to commit a  
3           robbery, why does he go into the bank without a  
4           disguise on?  Ladies and gentlemen, think about it  
5           from the other direction:  If Leon James goes into  
6           the bank to check it out and to see who's in there  
7           and he has a disguise on, if his face is covered so  
8           nobody can identify him, don't you think that might  
9           raise some alarms?

10                   The reason Leon James went into the bank  
11           without a disguise on is because he didn't he didn't  
12           intend to get caught.  He figures, I go into the  
13           bank, tell them I want to open a checking account.  
14           This is significant because you heard from the bank  
15           teller the first time he came in, what do I need to  
16           get a bank account?  I told him everything he  
17           needed; I told him he needed a social security card,  
18           I told him he needed an ID, and I told him to come  
19           back in an hour because the lady that handles that  
20           stuff isn't here.

21                   So what does he do for an hour?  We don't know.  
22           According to Mr. Garvin, they ride around to look  
23           for his relatives.  None of these guys are from  
24           around here, but they're going to ride around and  
25           look for his relatives for an hour.  Ladies and

1 gentlemen, I submit to you that for an hour they  
2 were riding around trying to get up their nerve and  
3 get up their plan, figure out how they're going to  
4 do it.

5 But now it's an hour later. Better go check it  
6 out again, we know at least one person has come back  
7 from lunch. So he goes back in with the same story:  
8 What do I need to open a bank account? Oh, you got  
9 to have a social security card. Oh, still don't  
10 have a social security card, one didn't appear in my  
11 wallet in the last hour. He didn't go to Orangeburg  
12 to try to get a social security and figure, okay,  
13 I'll come back and see if I can open the account  
14 without it, they rode around looking for Lewis  
15 Garvin's cousins.

16 So he walks out. What's he got to worry about?  
17 Nobody is ever going to see him with these guys.  
18 Nobody is going to see him with these guys. Ladies  
19 and gentlemen, the second time he walked into that  
20 bank, he walked into that bank with the intent to  
21 steal. He walked in there knowing that he was going  
22 to end up with money from that bank in his  
23 possession illegally later on that afternoon,  
24 because then he goes back outside and now we got the  
25 half-hour gap.

1           What is the half-hour gap? What are they  
2           doing? Ladies and gentlemen, I submit to you they  
3           are doing the same thing they were doing in the  
4           hour; they're trying to figure out what the plan is  
5           going to be, how they're going to do this, and get  
6           up their nerve. But they finally do, and he pulls  
7           in front of the bank. And when he pulls in front of  
8           the bank, Homer James and Lewis Garvin jump out of  
9           the car and they go to run into that bank. And when  
10          they go to run into that bank, fortunately Betty  
11          Wilson sees them.

12               And I know she was nervous and I know she  
13               didn't want to be here, but Betty Wilson did the  
14               right thing. She saw it. It was strange. It was  
15               so strange she drove around the block to make sure  
16               she saw what she thought she saw. And when she gets  
17               around the block, the car is gone. She said she  
18               didn't know how many people it was, said she  
19               couldn't identify anyone, no one, but that silver  
20               Grand Am was gone and then the door flies open on  
21               the bank and the two people run out. Two people  
22               went in, car moves while they're inside, two people  
23               came out.

24               Ladies and gentlemen, there was another person  
25               involved, and that person was the driver of the car.

1       He was the get-away driver. That is the hand of one  
2       being the hand of all. They're all active  
3       participants in it. They're all active participants  
4       in the robbery of the bank. That's why he's charged  
5       with the robbery, the bank robbery, the armed  
6       robbery, because that's what it is. It's armed  
7       robbery, taking somebody's money that you don't  
8       deserve at the end of a gun through force and  
9       intimidation. That's what we allege Homer James  
10      did.

11             And that brings up something: Homer James  
12      isn't here. Homer James is going to have his day in  
13      court. We will be in a setting very similar to this  
14      in a very short period of time with Homer James. ..  
15      But y'all don't need to consider Homer James right  
16      now.

17             MR. WILSON: Your Honor, I don't generally  
18      object in people's closing statements, but --

19             THE COURT: Sustained.

20             You're not to consider the other co-defendants  
21      at all in your deliberations and their guilt or  
22      innocence.

23             MR. WILSON: Your Honor, he doesn't have the  
24      right to imply that we had to bring Homer James.  
25      They have the burden of proof. I don't want any

1       implication --

2               THE COURT: Disregard that last argument.

3               MR. MILLER: Certainly that was not the point.

4               The point is exactly what the Judge said. This  
5       is his day in court. He's the one that y'all are  
6       worried about right now. He was the get-away  
7       driver.

8               Now, what evidence is there that there was a  
9       person holding the defendant at gunpoint, forcing  
10      him to be the get-away driver? There is none. No  
11      one has testified, no video shows, no one has said  
12      from that stand, it's not anywhere in any of this  
13      evidence that someone was holding him at gunpoint.

14              If I'm in the car and somebody has a gun, that  
15      doesn't mean I'm being held at gunpoint; it means  
16      I'm in a car with somebody that has a gun. We  
17      dispute that there's even a fourth person in the  
18      car. But this is why it's important: They're going  
19      to talk -- the Judge is going to tell you about the  
20      defense that they're asserting of coercion. And  
21      coercion means that -- it means I did it, but I was  
22      forced to do it. I was in danger of life or limb,  
23      imminent threat of harm.

24              And in this case, they're claiming that this  
25      fourth person that nobody knows, nobody can

1 identify, no one has ever seen, doesn't appear on  
2 any videos, they're saying that this fourth person  
3 held him at gunpoint. What evidence is there of  
4 that? There is none.

5 You have the statement of a guy who,  
6 realistically, wants to help himself. Everybody  
7 would want to help themselves in his position.  
8 Nobody wants to be in his position. But even he  
9 wouldn't say there was a fourth person in that car  
10 with a gun. What he did say was he was forced to  
11 participate in the robbery. Well, the only person  
12 we see with a gun is Homer James. Homer James is in  
13 the bank.

14 You know, coercion only works as a defense if  
15 there's no other way than committing the crime for  
16 you to get out of the situation. If you believe  
17 him -- if you believe Lewis Garvin, when he drags --  
18 when Homer James drags Lewis Garvin into the bank,  
19 which, ladies and gentlemen, I don't think is borne  
20 out by the video, but if you believe Lewis Garvin,  
21 when Homer James goes into the bank with him with a  
22 gun, all Leon James has to do is drive away, use one  
23 of those three cell phones in the car, dial 911, get  
24 out of the car and walk away. It wasn't even his  
25 car. There's lots of different options for him.

1           But he was scared. He was scared, so he  
2       decided, okay, here they come running back to the  
3       car after he's moved it -- and you notice Betty  
4       Wilson never says she saw the guys get back into the  
5       car, because she didn't see the guys get back into  
6       the car. What she said is, when I got back to the  
7       bank, the car was gone. The only reason she was  
8       convinced that she had seen something important is  
9       because she saw the guys run out of the car -- or  
10      out of the bank and go take off towards that  
11      railroad tracks. So she called the police and told  
12      them what she saw.

13           If she hadn't seen the get-away car before it  
14      was a get-away car, when it was the drop-off car, if  
15      she hadn't seen that, Chief Walley wouldn't have  
16      known what kind of car to be looking for. You heard  
17      him when he testified, they came driving in, they  
18      weren't doing anything wrong; he saw that it matched  
19      the description of the vehicle he was looking for.  
20      That's why he got behind them. He didn't cut on his  
21      blue lights until they ran a stop sign, committed a  
22      traffic offense. That's when he turned on the  
23      lights.

24           Without Betty Wilson, he's not even looking at  
25      that Grand Am; it drives on by him and keeps on

1       going. That's why Leon James was okay with going  
2       into the bank without a disguise on. Because but  
3       for Betty Wilson, he would have gotten away with it,  
4       nobody would have known. The reason you drive from  
5       Columbia to Denmark to commit a robbery is because  
6       nobody knows you. Nobody is going to say, I went to  
7       school with that guy, I played basketball with him,  
8       I recognize him, I know he had his face covered, but  
9       I can tell you who that was, I know that boy.  
10      That's why.

11               Which begs the question, ladies and gentlemen,  
12      when you're judging credibility and you're talking  
13      about motive and you're talking about all of the  
14      different things that are going to allow you to tell  
15      if somebody's story is truthful or if somebody's  
16      story is not, you got to think about certain things.  
17      Why does a guy from Columbia all of a sudden have  
18      such a burning desire to open up a checking account  
19      at the Enterprise Bank in Denmark? Why is that? He  
20      wanted to open a checking account in Denmark so bad  
21      that when he went in and found out he couldn't open  
22      a checking account, he waited around for an hour so  
23      he could go back in and try to open a checking  
24      account again. Why?

25               At the beginning of the trial whenever the

1 judge had all of y'all sitting out there and he kept  
2 asking the questions and making everybody stand up  
3 and everybody would sit down and everybody had to  
4 remember their juror number, all of those questions  
5 had a purpose. Those questions were designed to  
6 make sure that you were legally qualified jurors,  
7 which, obviously, all of you are, but it was also to  
8 make sure you didn't have any preconceived notions  
9 or any knowledge about the case outside of what you  
10 were going to find out about in here. That was the  
11 purpose of all of those questions.

12 The one question the Judge didn't ask is, does  
13 anybody in the jury panel have common sense? And  
14 the reason for that is because we want jurors to  
15 have common sense. Use your common sense. Why is a  
16 guy coming from Columbia to Denmark to open a  
17 checking account? Now, certainly that's not  
18 something the Defense has to prove or has to  
19 identify, but using your common sense you can sit  
20 there and say that doesn't really make a lot of  
21 sense. He doesn't really want to open a checking  
22 account.

23 From right here at the Enterprise Bank -- this  
24 is State's 69, y'all will have this in the back  
25 too -- down to Olar, ten miles. Ten miles in a

1 vehicle, nothing to it. From right here, Lewis  
2 Garvin says -- although what you can take from his  
3 testimony I have no idea, Lewis Garvin says he  
4 didn't see Homer and Leon after that. So they come  
5 into here, SLED is searching all around here looking  
6 for him and -- I'm sorry, down here. They end up  
7 catching -- SLED ends up catching -- it wasn't SLED.  
8 It was actually DNR and some Bamberg City police  
9 officers and Captain Williams end up catching Lewis  
10 Garvin over here. Lewis Garvin -- that's about  
11 three miles right there.

12 The next time that anybody sees Leon James and  
13 Homer James is the night at the Govan Fire  
14 Department. And I know it's confusing, because it  
15 confused everybody that was out there that night.  
16 Captain Williams made contact with Homer James at  
17 the trailer. Homer James is the one that came  
18 out -- and he said in his testimony, you heard it:  
19 When he was being aggressive and coming towards me,  
20 I took out my gun. But then he just kept on running  
21 his mouth and talking, and I realized he wasn't a  
22 threat. He wasn't wearing a shirt. He could see he  
23 didn't have any weapons, so he holsters his weapon  
24 back and goes for his taser because he's still not  
25 complying with him, and the guy takes off behind the

1 trailer.

2 Well, at that time, all those firemen are  
3 standing over there, and here comes a guy running  
4 out from behind the trailer. But this guy has a  
5 shirt on. It's Leon. They're chasing Leon.  
6 Captain Williams comes around, what's going on? All  
7 these firemen are going down the road. What are  
8 y'all doing? We're chasing the guy. They think  
9 they're chasing the same guy. They're not chasing  
10 the same guy. Homer didn't have on a shirt, Homer  
11 didn't have anything in his hands, he ran behind the  
12 trailer.

13 He ran across the street -- the defendant runs  
14 across the street, gets in that little tree line,  
15 ultimately gets flushed out a little bit further  
16 down. When he comes out now, he's not wearing a  
17 shirt, but he's still got his shirt in his hand.  
18 And he takes off across the road after Jeff Jackson  
19 draws down on him and says stop. Please don't shoot  
20 me. He runs off. SLED comes and finds him.

21 Now, think about that. Over 30 hours that he  
22 was on the run, over 30 hours. It wasn't Homer that  
23 was forcing him to participate in the robbery. It  
24 can't be Homer because Homer was inside the bank  
25 during the robbery. So how could he force me to be

1       in the robbery if he was inside the bank? He wasn't  
2       with anybody else. Him and Homer.

3               The car wrecks, everybody bails out of the car.  
4       Sit in the car. There's a police officer right  
5       there. He's driving right behind you, that's why  
6       you wrecked in the first place. Sit in the car, let  
7       Chief Walley get out, go, hey, these guys just made  
8       me be the get-away driver in a bank robbery, they  
9       went that way, if that's what happened. He was  
10      scared, so he ran.

11             And over the course of the next 30 hours, it  
12      never occurred to him, I made a mistake, I don't  
13      have a phone, you know what, I'm going to go up to a  
14      house and knock on the door and tell them, hey,  
15      look, these guys robbed this bank, I was held at  
16      gunpoint, I couldn't do anything about it, when I  
17      ran from the police I was scared, but here I am,  
18      I'll tell you what I know. No, he doesn't do that,  
19      doesn't do that either. Maybe he's just scared of  
20      police.

21             All these guys are at the Govan Fire  
22      Department. They're all milling around outside  
23      around the fire department. Hey guys, y'all ain't  
24      going to believe this story, but here's what  
25      happened. Any time he could have come out, but he

1        didn't, because it wasn't true. There's no evidence  
2        to support it. There was a guy's driver's license  
3        in his car. That was what he knew was in the car  
4        that was going to point to someone else. Problem  
5        is, it went to a really good guy, went to an honest  
6        guy working three jobs in North Carolina who, and I  
7        will concede this, thank goodness was absolutely  
8        able to prove where he was on June 5th, 2014.

9                Ladies and gentlemen, the State has proven  
10        beyond any doubt that the Enterprise Bank in Denmark  
11        was the subject of an armed robbery on June 5th,  
12        2014. And through circumstantial evidence, which  
13        the Judge is going to talk to you about, we've  
14        proven beyond any reasonable doubt that Leon James  
15        was the get-away driver for that armed robbery; both  
16        before the armed robbery he was the driver, and you  
17        heard from Lewis Garvin he was the driver afterwards  
18        too.

19                You know, Chief Walley says during his  
20        testimony when he gets out of his car, high risk  
21        traffic stop, he's going to pull his weapon, he sees  
22        a guy getting out of the back seat, back passenger  
23        door. Lewis Garvin: I was person in the back  
24        passenger's seat or I was the person in the back  
25        seat, the other door wouldn't even open because it

1           was closed.

2           Which brings me to another point: Inside the  
3           car there were a number of items; personal items,  
4           clothing, shoes, the defendant's own shoes still  
5           sitting in the driver's side floorboard of the car.  
6           Where I'm from, if you kick off your flip-flops,  
7           it's because you're going to run. That's what he  
8           did. He took off his flip-flops before he took off  
9           running.

10          Look at the condition of this car. And if you  
11          look closely right here, you can see that is Darrell  
12          Lassiter's wallet. It's open, it's sitting up here  
13          like it was on the front seat right up here. And  
14          there's another photo in here where it actually  
15          shows -- and that was State's 32. There's actually  
16          another photo where it shows the driver's license  
17          that was entered into evidence, a picture of it,  
18          here we go, State's 38. This is when they picked up  
19          that wallet and held it up and took a picture of it.  
20          That's where his wallet was.

21          You know from Lewis Garvin that he was in the  
22          back seat. That's where his ID was found. You know  
23          from the circumstances, including the picture here,  
24          there's the defendant's flip-flops, there's his ID,  
25          that's the driver's seat, so the defendant is in the

1 driver's seat. Homer James' ID is in the  
2 passenger's floorboard.

3 Where does the six-four Darrell Lassiter sit  
4 for this drive that, supposedly, he was a part of?  
5 There's no room for him. He's 6-foot-4, y'all saw  
6 him yesterday. There's nobody sitting in that seat.  
7 Nobody's sitting behind the driver. No ID was found  
8 behind the driver.

9 If you notice, there's a pair of shoes right  
10 here. The soles in the shoes are up against the  
11 door. If you even open that door, the shoes are  
12 going to fall out on the ground. There wasn't a  
13 fourth person in this car, not that night.

14 Ladies and gentlemen, I appreciate the Judge  
15 for not cutting me off, and I appreciate y'all for  
16 sitting here and listening. But I've gone on. I do  
17 want to get to one last thing. The shorts, y'all  
18 can take those out. We have gloves that we can give  
19 to y'all if you want to open up any of this evidence  
20 and you want to look at it and actually lay it out.

21 The shorts in there are the shorts he was  
22 wearing in the video. The shirt that is there, we  
23 would submit, is the shirt he was wearing in the  
24 video. This hat is the hat he was wearing in the  
25 video.

1           Why would he have all of this stuff? Because  
2           he never intended to get caught, he never intended  
3           someone to see the car, and he didn't realize that  
4           they would call the police immediately when they saw  
5           the car and the police would already have a  
6           description of it.

7           This, ladies and gentlemen, is State's Exhibit  
8           66. This is the water bottle that had the two guys'  
9           DNA on it that had been in the woods for over 24  
10          hours. The guys had been in the woods over 24  
11          hours. This is that water bottle that was collected  
12          at the Govan training trailer that has Homer James'  
13          DNA on it and it's got the defendant's DNA on it.

14          This is Defense 1. That is the water bottle  
15          that was collected at the Govan fire training  
16          trailer with unidentified male DNA on it. You heard  
17          they didn't even lock that place, anybody could have  
18          gone in that trailer at any point in time. But they  
19          used it for training purposes. This is nothing.  
20          This is proof that Homer and Leon drank out of this  
21          bottle. That doesn't even mean that they were ever  
22          even in the trailer. That's where it was found.  
23          They could have been walking by the trailer,  
24          finished with the bottle, thrown the bottle through  
25          the open door. That doesn't mean that they were in

1 the trailer.

2 The same thing applies when you're talking  
3 about the gloves in the back floorboard. Those  
4 gloves in the back floorboard, they've got Lewis  
5 Garvin's DNA on them, but they don't have the  
6 defendant's DNA and they don't have Homer's. But  
7 it's a mixture of three people; one of those people  
8 is Lewis Garvin, so that means there's two more  
9 people they don't know. Now we got five people in  
10 the car, if that's the theory. Just because  
11 something has DNA on it does not mean that that  
12 person was in that location. It means something  
13 that they put their DNA on ended up in that  
14 location.

15 Same thing with the hat. You got the hat in  
16 the front seat of the car, it's got Homer's DNA on  
17 it, but it's got somebody else's DNA on it too.  
18 That doesn't mean there were four people in that car  
19 when the robbery occurred. And the Judge will tell  
20 you, as to the coercion or duress charge alone, and  
21 only to that charge alone, they actually got the  
22 burden of proof on that. And there's zero, zero  
23 evidence of that, none.

24 Ladies and gentlemen, the term verdict is  
25 derived from a Latin word that means veredicto,

1       which means to speak the truth. Ladies and  
2       gentlemen, the truth is, Leon James, Homer James,  
3       and Lewis Garvin came in the car Leon was driving  
4       from Columbia, South Carolina to Denmark, and  
5       whether they left Columbia intending to rob that  
6       bank or they decided once they saw how easy a target  
7       it could be, they decided to rob that bank. And  
8       they carried out their plan, and it would have  
9       worked -- they wouldn't have gotten any money out of  
10      it that wasn't dye-stained red. But they would have  
11      gotten away if it wasn't for Betty Wilson and some  
12      alert law enforcement and the efforts of the State  
13      Law Enforcement Division. That's the truth.

14             I ask that you go back into the jury room,  
15      consider the evidence presented, consider how it all  
16      fits together. And I know that the -- Nick Saban is  
17      a very successful football coach for those of you  
18      who don't know him. He says the key to success is  
19      one thing: Do your job.

20             Ladies and gentlemen, go into that jury room  
21      and do your job. Find this defendant guilty of  
22      entering that bank with the intent to steal so he  
23      could scope it out, and armed robbery for being the  
24      get-away driver for his two friends that he brought  
25      from Columbia that committed this crime themselves.

1           Thank you.

2           THE COURT: All right. Well, ladies and  
3 gentlemen, you've heard all of the arguments in the  
4 case. You've heard all of the evidence in the case.  
5 And so now it's my duty to charge you on the law in  
6 the case.

7           As I told you, you have duties as the finders  
8 of the fact, I have duties as the trial judge. And  
9 one of my jobs was to preside over the trial and  
10 make sure that we had a fair trial, rule on things  
11 like admissibility, things like that. You are to  
12 only consider the evidence that you heard in this  
13 case, that is testimony -- evidence takes form in  
14 the testimony that you heard from the stand -- any  
15 exhibits made part of the record, and any  
16 stipulations of counsel.

17           I also now have the additional job of  
18 instructing you on what the law is that applies to  
19 this type of case. It's your duty as jurors to  
20 accept and apply the law as I now state it to you.  
21 And if you think you have some idea of what you  
22 think the law is or what you think the law ought to  
23 be and it doesn't agree with what I now tell you the  
24 law is, you have to forget that idea because you're  
25 sworn now and you have to accept the law and apply

1 the law exactly as I state it to you.

2 As jurors, you are the judges of the facts, you  
3 are the sole judges of the facts. I, as the trial  
4 judge, cannot state or comment to you or make any  
5 statement to you about the facts of the case or how  
6 I might feel about the case. Since you, as the  
7 jury, are the sole judges of the facts in this case,  
8 you're not to infer from anything that I said during  
9 the progress of the trial of this case in ruling  
10 upon the admissibility of any evidence or anything  
11 otherwise that I may have said or done during the  
12 course of this instruction that makes you or would  
13 leave you to believe that I have an opinion about  
14 the facts of this case.

15 The law does not allow me to have an opinion  
16 about the facts of this case. That is solely a  
17 matter for you to decide. As jurors, it is your  
18 duty to determine the effect, the value, the weight,  
19 and the truth of the evidence as it was presented to  
20 you during the trial.

21 Now, I want to remind you, the fact that the  
22 defendant was arrested, charged and indicted in this  
23 case is not evidence in the case, and it can't be  
24 considered by you as evidence of guilt in this case,  
25 nor does it create any presumption or inference of

1       guilt. The indictments that we had in this case are  
2       simply the formal written instruments by which the  
3       charges were made against the defendant. It's the  
4       formal documents that give this Court jurisdiction  
5       to hear this case.

6               There were two indictment that were presented  
7       against the defendant; the first indictment, which  
8       was 2014-GS-05-202, was for armed robbery; the  
9       second indictment, which is 2014-GS-05-204, was for  
10      entering a bank with the intent to steal. Each of  
11      those two indictments are separate and distinct  
12      offenses. You must decide each indictment  
13      separately on the evidence and the law applicable to  
14      it, uninfluenced by your decision as to the other  
15      indictment. The defendant may be convicted or  
16      acquitted on any or all of the charges that were  
17      charged. You will be asked to write a separate  
18      verdict of guilty or not guilty for each of the  
19      indictments.

20             Now, as to those indictments, the defendant  
21      pled not guilty, and that plea casts a burden on the  
22      State to prove the defendant guilty beyond a  
23      reasonable doubt. A person charged with committing  
24      a criminal offense in South Carolina is never  
25      required to prove himself innocent. This is an

1       important rule of law in this country, that the  
2       defendant in a criminal trial will always be  
3       presumed to be innocent of that crime for which he's  
4       indicted unless and until his guilt has been proven  
5       by evidence satisfying you of that guilt beyond a  
6       reasonable doubt.

7               The presumption of the evidence isn't just a  
8       mere legal theory, it's not just some mere legal  
9       phrase; this is a substantial constitutional right  
10      which the defendant is entitled. This is a  
11      presumption of innocence which accompanies the  
12      defendant from the time he's charged, throughout the  
13      trial, unless and until you reach a verdict of guilt  
14      based upon evidence satisfying you of that guilt  
15      beyond a reasonable doubt.

16             As I've stated a number of times, this standard  
17      of proof is called guilt beyond a reasonable doubt.  
18      And I gave you an example and I said during -- you  
19      may have served as a juror in a civil case where you  
20      were told that it was necessary to only prove that  
21      the a fact is more likely true than not true, such  
22      as by the greater weight or the preponderance of  
23      evidence. In a criminal case, however, the State's  
24      proof must be more powerful than that; it must be  
25      beyond a reasonable doubt.

1           Proof beyond a reasonable doubt is proof that  
2       leaves you firmly convinced of the defendant's  
3       guilt. Reasonable doubt has also been defined as  
4       the kind of doubt that would cause a reasonable  
5       person to hesitate to act. There are very few  
6       things in this world that we know with absolute  
7       certainty, and in criminal cases the law does not  
8       require proof that overcomes every possible doubt.  
9       If, based on your consideration of the evidence, you  
10      are firmly convinced that the defendant is guilty of  
11      the crime charged, then you must find the defendant  
12      guilty. On the other hand, if you think there is a  
13      real possibility that the defendant is not guilty,  
14      then you must give that defendant the benefit of the  
15      doubt and find him not guilty.

16           I want to again instruct you and emphasize the  
17      fact that the defendant did not testify is not a  
18      factor to be considered by you in any way in your  
19      deliberation and in your consideration on the  
20      question of the guilt or innocence of the defendant.  
21      It must not be considered by you by -- in any way  
22      during your deliberations whatsoever.

23           A defendant has a constitutional right to  
24      remain silent and the assertion of this right must  
25      not be considered by you during your deliberations.

1 I repeat, under the oath that you took at the  
2 beginning of the trial, you are to draw no  
3 conclusion whatsoever from the fact that the  
4 defendant in this case did not testify. The fact  
5 that the defendant did not testify should not be  
6 even discussed in the jury room.

7 The burden of proof, as I stated to you, is on  
8 the State. The defendant is not required to prove  
9 his innocence. The burden of proof remains on the  
10 State to prove guilt beyond a reasonable doubt.

11 Now, there are two types of evidence that are  
12 generally presented during the course of a trial;  
13 there's direct evidence and circumstantial evidence.  
14 And direct evidence directly proves the existence of  
15 a fact and does not require deduction.  
16 Circumstantial evidence is a proof of a chain of  
17 facts and circumstances that indicate the existence  
18 of a fact.

19 Crimes can be proven by circumstantial  
20 evidence. The law makes no distinction between  
21 weight or credit to be given to either direct or  
22 circumstantial evidence; however, to the extent that  
23 the State relies on circumstantial evidence, all of  
24 the circumstances must be consistent with each  
25 other, and when taken together, point conclusively

1 to the guilt of the accused beyond a reasonable  
2 doubt. If the circumstances merely portray the  
3 defendant's behavior as suspicious, then the proof  
4 has failed.

5 The State has the burden of proving the  
6 defendant guilty beyond a reasonable doubt. This  
7 burden rests with the State regardless of whether  
8 the State relies on direct evidence, circumstantial  
9 evidence, or some combination of the two.

10 Now, as jurors you must necessarily determine  
11 the credibility of witnesses who testified in this  
12 case. And credibility simply means believability.  
13 It's your duty as jurors to analyze and to evaluate  
14 the evidence and determine what evidence convinces  
15 you of its truth. In determining the believability  
16 of witnesses who testified in this case, you can  
17 believe one witness over several witnesses or  
18 several witnesses over one witness. You may believe  
19 the testimony of a witness in its entirety or you  
20 can reject the testimony of a witness in its  
21 entirety. You can believe part of the testimony of  
22 a witness and you can reject the remaining part of  
23 the testimony of the same witness. And if you  
24 reject part of it, you can still accept the  
25 remainder of the witness' testimony.

1           You can consider whether any witness has  
2           exhibited to you any interest, bias, prejudice, or  
3           other motive in this case. You may consider the  
4           appearance and demeanor of a witness while on the  
5           witness stand. And you're not bound to decide this  
6           case based on the number of witnesses that they  
7           decide to produce.

8           Now, as I told you, there's two indictments, so  
9           I'll go over the substantive elements of those  
10          indictments with you now. The first indictment  
11          we'll go over is for armed robbery.

12          In order to prove this offense, the State must  
13          first prove beyond a reasonable doubt that the  
14          defendant took personal property from the person or  
15          person of another. Property is in the presence of a  
16          person if it is within the person's reach,  
17          inspection, observation, or control so that the  
18          person could, if not overcome with violence or  
19          prevented by fear, keep possession of the property.

20          The State must also prove beyond a reasonable  
21          doubt that the defendant carried away the property  
22          intending to permanently deprive the owner of the  
23          property or to keep the property for the defendant's  
24          own use. The slightest removal of the property or  
25          the complete possession of the property, even if for

1       an instant, by the defendant is sufficient to show a  
2       taking and carrying away of the property. The  
3       taking and carrying away of the property must have  
4       been done with violence or by putting the owner of  
5       the property in fear of violence.

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

13             Whether a BB gun, which has the appearance of  
14      and/or believed to be a real gun -- whether it's  
15      believed to be a real gun as a deadly weapon is a  
16      factual case for you to determine. The following  
17      are examples of instruments which can be considered  
18      as deadly weapons: A pistol, a shotgun, a rifle, a  
19      dirk, a dagger, a knife, a slingshot, metal  
20      knuckles, a razor, gasoline, a firebomb, a Molotov  
21      cocktail, lighter fluid. A gun can be a deadly  
22      weapon even if it's not operating.

23             Now, the second indictment is for robbery,  
24      entering a bank with intent to steal. So the  
25      elements of that crime, of robbery by entering a

1 building occupied by a bank, depository, or building  
2 associated -- or building or loan association with  
3 the intent to steal is this: The State has to prove  
4 this offense by first proving beyond a reasonable  
5 doubt that the defendant actually went inside the  
6 building or some part of it. The State must also  
7 prove beyond a reasonable doubt that the defendant  
8 had an intent to steal money, securities for money,  
9 or property by force, intimidation, or threats.  
10 It's not sufficient that the intent to steal was  
11 formulated after entry; however, the defendant's  
12 actions after he entered the building can be  
13 evidence used to determine if he had the intent to  
14 commit a crime at the time of entry. Intent may be  
15 shown by acts and conduct of the defendant and other  
16 circumstances from which you may naturally and  
17 reasonably infer intent.

18 Now, both of these indictments, the State has  
19 relied upon the theory of the hand of one, hand of  
20 all. And the law in that area is, if a crime is  
21 committed by two or more people who are acting  
22 together in committing a crime, the act of one is  
23 the act of all. A person who joins with another to  
24 commit an unlawful act is criminally responsible for  
25 everything done by the other person or persons which

1 happens as a natural and probable consequence of the  
2 acts done carrying out the common plan and purpose.

3 For example, two people can be guilty of  
4 killing another person when only one of the two had  
5 a gun, there was only one bullet, and only one of  
6 the two fired the shot that caused the death. If  
7 two or more people are acting together assisting  
8 each other, they are together and assisting each  
9 other in committing the offense, the act of one is  
10 the act of all, or, as it is sometimes called, the  
11 hand of one is the hand of all.

12 Prior knowledge that a crime is going to be  
13 committed without more is not sufficient to make a  
14 person guilty of that crime. Mere knowledge that  
15 another person is going to commit a crime, even if  
16 the defendant is present when the crime is  
17 committed, is not sufficient to convict the  
18 defendant as a principal.

19 A principal in a crime is one who either  
20 actually commits the crime or who is present,  
21 aiding, or abetting or assisting in committing the  
22 crime. When a person does an act in the presence of  
23 and with assistance of another, the act is done by  
24 both. When two or more people acting with a common  
25 plan or intent are present at the commission of the

1 crime, it does not matter who actually commits the  
2 crime; all are guilty, the hand of one is the hand  
3 of all.

4 Guilt as a principal is shown by actual or  
5 constructive presence at the scene as a result of  
6 prior arrangement, therefore a finding of prior  
7 arranged plan or common scheme is necessary for the  
8 finding of guilt as a principal. The State must  
9 prove beyond a reasonable doubt, by competent  
10 evidence, the theory of one -- the theory of the  
11 hand of one is the hand of all.

12 Present at the commission of the crime means to  
13 be sufficiently near to aid, abet, and assist in the  
14 commission of the crime; however, mere presence at  
15 the scene is not sufficient to convict one as a  
16 principal on the theory of aiding and abetting.  
17 Intent is also a necessary element where there must  
18 have been a common design or intent to commit the  
19 crime and the crime must have been committed  
20 pursuant thereto with the person aiding and abetting  
21 by some overt act.

22 Intent means intending the result that actually  
23 occurs, not accidentally or involuntarily. Intent  
24 may be shown by acts and conduct of the defendant or  
25 other circumstances from which you may naturally and

1       reasonably infer intent. The State must prove these  
2       elements, again, beyond a reasonable doubt.

3               The burden is on the State to prove every  
4       element of the crime charged. If, after reviewing  
5       all of the evidence, you find that the State has  
6       proved that the defendant was only present at the  
7       scene of the crime and that they have not proved  
8       beyond a reasonable doubt any other participation in  
9       the crime, then you must find the defendant not  
10      guilty. The law is on the -- the law is that proof  
11      of presence at the scene of the crime is not  
12      sufficient to find somebody guilty.

13             Now, the defendant raised the defense of  
14      coercion or duress. Coercion or duress is when a  
15      person makes another person commit a crime against  
16      someone else's person or property by the threat of  
17      immediate physical violence. Coercion or duress  
18      must be present, imminent, and of the type to create  
19      a well-grounded fear of death or serious bodily harm  
20      if the act is not done. The fear of the injury must  
21      be reasonable.

22             Coercion or duress is not a defense if there is  
23      any reasonable way other than committing the crime  
24      for the defendant to escape the threat of harm. The  
25      defendant must prove the defense of duress by a

1       preponderance of the evidence. If you find that the  
2       defendant was coerced into committing the crime, you  
3       must find the defendant not guilty.

4               Again, a preponderance of the evidence simply  
5       means the greater weight of the evidence. It's  
6       evidence which, when viewed as a whole, shows that  
7       the fact sought to be proved is more likely true  
8       than not true.

9               Now, in determining your verdict of guilty or  
10       not guilty, you cannot consider any possible penalty  
11       for any particular crime. The punishment for the  
12       crime is a matter for me to determine and should  
13       never be considered by you in any way whatsoever in  
14       arriving at a verdict of guilty or not guilty.

15               Now, your verdict must be unanimous, which  
16       means all 12 jurors must agree. And there's four  
17       possible verdicts in this case. Those are, as to  
18       the indictment for armed robbery, guilty or not  
19       guilty; as to the indictment for entering a bank  
20       with intent to steal, guilty or not guilty. And  
21       there's no significance whatsoever in the order in  
22       which I state these verdicts, something just has to  
23       be stated first.

24               Now, Madam Foreman, when the jury has reached a  
25       unanimous verdict as to one of the indictments, it's

1       your job to write on the back of it the verdict of  
2       guilty or not guilty. Now, I see on here -- I just  
3       noticed this, the foreman of the grand jury actually  
4       wrote his or her name down in the verdict line. It  
5       should have been right up there. So just ignore  
6       that. Right below where the grand jury -- in this  
7       case it looks like -- I'm going to guess this name  
8       is Terrant or something like that. Just below that,  
9       you either write the verdict of guilty or not  
10      guilty, and then right below that you sign your  
11      name. All right?

12             And then the same thing on the others, the  
13      grand jury foreperson wrote their signature just on  
14      the line below where it says verdict. It should  
15      have been right above it. Just ignore that and  
16      write either guilty or not guilty on whichever the  
17      two verdicts it is, sign it, date it, and let the  
18      bailiff know you've reached a verdict.

19             Now I'm going to send you back to the jury  
20      room. Don't begin your deliberations just yet  
21      because I have to give the lawyers an opportunity to  
22      tell me if I misspoke, and then we get the evidence  
23      together and send it back to you. When I send the  
24      evidence back along with the indictments, then the  
25      bailiff will tell you the Judge says it's okay for

1       you to deliberate.

2               Your lunch is there waiting on you. You can go  
3 ahead and start eating your lunch if you want to,  
4 but don't begin your deliberations until I tell you  
5 to. Shouldn't be just a few minutes. But if you  
6 want to go ahead and start eating, you can, just  
7 don't begin deliberations until I send word back  
8 with the bailiff along with the evidence. Okay?  
9 Thank you.

10               (The jury exits the courtroom at 1:04 PM.)

11               THE COURT: Anything from the State on the  
12 charges?

13               MR. MILLER: No, Your Honor.

14               THE COURT: From the Defense?

15               MR. WILSON: Nothing on the charge, Your Honor.

16               THE COURT: Is everything together there?

17               MR. WILSON: I believe so.

18               MR. MILLER: I believe so. But since we have  
19 60 photos, we were going to go through and make sure  
20 we had all of them.

21               THE COURT: All right. Do that real quick so  
22 we can send it back there to them and they can start  
23 their deliberations.

24               MR. WILSON: Can we talk to you off the record  
25 for a second, Your Honor?

1 THE COURT: Yes, sir.

2 (Sidebar conference.)

3 THE COURT: For the record, I'm discharging the  
4 alternate. Also for the record, he's renewed his  
5 motion for a directed verdict. We didn't get to  
6 argue that on the record, but we agreed that he made  
7 it at the presentation -- or the completion of his  
8 case after he rested, and it was denied.

9 MR. WILSON: Thank you, Judge.

10 THE COURT: Okay. Tell the jury they can begin  
11 their deliberations while they're eating.

12 (The begins deliberation at 1:09 PM.)

13 THE COURT: All right. Let the record reflect  
14 the defendant is in the courtroom.

15 The jury has sent back a note that says: Can  
16 we have the law on robbery and guilt of association,  
17 and can we have the law entering a bank with intent  
18 to steal? So the parties have asked that I recharge  
19 on -- well, it would be -- while they say robbery, I  
20 didn't charge it as robbery. I charged it as armed  
21 robbery, entering the bank with intent to steal, and  
22 hand of one, hand of all. There really wasn't  
23 anything called guilty of association. But I'll  
24 bring them in and we'll make sure that's what they  
25 want before we do it.

1           MR. WILSON: And that little portion of mere  
2           presence, Your Honor.

3           THE COURT: Mere presence is included in hand  
4           of one, hand of all.

5           MR. WILSON: Okay.

6           THE COURT: Okay. Bring the jury in.

7           (The jury enters the courtroom at 2:19 PM.)

8           THE COURT: All right. Folks, we got your note  
9           here, and you have asked: Can we have the law on  
10          robbery and guilt of association? That's the first  
11          question. By that, I take it that you want me to  
12          recharge you on armed robbery, which was the charge,  
13          not just robbery. And then by guilty of  
14          association, you mean the hand of one, hand of all  
15          theory?

16          THE FOREPERSON: Yes.

17          THE COURT: Okay. And then you also want to be  
18          recharged on entering a bank with intent to steal?

19          THE FOREPERSON: Yes.

20          THE COURT: All right. Well, on armed robbery,  
21          in order to prove this offense, the State must first  
22          prove beyond a reasonable doubt that the defendant  
23          took personal property from the person or person of  
24          another. Personal property is defined -- or  
25          property is in the presence of a person if it is

1       within the person's reach, inspection, observation,  
2       or control, so that the person could, if not  
3       overcome with violence or prevented by fear, keep  
4       possession of the property.

5               The State must also prove beyond a reasonable  
6       doubt that the defendant carried the property away  
7       intending to permanently deprive the owner of the  
8       property, and to keep the property for the  
9       defendant's own use. The slightest removal of the  
10      property or the complete possession of the property,  
11      even if for an instant, by the defendant is  
12      sufficient to show a taking and carrying away of the  
13      property.

14             The taking and carrying away of the property  
15      must have been done with violence or by putting the  
16      owner of the property in fear of violence. Finally,  
17      the State must prove beyond a reasonable doubt that  
18      the defendant was armed with a deadly weapon during  
19      the robbery.

20             A deadly weapon is any article, instrument, or  
21      substance which is likely to cause death or great  
22      bodily harm. Whether an instrument has been used as  
23      a deadly weapon depends on the facts and  
24      circumstances of each case. Whether a BB gun that  
25      has the appearance of and believed to be a real gun

1 is a deadly weapon is a factual question for you to  
2 determine.

3 And the following are examples of instruments  
4 which might be deadly weapons: A pistol, a shotgun,  
5 a rifle, a dirk, a dagger, a knife, a slingshot,  
6 metal knuckles, a razor, gasoline, firebomb, a  
7 Molotov cocktail, or lighter fluid. And a gun may  
8 be a deadly weapon even though it's not operating.

9 Then the second indictment, which was for  
10 entering a bank with intent to steal or robbery with  
11 the entering the bank with intent to steal is - -in  
12 order to prove this offense, the State must prove  
13 beyond a reasonable doubt that the defendant  
14 actually went inside of the building or some part of  
15 it.

16 And the building would be a bank, depository,  
17 or a building and loan association, and is charged  
18 with entering that building, bank, depository, or  
19 building and loan association with the intent to  
20 steal. So in order to prove that offense, the State  
21 has to first prove beyond a reasonable doubt that  
22 the defendant actually went inside the building or  
23 some part of it.

24 And then the State must also prove beyond a  
25 reasonable doubt that the defendant had an intent to

1 steal money, securities for money, or property by  
2 force, intimidation, or threats. It's not  
3 sufficient that the intent to steal was formulated  
4 after the entry, however the defendant's actions  
5 after he entered the building can be evidence to  
6 determine if he had the intent to commit a crime at  
7 the time of entry. Intent may be shown by acts or  
8 conduct of the defendant and other circumstances  
9 from which you may reasonably and naturally and  
10 reasonably infer intent.

11 Now, on the hand of one, hand of all, the law  
12 says that if a crime is committed by two or more  
13 people who are acting together in committing a  
14 crime, the act of one is the act of all. A person  
15 who joins with another to commit an unlawful act is  
16 criminally responsible for everything done by the  
17 other person or persons which happens as a probable  
18 or natural consequence of the acts done in carrying  
19 out the common plan and purpose.

20 For example, if two people could be guilty of  
21 killing another person when only one of the two had  
22 a gun and there was only one bullet and only one of  
23 the two fired the shot that caused the death, if two  
24 or more are acting together -- if two or more are  
25 together, acting together, assisting each other in

1 committing the offense, the act of one is said to be  
2 the act of all, or the hand of one is the hand of  
3 all.

4 Prior knowledge that a crime is going to be  
5 committed without more is not sufficient to make a  
6 person guilty of the crime. Mere knowledge that  
7 another person is going to commit a crime, even if  
8 the is present when the crime is committed, is not  
9 sufficient to convict the defendant as a principal.

10 A principal in a crime is one who either  
11 actually commits the crime or who is present aiding,  
12 abetting, or assisting in committing the crime.  
13 When a person does an act in the presence of and  
14 with the assistance of another, the act is done by  
15 both. When two or more people, acting with the  
16 common plan or intent are present at the commission  
17 of a crime, it does not matter who actually commits  
18 the crime, all the guilty, the hand of one is the  
19 hand of all.

20 Guilt as a principal is shown by actual or  
21 constructive presence at the scene as a result of  
22 prior arrangement; therefore, a finding of a prior  
23 arranged plan or common scheme is necessary for a  
24 finding of guilt as a principal. The State must  
25 prove beyond a reasonable doubt, by competent

1 evidence, the theory of the hand of one is the hand  
2 of all.

3 Present at the commission of a crime means to  
4 be sufficiently near to aid and abet and assist in  
5 the commission of a crime; however, mere presence at  
6 the scene of the crime is not sufficient to convict  
7 one as a principal on the theory of aiding and  
8 abetting.

9 Intent is also a necessary element, for there  
10 must have been a common design or intent to commit  
11 the crime, and the crime must have been committed  
12 pursuant thereto with the person aiding and abetting  
13 by some overt act. Intent means intending the  
14 result which actually occurs, not accidentally or  
15 involuntarily.

16 Intent may be shown by acts and conduct of the  
17 defendant and other circumstances from which you may  
18 naturally and reasonably infer intent. The State  
19 must prove these elements beyond a reasonable doubt.  
20 The burden is on the State to prove every element of  
21 the crime charged.

22 If you find, after reviewing all of the  
23 evidence, the State has proved that the defendant  
24 was only present at the scene of the crime and that  
25 they have not proved beyond a reasonable doubt any

1       other participation in the crime, then you must find  
2       the defendant not guilty. The law is that proof of  
3       presence at the scene of the crime is not sufficient  
4       to find someone guilty.

5             All right. Well, that is the charges that you  
6       have requested. Is there anything else that you  
7       need, Madam Foreman?

8             THE FOREWOMAN: No, sir.

9             THE COURT: All right. Well, we'll send you  
10      back and you may resume your deliberations.

11            (The jury returns to the jury room to resume  
12      deliberations at 2:28 PM.)

13            THE COURT: Anything from the State?

14            MR. MILLER: No, Your Honor.

15            THE COURT: From the Defense?

16            MR. WILSON: No, Your Honor.

17            THE COURT: All right. I'm going to have this  
18      note marked as a Court exhibit.

19            (Court's Exhibit No. 2 marked for  
20      identification.)

21            THE COURT: Okay. We'll stand at ease.

22            (Pause in the proceedings 2:28 PM - 3:05 PM.)

23            THE COURT: Let the record reflect the  
24      defendant is in the courtroom. Bring the jury in.

25            (The jury enters the courtroom at 3:06 PM.)

1           THE COURT: Madam Foreman, I understand the  
2 jury has reached a verdict to both indictments; is  
3 that correct?

4           THE FOREWOMAN: That's correct.

5           THE COURT: Is it unanimous?

6           THE FOREWOMAN: Yes, sir.

7           THE COURT: All right. Would you hand it to  
8 the bailiff, please.

9           All right. The defendant will rise. As to  
10 Indictment 2014-GS-05-202, State of South Carolina  
11 vs. Leon Amos Jason James, indictment for armed  
12 robbery, the verdict is guilty. As to Indictment  
13 2014-GS-05-204, State of South Carolina State vs.  
14 Leon Amos Jason James, entering bank with intent to  
15 steal, the verdict is guilty.

16           Ladies and gentlemen of the jury, if this is in  
17 fact your verdict, would you please indicate that by  
18 raising your right hand. Let the record reflect all  
19 jurors have raised their right hand.

20           Do you wish to have the jury poled?

21           MR. WILSON: That's sufficient, Your Honor.

22           THE COURT: All right. You may be seated.

23           Well, ladies and gentlemen of the jury, let me  
24 thank you for your service this week. You know, we  
25 ask people to do a very difficult thing; leave your

1 homes, your work, come in and spend time with us  
2 this week. As I said at the beginning of the week,  
3 we kind of take it for granted because we do it all  
4 the time. But I understand it's a huge departure  
5 from your life. So I hope we haven't kept you  
6 waiting too much at any given time. We're always  
7 doing something. We're not sitting in the back  
8 playing cards or telling war stories, there's always  
9 something going on in here because I'm especially  
10 sensitive to the fact that, you know, it's often a  
11 financial hardship for people when they're not a  
12 work. So I want to thank you for your commitment to  
13 public service and showing up and doing your public  
14 duty this week.

15 I also though told you at the first of the week  
16 that I think an alternative or perhaps a better way  
17 to think about jury service is a privilege to serve  
18 on a jury. You know, it is a right that defendants  
19 in this country have to have 12 people like  
20 yourselves who -- we went through the questions.  
21 You don't know this gentleman, you don't know the  
22 people involved, to such the effect that it would  
23 affect your ability to be fair and impartial.

24 And you come in here and listen to what was  
25 presented as a way of evidence, and then you went

1 back and took the law, clearly deliberated -- it was  
2 not a rushed decision -- came back, asked very good  
3 questions, and came to a group decision. When you  
4 stop and think about how hard it is to get 12 people  
5 to agree on just about anything in this day and age,  
6 and yet y'all took your time, went through and  
7 sifted through the evidence, clearly discussed what  
8 the law was, and came to a unanimous verdict. And  
9 that's a remarkable thing. I think the process is a  
10 good one. I'm very comfortable with the way our  
11 jury system works, and I hope we never, ever change  
12 it.

13 That will end your service this week on jury.  
14 We're not going to try any other cases, so you don't  
15 have to come back tomorrow or do anything like that.  
16 The clerk's office will have an expense check for  
17 you. I don't know if they mail it to you or give it  
18 to you when you leave out of here. But it's not  
19 nearly enough for what you've done by way of showing  
20 up and participating.

21 And I'd like to thank you for your service on  
22 behalf of the State of South Carolina and the people  
23 of Bamberg County. So you're free to go at this  
24 time. And you don't have to call or come back any  
25 more this week. I hope you enjoyed it. Thank you

1       for your attention.

2               (The jury is dismissed at 3:12 PM.)

3               THE COURT: All right. Do you have a  
4       sentencing sheet?

5               MR. MILLER: Mr. Hammack went to pick them up  
6       right now.

7               THE COURT: All right. Do you have any motions  
8       you want to make?

9               MR. WILSON: Judge, I think Rule 29 of the  
10       Criminal Rules of Procedure gives us ten days to  
11       file posttrial motions. We'd like to ask for the  
12       ten days. I think the way it's written is it has to  
13       be heard here unless we waive the right to be heard,  
14       and we'll be glad to be heard in a different county.

15              THE COURT: Okay. Make sure you send me a copy  
16       of it. I'm not saying they don't do it here, but I  
17       often don't get them sent to me by either the  
18       lawyers or the clerk, and then six months, a year  
19       later, somebody sheepishly asks me if I'm ever going  
20       to rule. And I'm not going to rule on something  
21       that I don't even know about.

22              MR. WILSON: No, sir. We'll file --

23              THE COURT: If you do file something, send it  
24       to me.

25              MR. WILSON: We'll file within ten days here

1           and then send them to Your Honor. And we'll find  
2           out when you can hear us whenever you are, and we'll  
3           be glad to travel to be heard. Your Honor, do you  
4           want to --

5           THE COURT: Well, I'm going to hear from the  
6           State first as to what they want, and then if  
7           there's anybody that's a victim that wants to speak,  
8           then I'll let you speak --

9           MR. WILSON: I didn't know if you wanted to  
10          hold sentencing and do that also --

11          THE COURT: No. We're going to do that now.

12          MR. MILLER: Your Honor, on October 2nd, 2014,  
13          the defendant, Leon James, was served notice of  
14          intent to seek life without parole, a certified,  
15          true copy of that notice that's being handed up to  
16          the Court.

17          Additionally, Your Honor, on August 11th of  
18          2015, our office obtained certified true copies of  
19          the indictment and sentencing sheet for armed  
20          robbery from March 18th of 2003 where the defendant  
21          was convicted and sentenced for armed robbery, and  
22          also, the same day, a conviction following a guilty  
23          plea for kidnapping.

24          Your Honor, all of those certified true copies  
25          were from the Richland County Clerk of Court. I

1 will hand those up as well for the underlying most  
2 serious offense conviction. Your Honor, based upon  
3 the statute as cited in the notice, the State would  
4 allege that the only sentence is life without the  
5 possibility of parole in this matter.

6 THE COURT: Do you have anything you wish to  
7 say before I impose sentence?

8 THE DEFENDANT: Just one thing, Your Honor.

9 THE COURT: Well, let me hear from your lawyer  
10 first and then you can speak. I'll let you have the  
11 last word.

12 MR. WILSON: Thank you, Your Honor. Notice of  
13 intent was served in this case actually, I think,  
14 prior to our involvement in this case. But it was  
15 discussed with the defendant. We -- everybody at  
16 this side of the table was aware it was a  
17 notice-with-intent-to-seek-life-without-parole case,  
18 and that was discussed with the defendant, and a  
19 consideration that went into his decision and all to  
20 go to trial, Your Honor.

21 I don't -- I don't know that there's a whole  
22 lot I can say, Your Honor, under the circumstances.  
23 But I would ask if he has something he'd like to  
24 submit, Your Honor, and then, like I said, we'd like  
25 the time to file the posttrial motions. Thank you.

1           THE COURT: Mr. James, would you like to speak?

2           THE DEFENDANT: Yes, sir. Those charges that  
3 they speak of as far as the armed robbery and the  
4 kidnapping, I was 15 years old when they occurred.  
5 And I did do those crimes, that's why I pled guilty  
6 to them. I got -- you'll see on the sentencing  
7 sheet that I had got ten years for both of them and  
8 they ran them concurrent, which I served nine years  
9 and two months all in total. And I just -- that's  
10 all I wanted to say. I wanted to ask you to take  
11 that into consideration when you do your sentencing.

12          THE COURT: Well, you know, Mr. James, the  
13 hard -- how old are you?

14          THE DEFENDANT: Thirty.

15          THE COURT: Thirty. Well, one of the hardest  
16 parts of this job is sentencing people, especially  
17 when it's a sentence like this where, you know, the  
18 sentence is life without parole. It's your second  
19 strike offense. You know, you get one life, that's  
20 all you get. And I hope you figure out some way to  
21 make yours count while you're in the department of  
22 corrections. I'm sure you'll want to appeal the  
23 case, so there's a limit as to what you can say in  
24 an instance like this.

25          But I hope you can find something good to make

1 out of the rest of your life while you're in the  
2 department of corrections. But as far as your  
3 sentence goes on each, it is life without the  
4 possibility of parole. Good luck to you, sir.

5 THE DEFENDANT: All right.

6 MR. MILLER: Thank you, Your Honor.

7 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Bamberg County, South Carolina, on the 30th of November through the 3rd of December, 2015.

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

April 24, 2016

*s/Bethanie K. Creppon*

Bethanie K. Creppon  
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BAMBERG

CIRCUIT COURT  
2014-GS-05-00202, 00204

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 LEON AMOS JASON JAMES,  
6 Defendant.

7  
8 Heard on Thursday, February 11, 2016  
9 Bamberg, South Carolina

10  
11 BEFORE:

12 THE HONORABLE ROGER M. YOUNG  
13  
14

15 APPEARANCES:

16 Counsel on Behalf of the State:  
17 David W. Miller, Esq.

18 Counsel on Behalf of the Defendant:  
19 Janek C. Kazmierski, Esq.  
20  
21

22 Cheri L. Young, RPR  
23 Circuit Court Reporter  
24 P O Box 5232  
25 Aiken, SC 29804-5232

## EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON THURSDAY, FEBRUARY 11, 2016 AT 11:12 A.M.:

2 THE COURT: We are here on the State versus  
3 Leon James. The State has -- the Defendants  
4 filed some post-trial motions. So, what would  
5 you like to say?

6 MR. KAZMIERSKI: Good morning, Your Honor.  
7 May it please the Court.

8 Your Honor, in Solicitor Miller's closing,  
9 he stated that evidence comes from the witness  
10 stand. And we believe that the evidence that  
11 came from the witness stand was not sufficient to  
12 convict Mr. James of the counts that he was  
13 charged with.

14 In particular, the State did convict Louis  
15 Garvin and Homer James in their, in their  
16 presentation to the jury but there was scant  
17 evidence connecting Leon James to those two  
18 individuals.

19 The only evidence the State presented was  
20 that Mr. James was in Denmark on the day the bank  
21 was robbed, that he did enter the bank twice  
22 trying to open an account, and that after the  
23 bank robbery he fled.

24 The State's first witness, Betty Wilson,  
25 testified exclusively about Homer James and Louis

1 Garvin, that those two entered the bank, that she  
2 saw them come running out. There was no mention  
3 of Mr. James in her testimony.

4 Chief Wally further testified that he saw  
5 one individual leave the vehicle that Mr. James  
6 was driving. He never mentioned seeing the  
7 driver leave the vehicle. However, the SLED  
8 agent that testified misrepresented Chief Wally's  
9 statement and provided that three individuals and  
10 not the fourth person that we contend was in the  
11 vehicle that forced Mr. James to drive after the  
12 bank robbery was there. Nobody testified, nobody  
13 linked Homer, or, excuse me, Leon James to any  
14 involvement with Homer James in the planning,  
15 preparation of the bank robbery that took place  
16 in Denmark.

17 The State concedes that when Leon James  
18 entered the bank he was unarmed. He didn't do --  
19 he didn't participate in the actual robbery when  
20 Homer James and Louis Garvin entered the bank.

21 And we would contend, Your Honor, that  
22 there is simply just not enough evidence to  
23 convict Leon James of the counts that he was  
24 charged with, and based on that we'd ask for a  
25 new trial.

1 THE COURT: All right. Mr. Solicitor?

2 MR. MILLER: Thank you, Your Honor. May it  
3 please the Court.

4 I think that there is some mis-remembering  
5 of what the testimony actually was. In fact, we  
6 did establish beyond any reasonable doubt that  
7 the Defendant was in Denmark on the day of the  
8 robbery. He was in the bank on video. There  
9 wasn't any question about that.

10 Ms. Wilson didn't testify about any  
11 individuals. What Ms. Wilson testified about was  
12 a description of the vehicle that she saw two  
13 people get out of and enter the bank, and later  
14 that she saw two people run from the bank towards  
15 the back area, railroad tracks there, and into  
16 the woods.

17 And, Your Honor, it's -- doesn't take  
18 somebody making any kind of stretch of logic that  
19 if she saw two people run into the bank, and  
20 there are two people on video inside the bank  
21 robbing the bank, and then she came back and the  
22 car is gone, because the car's no longer in front  
23 of the bank, these guys are running to a  
24 location, that there had to be someone else  
25 operating that vehicle while those two guys were

1 in the bank robbing it.

2 Your Honor, there is no evidence, no  
3 credible evidence that there was any other person  
4 other than the Defendant inside of that vehicle.

5 The jury heard evidence from the stand,  
6 testimony of Mr. Durrel Lassiter. They clearly  
7 believed Mr. Lassiter and frankly had every  
8 reason in the world to believe Mr. Lassiter. He  
9 was not involved with this robbery because he had  
10 documentation showing that he was in fact in  
11 Greensboro, North Carolina, on the day that this  
12 robbery happened. He wasn't in Denmark.

13 As the Court is aware, all three -- from  
14 the trial, all three of the defendants were  
15 arrested within a short time of each other in the  
16 day and a half or two days following the robbery,  
17 and obviously the Court, in the State's view,  
18 applied the proper standard with regard to the  
19 motion for directed verdict when it was made.

20 Your Honor, on January the 6th of this  
21 year, 2016, the South Carolina Supreme Court  
22 issued an opinion in State versus Kevin Tyrone  
23 Bennett. That is Appellate Case Number  
24 2014-001544. I have handed a copy to  
25 Mr. Kazmierski and would hand up a copy to the

1 Court. That talks about the standard and what  
2 the judge should be looking for in the trial when  
3 considering the defense motion for a directed  
4 verdict.

5 And, Your Honor, the State would submit to  
6 the Court that absolutely there is more, more  
7 circumstantial evidence in this case than there  
8 was even in Bennett. And Bennett was a case  
9 where the trial court denied the defense motion  
10 for a directed verdict. Subsequently that  
11 decision was reversed by the Court of Appeals and  
12 on certiori the Supreme Court reversed the Court  
13 of Appeals and said the trial judge got it right  
14 the first time.

15 And, Your Honor, we would submit that you  
16 did get it right the first time in this matter.  
17 There was ample circumstantial evidence to, from  
18 which the jury could conclude that this Defendant  
19 was in fact an active participant in the robbery,  
20 despite the acknowledgment, and we said from the  
21 beginning, we never alleged that he went into the  
22 bank during the robbery. He didn't have a gun  
23 inside the bank. He didn't jump over the counter  
24 inside the bank. He was the driver. It was his  
25 girlfriend's car that he had taken from his

1 girlfriend. You heard Ms. Grayhouse testify that  
2 she had reported the car stolen in Lexington  
3 County, that the last time she had seen the car  
4 it was in his possession, that it was his car.  
5 There were things from the car in -- from the  
6 Defendant inside that car. The hat that the  
7 Defendant was wearing in the video in the bank  
8 that day was outside the car, indicating that he  
9 had fled from that car and dropped the hat along  
10 the way.

11 And most importantly, Your Honor, he was  
12 arrested in the middle of, with all due respect  
13 to Bamberg County, nowhere, with the other two  
14 defendants in close proximity to him.

15 There was certainly ample evidence that  
16 this Defendant was in fact an active participant  
17 in the crime and that he did in fact act as the  
18 getaway driver.

19 And with all due respect to the defense's  
20 argument, this Court and the jury got it right  
21 whenever they found the Defendant -- when the  
22 jury found the Defendant guilty and the Court  
23 sentenced him as such.

24 Thank you, Your Honor.

25 THE COURT: Do you have anything in reply?

1 MR. KAZMIERSKI: Just briefly, Your Honor.

2 The Solicitor stated that there was no  
3 evidence, credible evidence of a fourth person in  
4 the vehicle. Despite that there was DNA, unknown  
5 DNA found in the vehicle, unknown DNA found in  
6 the trailer in the woods where Mr. James was  
7 apprehended. And then Court and the jury heard  
8 the testimony of Louis Garvin who also said there  
9 was a fourth person in the vehicle.

10 As I previously stated, Your Honor, and the  
11 Solicitor stated as well, Mr. James, his  
12 involvement in this was not in the jumping over  
13 the counter, was armed and actually participated  
14 in the robbery. And that was Betty Wilson's  
15 testimony. And by inference those two  
16 individuals were Homer James and Louis Garvin.

17 And then there is a stretch by the  
18 Solicitor to say by inference the vehicle was no  
19 longer where it was parked initially, the vehicle  
20 was moved and Leon James was the getaway driver.  
21 That's where the State's case tends to be -- has  
22 no evidence, simply linking my client to the two  
23 people that robbed the bank.

24 And we'd say that there's still -- is  
25 despite the Solicitor's arguments, there's not

1 sufficient evidence to uphold the jury's  
2 decision. We'd ask for a new trial.

3 THE COURT: Well as to Mr. James, it was  
4 always a circumstantial-evidence case about his  
5 involvement in the armed robbery. But, I believe  
6 as I stated during the trial there was  
7 substantial circumstantial evidence. In fact, I  
8 found it strong -- you know, you'd have to  
9 believe several highly improbable things to think  
10 that Mr. James was an innocent who happened upon  
11 a robbery that was taking place. He's from the  
12 Columbia Area. Why he would be in Denmark, South  
13 Carolina, to open up a checking account is just a  
14 stretch in the first place. And to happen to  
15 just be there during the time of, that an armed  
16 robbery was taking place after he had obviously  
17 been in casing the joint a couple of times  
18 earlier in the day then fled and didn't make any  
19 attempt to surrender, if he was an innocent and  
20 who just happened upon the scene there would have  
21 been no reason for him to flee because the people  
22 that fled all fled in different directions. And  
23 he never came out and claimed that these folks  
24 were threatening him. He fled off into the woods  
25 just like they fled off into the woods.

1 But the rest of the thing, I think all the  
2 evidence that the State presented while it was  
3 circumstantial evidence more than met the burden  
4 of substantial evidence of guilt. And therefore  
5 the motion is denied.

6 Anything else?

7 MR. MILLER: Your Honor, just an  
8 administrative matter.

9 The State, as the Court is aware Durrel  
10 Lassiter is a native or resident of Greensboro,  
11 North Carolina. The State was required for the  
12 trial to call upon Mr. Lassiter as well as his  
13 wife, Ms. Tamela Hinard who would have been able  
14 to testify if there was any question in our minds  
15 that she was with Mr. Lassiter inside the bank in  
16 Greensboro, North Carolina, on the day of the  
17 robbery.

18 We secured their attendance under the  
19 Uniform Agreement for the compulsion of out-of-  
20 state witnesses and incurred expenses on behalf  
21 of the solicitor's office in order to reimburse  
22 Ms. Hinard and Mr. Lassiter for their travel as  
23 well as their lodging and their daily witness  
24 rate. Your Honor, those expenses totaled  
25 \$674.67. We have a proposed order to hand up

1 that would order the Bamberg County treasurer's  
2 Office to issue a check to the second Circuit  
3 Solicitor's Office as reimbursement for those  
4 expenses that were necessarily incurred to secure  
5 the attendance of those two witnesses.

6 And I would note for the Court that  
7 Mr. Lassiter and Ms. Hinard obviously stayed in  
8 the same hotel room as they are married and they  
9 travel together in the same vehicle which was a  
10 rental car. We didn't even get into that. We  
11 just charged the mileage rate but we only applied  
12 that to one of them because they were together in  
13 the car and we only charged for one hotel room  
14 because they were together in the hotel room. We  
15 did account for the per diem of \$25 per witness  
16 per day in that calculation. And the \$674.67 is  
17 an accurate accounting of what the solicitor's  
18 office spent in order to secure the attendance of  
19 those two witnesses. And we would ask that the  
20 Court sign the order as proposed.

21 I have handed up a copy to Mr. --

22 THE COURT: Give me a pen. I don't have  
23 one up here. I'm passing -- do you have a pen?

24 (Court reporter tosses Judge a pen.)

25 THE COURT: All right. I've signed that

1 for you.

2 MR. MILLER: Thank you, Your Honor.

3 If there is nothing else from the defense  
4 the State has nothing else for the Court.

5 THE COURT: Okay. Anything else from the  
6 defense?

7 MR. KAZMIERSKI: Nothing else at this time,  
8 Your Honor.

9 THE COURT: All right. Good luck.

10 MR. MILLER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 END OF CASE: 11:26 A.M.

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2 CERTIFICATE OF REPORTER

3 STATE OF SOUTH CAROLINA )

4 COUNTY OF AIKEN )

5 I, Cheri L. Young, Registered Professional  
6 Reporter and Official Court Reporter for the State  
7 of South Carolina, Second Circuit-At Large, do  
8 hereby certify that the foregoing proceedings were  
9 written stenographically by me using computer-aided  
10 translation; further, that the foregoing is a true,  
11 accurate and complete record, to the best of my skill  
12 and ability, of all the proceedings had and evidence  
13 introduced in the hearing of the captioned case,  
14 relative to appeal, in the Court of General Sessions for  
15 Bamberg County, on the 11th day of February, 2016.

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

18 I have hereunder set my hand this 9th day of  
19 August, 2016.

20  
21 \_\_\_\_\_  
22 Cheri L. Young, RPR  
23 Official Court Reporter  
24  
25

WITNESSES

Denmark Police Department

Denmark Police Officer

Law Enforcement Case #: 31140045

JWH

ARREST WARRANT NUMBER

2014A0520200049

ACTION OF GRAND JURYTrue BillForeperson of Grand Jury  
Date: October 16, 2014VERDICTNot GuiltyJuror HannibalForeperson of Petit Jury  
Date: 10-16-14DOCKET NO. 2014GS0500202The State of South CarolinaCounty of BambergCOURT OF GENERAL SESSIONSOCTOBER TERM 2014THE STATE  
vs.LEON AMOS JASON JAMESCDR #: 0139Indictment forARMED ROBBERY§ 16-11-0330(A)J. STROM THURMOND, SOLICITORFILED  
2013 DEC -3 PM 3:28  
CLERK OF COURT  
FOR BAMB

STATE OF SOUTH CAROLINA     )  
                                               )  
 COUNTY OF BAMBERG            )  
                                               )

INDICTMENT FOR  
 ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on October 20, 2014, the Grand Jurors of Bamberg County present upon their oath:

That **LEON AMOS JASON JAMES** did in Bamberg County on or about June 5, 2014, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: firearm, feloniously take from the person or presence of Rebecca Templeton by means of force or intimidation goods or monies of Enterprise Bank of South Carolina, such goods or monies being described as follows: United States currency, all in violation of §16-11-330, 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.

  
 J. STROM THURMOND, SOLICITOR

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

575

COUNTY OF Bamberg  
 STATE VS.  
Leon Amos Jason James

AKA: \_\_\_\_\_

Race: Black Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] CtCity, State, Zip: Irmo, SC 29063-2423DL#: [REDACTED] SID#: SC01470333\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was  
 TO: Robbery/Armed Robbery

INDICTMENT/CASE#: 2014GS0500202A/W#: 2014A0520200049Date of Offense: 6/5/2014S.C. Code § : 16-11-0330(A)CDR Code #: 0139

## SENTENCE SHEET

10-30 years (LWOP)☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ 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: David W Miller 69553

Miller, David Warren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of Life without parole 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 \$ \_\_\_\_\_  
 § 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 \$ \_\_\_\_\_  
 § 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 \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ \_\_\_\_\_  
 TOTAL \$ \_\_\_\_\_

Clerk of Court/ Deputy Clerk

Court Reporter:

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 ☐

Other: \_\_\_\_\_

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

Presiding Judge

Judge Code: 2134Sentence Date: 12/2/15  
12/3/15

WITNESSES

Denmark Police Department

Denmark Police Officer

Law Enforcement Case #: 31140045

JWH

ARREST WARRANT NUMBER

2014A0520200051

DOCKET NO. 2014GS0500204

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

THE STATE  
vs.

LEON AMOS JASON JAMES

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury  
Date: October 16, 2014

VERDICT

*Guilty*

*10-16-14*  
Foreperson of Petit Jury

576  
Date:

CDR #: 0257

Indictment for

ENTERING BANK WITH INTENT TO  
STEAL

\$ 16-11-0380

J. STROM THURMOND, SOLICITOR

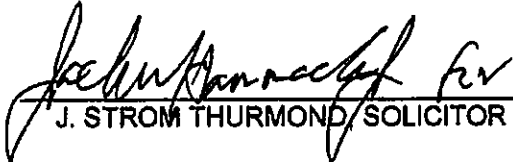
FILED  
2015 DEC -3 PM 3:27  
CLERK OF COURT  
BAMBERG, SC

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA | ) | INDICTMENT FOR                     |
|                         | ) | ENTERING BANK WITH INTENT TO STEAL |
| COUNTY OF BAMBERG       | ) |                                    |
|                         | ) | § 16-11-0380                       |

At a Court of General Sessions, convened on October 20, 2014, the Grand Jurors of Bamberg County present upon their oath:

That **LEON AMOS JASON JAMES** did in Bamberg County, South Carolina on or about June 5, 2014, unlawfully did enter Enterprise Bank of South Carolina located at 4668 Carolina Highway in Denmark, South Carolina, a building or part of a building occupied as a bank, depository, or building and loan association with the intent to steal money or securities for money, either by force, intimidation, or threats; all in violation of Section 16-11-380, 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.

  
 J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Bamberg

STATE VS.

Leon Amos Jason James

AKA:

Race: Black Sex: M Age: 30

DOB: SS#:

Address: Ct

City, State, Zip: Irmo, SC 29063-2423

DL#: SID#:

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

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

TO: Entering a Bank With Intent to Steal

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0500204

A/W#: 2014A0520200051

Date of Offense: 6/5/2014

S.C. Code §: 16-11-0380

CDR Code #: 0257

SENTENCE SHEET 0-30yvr.

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0380 of the S.C. Code of Laws, bearing CDR Code # 0257

☒ 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:

Miller, David Warren

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 180 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139

Sentence Date: 12/3/15

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

STATE OF SOUTH CAROLINA

County of BambergLeon Amos Jason James #291860

Full name and prison number (if any) of Applicant

Leon Amos Jason James #291960

v.

State of South Carolina

2018CP0500258  
IN THE COURT OF COMMON PLEASFILED  
BAMBERG COUNTY  
2018 DEC 28 AM 10:43  
JAMES B. HERS  
CLERK OF COURT  
BAMBERG, SC

APPLICATION FOR

POST-CONVICTION RELIEF

**RECEIVED**

JAN 02 2019

INSTRUCTIONS - READ CAREFULLYReferred to PCV/PB

Answered \_\_\_\_\_

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

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

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

1. Place of detention L.E.E. Correctional Inst.  
990 Wisacky Hwy. Bishopville, SC 29010
2. Name and location of Court which imposed sentence Bamberg Court of  
General Sessions of South Carolina
3. Name(s) of co-defendant(s) (if any) Homer James, Lewis Garvin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Armed Robbery - 2014G50500202, 2014(b) Bank Robbery / Entering bank with Intent to Steal  
2014G50500204

580 (c) 2014G505002014

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

(a) Life without Parole

(b) Life without Parole

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere \_\_\_\_\_

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

YES - Direct Appeal

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

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

i. The South Carolina Court of Appeals

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

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

i. The South Carolina Court of Appeals (Direct

ii. Appeal) was Dismissed

~~iii.~~ \_\_\_\_\_

(c) the date of each such result:

i. Submitted May 1, 2018 - Filed June 27, 2018

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

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

i. Appellate Defender Suzan Barber Hackett

ii. Filed an Anders Brief.

~~iii.~~ \_\_\_\_\_

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

~~(a)~~ \_\_\_\_\_

~~(b)~~ \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Subjectmatter Jurisdiction lack there of
  - (b) Attorney failed to inform of the violations in existing
  - (c) Violation of DUE Process of the Law
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Indictments
  - (b) Ineffective Counsel
  - (c) S.C Constitution Article 1, Section 3, Article 5 section 21
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
  - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
  - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
  - (d) any other petitions, motions or applications in this or any other Court? Yes
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. Direct Appeal
    - ~~ii.~~ \_\_\_\_\_
    - ~~iii.~~ \_\_\_\_\_
    - ~~iv.~~ \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. The South Carolina Court of Appeals
    - ~~ii.~~ \_\_\_\_\_
    - ~~iii.~~ \_\_\_\_\_
    - ~~iv.~~ \_\_\_\_\_

(c) the disposition thereof:

i. Anders Brief

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

~~iv.~~ \_\_\_\_\_

(d) the date of each such disposition:

i. Submitted May 1, 2018 Filed June 27, 2018

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

~~iv.~~ \_\_\_\_\_

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

i. Dismissed

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

~~iv.~~ \_\_\_\_\_

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

No

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

(a) which grounds have been presented:

~~i.~~ \_\_\_\_\_

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

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

~~i.~~ \_\_\_\_\_

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

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

- (a) Court lacked Subject matter Jurisdiction (indictments)  
 (b) I was told that the grounds would be, but they  
 (c) weren't this is a part of which supports 'Ineffective Counsel'

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

- (a) your arraignment and plea? \_\_\_\_\_  
 (b) your trial, if any? yes  
 (c) your sentencing? yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes (Direct Appeal)  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

None I have not anything

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. Tanek, C. Kazmierski  
P.O. Box 1150  
 ii. Bamberg S.C. 29003

~~iii.~~

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

- i. Trial and Sentencing

~~ii.~~

~~iii.~~

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

Convictions are reversed, The state provides an adequate  
competency evaluation, New trial, sentence reduction

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

No

STATE OF SOUTH CAROLINA )

County of Bamberg )

VERIFICATION

I, Leon James, 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.

[Signature]

SWORN to and subscribed before me this 26  
 day of NOV., 2018.

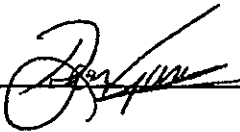
[Signature] (L.S.)  
 Notary Public

My Commission Expires: 3/3/2024

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

I, Leon James, 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  
26 day of Nov, 2018.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

Leon Amos Jason James, SCDC#291860,

Applicant,

v.

State of South Carolina,

Respondent.

FILED  
BAMBERG COUNTY  
IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT  
JAMES B. HIERS  
CLERK OF COURT  
BAMBERG, SC  
Case No.: 2018-CP-05-00258

RETURN, MOTION FOR A MORE  
DEFINITE STATEMENT, AND  
PARTIAL MOTION TO DISMISS

In response to the post-conviction relief application filed December 28, 2018, by Applicant Leon Amos Jason James, Respondent (the State) would show this Court:

#### I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections following convictions in Bamberg County. During its October 2014 term, the Bamberg County Grand Jury indicted Applicant for armed robbery (2014-GS-05-0202) and entering a bank with intent to steal (2014-GS-05-0204). Applicant was presented by Janek Kazmierski, Esquire. The case was prosecuted by Deputy Solicitor David Miller, Assistant Solicitor Jack Hammack, and Assistant Solicitor Wilder Harte.

On October 27, 2015, Applicant, alongside co-defendants Homer Arthur James and Lewis Garvin, appeared for pre-trial hearings before the Honorable Roger M. Young, Sr., circuit court judge. Thereafter, on November 30, 2015, Applicant proceeded to trial before Judge Young. On December 3, 2015, the jury convicted Applicant as indicted. Judge Young sentenced Applicant to confinement for life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

On February 11, 2016, all parties reconvened before Judge Young for a hearing on Applicant's post-trial motion challenging his conviction based on the sufficiency of the evidence. Judge Young denied the motion.

Thereafter, Applicant filed a notice of an appeal and an appeal as perfected on his behalf by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense-Division of Appellate Defense. (Appellate Case No. 2016-001155). Appellate Defender Hackett filed a brief of appellant pursuant to Anders v. California, 386 S.S. 738 (1967) and moved to be relieved as counsel for Applicant. Applicant then filed his *pro se* brief. On June 27, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal. State v. James, Unpub. Op. No. 2018-UP-284 (Ct. App. filed June 27, 2018). The Remittitur was issued on July 13, 2018.

## **II. Allegations Raised and Relief Sought in Application**

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on general allegations of ineffective assistance of counsel, subject matter jurisdiction, and due process violations. Applicant wholly failed to provide any specific allegations or any facts to support these allegations.

As requested relief, Applicant states he wants "convictions reversed, the State provides and adequate competency evaluation, new trial, sentence reduction."

Attached herewith and incorporated herein by reference are the records of the Bamberg County of Court regarding the subject convictions challenged in this application, the record on appeal containing all pertinent transcripts, the appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

### III. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts his trial counsel was constitutionally ineffective. However, Applicant wholly fails to state with any specificity facts to support this general allegation. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Respondent moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel.

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 (1984); Loinax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

As discussed above, it is impossible for Respondent to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has completely failed to provide any specific allegations or facts to support such claims. Respondent requests Applicant, through counsel, provide specific claims and facts to support this vague allegation.

#### **IV. Motion for More Definite Statement as to Ineffective Assistance of Counsel**

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which his claims of ineffective assistance of counsel are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. 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).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds

upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

#### **V. Summary Dismissal of Allegation of a Lack of Subject Matter Jurisdiction**

Applicant claims he is entitled to relief based on a lack of subject matter jurisdiction, but wholly fails to provide any specific claims or facts to support this vague allegation.

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Accordingly, an applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Here, Applicant’s convictions involved a criminal charge in General Sessions Court, and therefore, the circuit court clearly had subject matter jurisdiction. This allegation should be summarily dismissed.

#### **VI. Summary Dismissal of Allegations of Due Process Violations**

Applicant alleges a denial of due process of law. However, Applicant fails to set forth with specificity grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “... specifically set forth the grounds upon which the application is based.” S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the applicant to make at least a *prima facie*

showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. 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). Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

#### **VII. Any Future Amendments and Invocation of Discovery Process**

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCR. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCR. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCR.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

**VIII. Response to Any and All Other Allegations**

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

**IX. Request for Applicant to file an Amended Application**

WHEREFORE, having made its return, the State requests applicant, through his counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to arrant an evidentiary hearing on this application and requests a hearing not be schedule until after an amended application is so filed. As to the allegations of due process and subject matter jurisdiction claims, Respondent moves for summary dismissal.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

April 4, 2019

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) |                              |
|                                 | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF BAMBERG               | ) |                              |
|                                 | ) |                              |
|                                 | ) | 2018-CP-05-00258             |
|                                 | ) |                              |
| LEON AMOS JASON JAMES, #291860, | ) |                              |
|                                 | ) |                              |
| 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, Motion for a More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nancy C. Fennell, Esquire  
Post Office Box 2176  
Irmo, South Carolina 29063

DATED this the 4th day of April 2019.

  
Kaitlyn S. Slice, Legal Assistant  
For Respondent

|                                |   |                              |
|--------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS |
|                                | ) | FIFTH JUDICIAL CIRCUIT       |
| COUNTY OF BAMBERG              | ) | C/A NO. 2018-CP-05-00258     |
|                                | ) |                              |
| Leon Amos Jason James, #291860 | ) | AMENDMENT TO PCR APPLICATION |
|                                | ) |                              |
| Applicant,                     | ) |                              |
|                                | ) |                              |
| v.                             | ) |                              |
|                                | ) |                              |
| State of South Carolina        | ) |                              |
|                                | ) |                              |
| Respondent.                    | ) |                              |
| _____                          | ) |                              |

The Applicant, by and through appointed counsel below, hereby amends his PCR application filed on December 28, 2018, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Applicant amends his response to item 10 to add the following:

Ineffective assistance of counsel for failing to timely object to state presented evidence of flight.

Ineffective assistance of counsel for failing to raise the issue that Applicant's first offense was when he was fifteen years old and should not have counted toward seeking life without parole.

Ineffective assistance of counsel for failing to question Rebecca Templeton, whose name appears on the indictment, regarding Applicant's involvement in the robbery.

Ineffective assistance of counsel for failing to object to the burden shifting that occurred on p. 364 - lines 4-6 and lines 16-19

Ineffective assistance of counsel for failing to prepare for trial with Applicant and failing to discuss with Applicant a trial strategy.

Ineffective assistance of counsel for failing to investigate the defense regarding the identity of the fourth person.

Ineffective assistance of counsel for failing to raise issues regarding the validity of the indictment, including the fact that indictments were not filed stamped pursuant to Rule 3 of the South Carolina Rules of Criminal Procedure.

Ineffective assistance of counsel for failing to raise the issue of the presence of a third party in the deliberation room after the jury started deliberating. A deputy entered the deliberation room.

Ineffective assistance of counsel for failing to put forth a defense on Applicant's behalf, including evidence of Applicant's involuntary presence on the day in question.

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

Applicant amends his response to Item 19 as follows:

Applicant seeks a new trial.

Respectfully submitted,

s/ Nancy C. Fennell

Nancy C. Fennell  
Law Office of Nancy C. Fennell, LLC  
P.O. Box 2176  
Irmo, South Carolina 29063  
(803) 553-1772  
[nancyfennell1@gmail.com](mailto:nancyfennell1@gmail.com)  
SC Bar No. 69729  
Attorney for Applicant

Columbia, SC  
May 3, 2021

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this Amendment to PCR

Application was served upon the following this 3rd day of May, 2021 via email to:

Michael Neubauer  
Assistant Attorney General  
michaelneubauer@scag.gov  
P.O. Box 11549  
Columbia, SC 29211

s/ Nancy C. Fennell  
Nancy C. Fennell  
Attorney for Applicant

STATE OF SOUTH CAROLINA )

COUNTY OF BAMBERG )

Leon Amos Jason James, #291860 )

Applicant, )

v. )

State of South Carolina )

Respondent. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
C/A NO. 2018-CP-05-00258

AMENDMENT TO PCR APPLICATION

FILED  
BAMBERG COUNTY  
2022 FEB 17 AM 8:45  
JASON  
CLERK OF COURT  
BAMBERG, SC

The Applicant, by and through appointed counsel below, hereby amends his PCR application filed on December 28, 2018, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Applicant amends his response to item 10 to add the following:

Ineffective assistance of counsel for failing to raise the issue that Applicant's first offense was when he was fifteen years old and should not have been considered toward seeking life without parole.

Ineffective assistance of counsel for failing to question Rebecca Templeton, whose name appears on the indictment, regarding Applicant's involvement in the robbery.

Ineffective assistance of counsel for failing to prepare for trial with Applicant and failing to discuss with Applicant a trial strategy.

Ineffective assistance of counsel for failing to thoroughly investigate the defense regarding the identity of the fourth person as it relates to any available defense on behalf of Applicant as to his involuntary presence on the day in question.

Ineffective assistance of counsel for failing to raise issues regarding the validity of the indictment, including the fact that indictments were not filed stamped pursuant to Rule 3 of the South Carolina Rules of Criminal Procedure.

Ineffective assistance of counsel for failing to raise the issue of the presence of a third party in the deliberation room after the jury started deliberating. Sheriff Ed Darnell entered the deliberation room.

Furthermore, Applicant's Sixth Amendment guarantee of the right to trial with an impartial jury was violated when a deputy entered the deliberation room. *Parker v. Gladden*, 385 U.S. 363 (1966).

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

Applicant seeks a new trial.

Respectfully submitted,

s/ Nancy C. Fennell  
Nancy C. Fennell  
Law Office of Nancy C. Fennell, LLC  
P.O. Box 2176  
Irmo, South Carolina 29063  
(803) 553-1772  
[nancyfennell1@gmail.com](mailto:nancyfennell1@gmail.com)  
SC Bar No. 69729  
Attorney for Applicant

Irmo, SC  
January 25, 2022

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this Amendment to PCR

Application was served upon the following this 25th day of January, 2022 via email to:

Megan Jameson  
Senior Assistant Deputy Attorney General  
mjameson@scag.gov  
P.O. Box 11549  
Columbia, SC 29211

Michael Neubauer  
Assistant Attorney General  
michaelneubauer@scag.gov  
P.O. Box 11549  
Columbia, SC 29211

s/ Nancy C. Fennell  
Nancy C. Fennell  
Attorney for Applicant

FILED  
BAMBERG COUNTY  
2022 FEB 17 AM 8:45  
CLERK OF COURT  
BAMBERG, SC

STATE OF SOUTH CAROLINA

DOCKET NO.

2018-CP-52-00258

IN THE SOUTH CAROLINA CIRCUIT COURT 2

COUNTY OF BAMBERG

LEON AMOS JAMES,  
Plaintiff,

v.

STATE OF SOUTH CAROLINA  
Defendant.

~~~~~

07/16/2024 Motion Hearing

B E F O R E:

The HONORABLE BRIAN M. GIBBONS,  
Circuit Court Judge

C O U R T:

Bamberg County Circuit Court 2

T R A N S C R I B E R:

Tina M. Steinmetz, Transcriber

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

NANCY FENNELL, *Esquire*  
PO Box 2176  
Irmo, SC 29063

Attorney for the Plaintiff,

TRAVIS CRUISE MITCHELL, *Esquire*  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

Attorney for the Defendant.

\*\*\*\*\*

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**E X H I B I T S**

(None Marked)

## JULY 16, 2024 - MOTION HEARING

THE COURT:       Alright.   Mr. A.G.?

MR. MITCHELL:   May it please the Court, Your Honor.

THE COURT:       Yes.

MR. MITCHELL:   This is the post-conviction relief matter of Leon Amos Jason James v. State. Case Number 2018-CP-05-00258 out of Bamberg County. I am Cruise Mitchell on behalf of the State of South Carolina. Applicant is present, represented by counsel Nancy Fennell.

During its October 2014 term, the Bamberg Couty Grand Jury indicted Applicant for armed robbery and entering a bank with intent to steal. Applicant was represented by Janek Kazmierski, Esquire. The case was prosecuted by Deputy Solicitor David Miller, Assistant Solicitor Jack Hammack, and Assistant Solicitor Wilder Hart.

On November 30<sup>th</sup>, 2015, Applicant proceeded to a jury trial before the Honorable Roger M. Young. On December 3<sup>rd</sup>, 2015, the jury convicted Applicant as indicted. Judge Young sentenced Applicant to confinement for life without possibility of parole, pursuant to the recidivist statute.

1           On February 11<sup>th</sup>, 2016, all parties reconvened  
2           before Judge Young for a hearing on Applicant's Post-  
3           Trial Motion challenging his conviction based on the  
4           sufficiency of the evidence. Judge Young denied the  
5           motion.

6           Thereafter, Applicant filed a Notice of Appeal  
7           and appeal was perfected by Appellate Defender Susan  
8           B. Hackett.

9           On June 27<sup>th</sup>, 2018, the South Carolina Court of  
10          Appeals dismissed the Applicant's appeal. The remit-  
11          ter was issued on July 13<sup>th</sup>, 2018. And with that, Your  
12          Honor, I'll turn the case over to Ms. Fennell.

13          THE COURT:        Alright. Ms. Fennell?

14          MS. FENNELL:    Thank you, Your Honor. I would  
15          call Leon James to the stand.

16          THE COURT:        Alright. Sir.

17          CLERK:        Please place your left hand on the Bi-  
18          ble and raise your right hand. Do you solemnly swear  
19          or affirm the testimony you should give the Court in  
20          this case shall be the truth, the whole truth, and  
21          nothing but the truth, so help you God?

22          MR. JAMES:        I do.

23          CLERK:        Okay. Please take a seat at the witness  
24          stand and state your full name for the Court.

## DIRECT EXAMINATION OF LEON JAMES

BY MS. FENNELL

Q. Thank you. Mr. James, can you state your name for the record?

A. Yes. My name is Leon Amos Jason James.

Q. Okay. Mr. James, we're here on your application for Post-Conviction Relief and you filed your application on December 28<sup>th</sup>, 2018, is that correct?

A. Correct.

THE COURT: I need to take a time out. Are you going to hand me the packet?

MR. MITCHELL: Yes, Your Honor.

THE COURT: Thank you. Go ahead, Ms. Fennell.

MS. FENNELL: Thank you, Your Honor. May I approach the witness?

THE COURT: Yes.

MS. FENNELL CONTINUES

Q. And Mr. James, I'm going to show you this document. This is the original application that you filed. And can you look at Paragraph 10 and -- and indicate what the original allegations that you included in your application?

A. 10?

Q. Yes.

A. It was subject matter jurisdiction -- what I was --

1 subject matter jurisdiction so on, and -- okay. What  
2 I was -- subject matter jurisdiction, I didn't think  
3 that the Court had jurisdiction on the bank robbery  
4 because I was under the impression that the bank was  
5 federally insured.

6 Q. Okay. And Mr. James, right now, I just want you to  
7 read what's on the paper.

8 A. Oh, okay. Sorry.

9 Q. We'll go into all of that.

10 A. Subject matter jurisdiction, lack thereof, attorney  
11 failed to inform of the violation in resisting, vio-  
12 lation of due process of the law.

13 Q. Okay. Thank you. I'll take that back. And then after  
14 -- after you and I discussed your case, we then filed  
15 an amendment to your application, is that right?

16 A. That's right.

17 Q. And I -- do you still have a copy of that amendment  
18 that I provided you? And we filed that amendment on  
19 February 17<sup>th</sup>, 2022. Do you have a copy of that?

20 A. I do.

21 Q. Alright. And does that amendment contain all of the  
22 allegations that you want to roll -- move forward to  
23 -- move forward with today for your PCR?

24 A. It does.

25 Q. Okay. Thank you. Now, Mr. James, where are you

1           currently housed?

2       **A.**   I'm at the Greenville Correctional Institute.   [Pho-  
3           netic].

4       **Q.**   Okay.   And what sentence are you serving?

5       **A.**   I'm serving a life sentence.

6       **Q.**   Okay.   And you were indicted for armed robbery and  
7           entering a bank with intent to steal?

8       **A.**   Correct.

9       **Q.**   And did you take the case to trial?

10      **A.**   Yes, I did.

11      **Q.**   And who represented you during that trial?

12      **A.**   Janek Kazmierski.

13      **Q.**   And was he the original attorney that was appointed to  
14           represent you?

15      **A.**   No, he was not.   I had two attorneys before him.   There  
16           was Brad MacMillan [phonetic] and some other guy.   I  
17           don't even know his name.

18      **Q.**   Okay.   And you went to trial on November 30<sup>th</sup>, 2015?

19      **A.**   Correct.

20      **Q.**   And how long had you been incarcerated prior to going  
21           to trial?

22      **A.**   About -- about nineteen months.

23      **Q.**   Okay.

24      **A.**   Close to that.

25      **Q.**   Prior to your trial on November 30<sup>th</sup> of 2015, when --

1           when was it that Mr. Kazmierski was appointed to rep-  
2           resent you?

3     **A.**   In October.   I went to trial in December.   I believe  
4           he was appointed in October.

5     **Q.**   Okay.   So, from October to November 30<sup>th</sup> is the  
6           timeframe that he represented you before going to  
7           trial?

8     **A.**   Yes, ma'am.

9     **Q.**   And did you meet with Mr. Kazmierski?

10    **A.**   Yes.   I met with him three times.

11    **Q.**   Okay.   And where were you when you met with him?

12    **A.**   I was in Bamberg County Jail.

13    **Q.**   And did he -- so, he came to see you?

14    **A.**   Yes.

15    **Q.**   And when he came to see you, what did you all discuss?

16    **A.**   The first time he came he told me that he was on my -  
17           - on my case and he told me he was working to and get  
18           -- gather some paperwork and he wanted to know what I  
19           had to say so he could [Inaudible -- muffled/muted].  
20           He said he had to corroborate some things.   So, I told  
21           him and he was like let me check it out.   And the  
22           second time he came, I'm -- I think it -- that was the  
23           time he came with a -- with a plea or something like  
24           that.   And the third time he came he was just like  
25           hey, this -- this is our court date, this is when we're

1           going. Be ready for that because -- you know what I  
2           mean.

3    **Q.** Okay.

4    **A.** Yes.

5    **Q.** And did he inform you that a Notice of Intent to Seek  
6           Life Without Parole had been served?

7    **A.** He did.

8    **Q.** So, -- so, you were aware of that?

9    **A.** Yes.

10   **Q.** Okay. And did you discuss with him what defenses you  
11       would have if you went to trial?

12   **A.** Mmm ... I -- I didn't have an opportunity to -- to  
13       discuss these things and -- it was brief. I did, but  
14       it was -- it was very brief. I was thinking that I  
15       would see more of him, so, I just didn't because I  
16       went -- I thought [Inaudible -- muffled/muted].

17   **Q.** Okay. And prior to going to trial, had you received  
18       a plea offer?

19   **A.** Yes. The plea offer of thirty years.

20   **Q.** Did you discuss that plea offer with Mr. Kazmierski?

21   **A.** Mmm ... momentarily. It was -- it was -- he -- he  
22       presented it. I -- we didn't discuss it, it was pre-  
23       sented, you know?

24   **Q.** Okay.

25   **A.** Didn't get too much, you know, into it as far as him

1 weighing out the options and telling me his opinion  
2 and things like that. I mean, yeah, he -- he did tell  
3 me his opinion. He told me what was going on.

4 Q. Okay. And in this case, --

5 A. Yeah.

6 Q. -- there was no direct evidence linking you to the  
7 crime in this case?

8 A. No, ma'am. No, ma'am, there wasn't.

9 Q. Okay. So, it was all circumstantial evidence?

10 A. Yeah. Originally, it was -- it was. The thing about  
11 it is I did not commit the crime, you know what I mean?  
12 And what they said that -- well, what the jury was  
13 called in was guilty by association is what they have.  
14 I believe the theory called hands of one, hands of  
15 all. You know, I -- I did not -- I was not even inside  
16 of the building when it was being robbed. So, I was  
17 not in there. So, --

18 Q. And did you have conversations with your counsel about  
19 that fact?

20 A. -- I did. And what he told me was that they were  
21 implementing something called hands of one, hands of  
22 all -- but the thing about that is I was not -- that  
23 was not something that I told anyone to do. That's  
24 something that someone did that was -- that was hap-  
25 pened to be -- I happened to be transporting, you know?

1        So, that's what we discussed. I told him that I had  
2        no -- I had nothing to do with it, you know what I  
3        mean, like whatsoever. You know? I was just giving  
4        the guy a ride, you know? Hands of one, hands of all.

5        Q. Okay.

6        A. And now I have a life sentence for it. But I'm not  
7        really sure [Inaudible -- muffled/muted].

8        Q. Okay. And let's -- let's turn to your -- your amendment  
9        and the specific allegations in the amendment. The  
10       first allegation - ineffective assistance of counsel  
11       for failing to raise the issue that Applicant's first  
12       offense was when he was fifteen years old and should  
13       not have been considered toward seeking life without  
14       parole.

15       A. Mmm hmm. [Affirmative].

16       Q. Did you have a -- a -- a strike offense prior to being  
17       charged with these charges?

18       A. Okay. About that, Ms. Fennell, yes, when I was fifteen  
19       years old, I was -- I was incarcerated for armed rob-  
20       bery. And I had a -- an attorney named Joe Chapman.  
21       To this day, he's been disbarred for misconduct and  
22       they used that from when I was fifteen years old as my  
23       first strike, you know what I mean? And they used --  
24       and then they say this right here caused my sentence,  
25       so I was given a life sentence. I didn't -- you know,

1 I -- I don't even know how they came up with it.

2 Q. So, you were charged as a juvenile and you were waived  
3 into general sessions [Inaudible -- muffled/muted]?

4 A. Yes, ma'am. They got Joe Chapman. He was disbarred  
5 for misconduct. I'm not sure what he did or anything,  
6 but this is something that he -- he was -- I was a  
7 juvenile, I was fifteen years old. I didn't understand  
8 the process. He was just -- you know what I mean? He  
9 just -- I really didn't -- I wasn't even aware that I  
10 was charged as an adult, you know, until I was in  
11 prison doing ten years, you know? So, yes.

12 Q. Did you discuss with Mr. Kazmierski whether he could  
13 raise that issue?

14 A. I did. But I don't believe it was never -- it was  
15 never a topic of discussion, but I don't know why, you  
16 know? It should have been the main topic of discussion  
17 once the contingency of life without parole was pre-  
18 sented.

19 Q. Okay. And he didn't explain to you --

20 A. No.

21 Q. -- whether or not that had any impact on --

22 A. No. No.

23 Q. -- seeking of life without parole?

24 A. No, ma'am, he really didn't.

25 Q. Okay. And then your second allegation -- well, strike

1       that.  You were -- so, you were -- you pled guilty  
2       when you were fifteen, is that correct?

3       **A.**  Yes.  Again, Mr. Chapman, he had -- I guess that's why  
4       he's disbarred now, he had suggested -- he really co-  
5       erced me into signing [Inaudible -- muffled/muted] I'm  
6       fifteen years old, man, I did --

7               THE COURT:       Allow me to interrupt.  Are you  
8       talking about Jonathan Chapman, Judge Chapman?  Joe  
9       Nathan Chapman [phonetic]?

10       MR. JAMES:       Yes, Sir.

11       THE COURT:       Alright.  I -- I know Mr. Chapman  
12       and [Inaudible -- muffled/muted], he is not -- he is  
13       not disbarred.  He was suspended and I don't think --

14       MR. JAMES:       Oh, suspended.  Oh, well, I apol-  
15       ogize.

16       THE COURT:       -- no, no, no.  I'm not telling  
17       you -- you didn't know.  But I -- I -- I want to  
18       correct the record.  He was suspended.  That was a  
19       suspension.

20       MR. JAMES:       Okay.

21       THE COURT:       And he was rematched -- he was re-  
22       instated about six years ago.  And I was hoping, be-  
23       cause he just appeared in front of me like nine days  
24       ago --

25       MR. JAMES:       I wasn't aware of --

1 THE COURT: -- and I wanted to make sure he's  
2 legit.

3 MR. JAMES: -- yeah. I wasn't aware of that.  
4 But this guy, he really lied.

5 THE COURT: Okay.

6 MR. JAMES CONTINUES

7 A. I was fifteen years old. I was naïve. I guess he  
8 just wanted to allow this case to go so he came to me  
9 and was like -- you know, you're fifteen years old.  
10 You're going to need [Inaudible -- muffled/muted] this  
11 tied you up for three years now. So, I go down there  
12 in five, you sign this plea bargain and you're only  
13 going to do five years. Come on back, I've got a job  
14 for you. He never had a job for me, by the way. But  
15 I did the time, you know, I -- I wasn't aware that I  
16 would -- that would be counted against me like on --  
17 on an adult level. If that was the case, I wouldn't  
18 have never signed anything. I -- I was just unaware.  
19 And the fact that that -- that that was used to -- to  
20 enhance my -- my sentencing, I -- I -- I'm just -- I'm  
21 thinking, you know, I'm -- I'm -- I'm not really think-  
22 ing, I'm hoping that after researching is -- is -- was  
23 that illegal? Can anybody inform me if that was il-  
24 legal, or if not, then, you know, is it legal to do  
25 that?

1 THE COURT: Just -- just --

2 **Ms. FENNEL CONTINUES**

3 Q. Well, --

4 THE COURT: -- just answer your lawyer's ques-  
5 tions.

6 **Mr. JAMES CONTINUES**

7 A. [Inaudible -- muffled/muted] --

8 Q. -- yeah. So, I -- I don't think that's -- your PCR  
9 application today is as to the charges that Mr. Kazm-  
10 ierski represented you on.

11 A. Yeah. I was -- yeah, I was just saying that because  
12 that was what was used to enhance -- to give me a life  
13 sentence.

14 Q. Okay. And you weren't aware, at the age of fifteen,  
15 of the ramifications of -- of that -- that charge and  
16 pleading guilty to that?

17 A. No, ma'am, I wasn't.

18 Q. Okay. Okay. And do you feel like --

19 A. I actually had three charges. Excuse me, I didn't  
20 mean to cut you off. It was -- there was armed robbery,  
21 kidnapping, and it was possession of a gun or something  
22 like that. But he was -- initially, he was saying  
23 that I would get a [Inaudible -- muffled/muted], you  
24 know what I mean? For [Inaudible -- muffled/muted]  
25 36.54 -- something, you know what I mean, that's how

1 he presented it to me. But somehow I ended up in  
2 general session and I -- I'm not -- because I guess I  
3 spent eight hundred and fifty-three days in county jail  
4 in [Inaudible -- muffled/muted] County, from the age  
5 fifteen to seventeen, close to eighteen, I was there.  
6 You know, I didn't know what was going on. He was  
7 coming to see me, I'm signing things, you know? And  
8 that's when he came oh, man, got ten years. Sign this.  
9 You'll go do five [Inaudible -- muffled/muted]. But  
10 yes, that's -- that's how that went.

11 Q. Okay.

12 A. But I was -- I was too young to be aware.

13 Q. Okay. And then your second allegation, the ineffective  
14 assistance of counsel for failing to question Rebecca  
15 Templeton, whose name appears on the indictment re-  
16 garding Applicant's involvement in the robbery.

17 A. Yes.

18 Q. So, who is Rebecca Templeton?

19 A. Well, Rebecca Templeton is the woman that is on the  
20 con -- she's in the document on the armed robbery  
21 because [Inaudible -- muffled/muted] the fact that  
22 [Inaudible -- muffled/muted] slash bank robbery, but  
23 her name is specifically on the armed robbery like --  
24 you know, like -- like they went and robbed her in  
25 particularly - that her name was -- went and took this

1 from Rebecca Templeton, like, you know what I mean?

2 Q. Right.

3 A. And the indictment for the bank robbery was that same  
4 thing, just minus her name. So, I was trying to figure  
5 out what that was about too. So, --

6 Q. And so, Rebecca Templeton testified during your trial?

7 A. -- yes, ma'am.

8 Q. Okay. And -- and she testified about the -- the --  
9 the robbery, the bank robbery, and -- and testified as  
10 to putting money into the bag and -- do you recall  
11 that testimony?

12 A. Yes.

13 Q. And -- and so, Mr. Kazmierski did not cross-examine  
14 her during the trial?

15 A. No. I don't think he asked her one single question  
16 [Inaudible -- muffled/muted]. He said -- I don't think  
17 that he said -- no, he didn't cross-examine her at  
18 all.

19 Q. Okay. And so, you believe that -- based on her tes-  
20 timony, and based on the elements of the charge, that  
21 he should have cross-examined her?

22 A. Yes, ma'am. And that her name is on the face of that  
23 indictment saying that someone went in the building  
24 and arm robbed her. You know, she could have clearly  
25 said that she -- she didn't speak to me. As a matter

1 of fact, she didn't even see me. You know what I mean?  
2 I was -- I was not even -- I wasn't there, you know  
3 what I mean? So, I think that would have played a --  
4 a -- a major part in [Inaudible -- muffled/muted]. I  
5 don't -- I'm not sure about -- I'm not well versed in  
6 law or anything, but I'd like to know.

7 Q. But you believe that his failure to do that was prej-  
8 udicial to the outcome of the case?

9 A. Yes, I did. Yes. Yes, I do.

10 Q. Okay.

11 A. Along with a few other things. But yes, to answer the  
12 question, I really do.

13 Q. So, you believe that if he had cross-examined her on  
14 your -- your presence and your participation that that  
15 would have raised reasonable doubt to the jury?

16 A. Yes. Because the jury sent back a juror -- sent back  
17 a note to the Judge that was assigned over my trial.  
18 And the note said can I have -- can we have the law on  
19 guilty by association? And yes, the Judge did -- he  
20 did correct them and said well, it's not guilty by  
21 association, it's actually called -- and he reiterated  
22 the hands of one, hands of all. And, you know, that  
23 was -- it sounds the same to me, but I was -- I knew  
24 that I might be associated, but I was planning or I  
25 didn't have anything to do with what went on, you know?

1 Q. And had Mr. Kazmierski explained to you the law of  
2 hands of one, hands of all?

3 A. Briefly. Yeah, he did -- I mean, just -- I got -- I  
4 had -- I [Inaudible -- muffled/muted], you know, I --  
5 I just, I understand what it is, but I -- I was still  
6 asking him like well, if this -- if the -- the legal  
7 theory states that I have to be in -- in -- in some  
8 type of cahoots or something like that, then that  
9 doesn't apply to me. But what he was tell me it's  
10 just the simple fact that they were around me, they  
11 were in my car, that's how the law is. So, I was like  
12 well, I mean, I -- I -- just me being there, that's  
13 what it established that's what's going on. And he's  
14 like yeah. So, alright. Well, I'm not -- I tell you,  
15 I don't know the law, so --

16 Q. Okay.

17 A. -- I [Inaudible -- muffled/muted].

18 Q. And then your third allegation ineffective assistance  
19 of counsel for failing to prepare for trial with Ap-  
20 plicant and failing to discuss with Applicant a trial  
21 strategy?

22 A. Yes, ma'am. To -- I -- to be honest, I don't -- I  
23 don't recall preparing at all, you know what I mean?  
24 Like, I'd put my hand on the Bible, I'm telling you  
25 the truth. I don't even recall him coming and saying

1           hey, this is what we're going to do. This is how we're  
2           going to do it. Never happened.

3       **Q.** Did he provide you with -- with your discovery motion?

4       **A.** Yes. No, no, no.. I got that before he even represented  
5           me. I got that from one of the other guys.

6       **Q.** Okay. Did you ever discuss with him, after he became  
7           your attorney, did you ever discuss with him what was  
8           contained in that?

9       **A.** No. No. It was just the main things that -- the guys  
10           I was with robbed the bank and they were in my car and  
11           they're charging me with hands of one, hands of all,  
12           which means that whatever they did means I did it too  
13           whether I was involved in it or not. Just meant them  
14           being with me or me -- they wasn't with me, you know  
15           what I mean? They was in my car, but like that -- you  
16           know what I mean? Yeah. He -- he said that part and  
17           like well, that's enough to do this that and the third.  
18           And I was like well, I didn't think so, you know what  
19           I mean? I didn't have nothing to do with it so I'm  
20           going to trial. That's the reason why I didn't take  
21           the plea bargain because I really didn't do it [Inau-  
22           dible -- muffled/muted].

23       **Q.** And what did you tell Mr. Kazmierski how it was that  
24           day?

25       **A.** Well, I -- what did I tell him, like verbatim? I don't

1       remember verbatim. If you mean what was the topic of  
2       discussion when --

3       Q. No. What -- what did you tell him about the events  
4       that occurred that day?

5       A. -- well, I told him that I had received a phone call  
6       from -- from a friend of mine. He said hey, him and  
7       a guy need your help with something. They need your  
8       ladder, you know what I mean? And that's how they  
9       ended up in my car, I was giving someone a ride. All  
10      of the rest of it, you know, I don't know. You know  
11      what I mean? Like, I --

12      Q. So, after you got in the car, who were you giving a  
13      ride?

14      A. -- well, there was three guys that I had met, I had  
15      known previously. But I was -- I was giving rides to  
16      these guys, they didn't have no car, but I had known  
17      a few of them, like two of them I had known. One of  
18      them I didn't know, you know what I mean? And --

19      Q. And who -- who were they? Do you -- what were their  
20      names?

21      A. -- ma'am?

22      Q. Did you know their names?

23      A. Their names?

24      Q. Of the people that you were --

25      A. I know the names of two of the people. The -- the

1       third man, I didn't know his name. He had ID and that  
2       wasn't his name. And when we went to trial they said  
3       that they found the guy, the fourth guy or whatever,  
4       and he wasn't him, you know what I mean? I thought  
5       that's not the guy that was in the car with me, you  
6       know what I mean? And they were like well, we should  
7       -- we -- we -- we are going to have him testify where  
8       he was at on this date. And I'm sitting here telling  
9       you that that's not the guy that was with me, you know  
10      what I mean? Like, I don't even -- I don't -- I didn't  
11      even know the guy I was with, just like I don't know  
12      him, you -- you know?

13    Q. Was Homer James with you?

14    A. Ma'am?

15    Q. Was Homer James with you? In the car?

16    A. Yes, he was.

17    Q. Was Lewis Garvin in the car with you?

18    A. Yes, he was.

19    Q. And those were two of -- two co-defendants in your  
20      case?

21    A. Yes.

22    Q. Okay. But no -- no one ever identified the fourth  
23      person in the car, is that right?

24    A. Yes. The only identification that they had was an ID,  
25      and that was [Inaudible -- muffled/muted]. But the

1 person was someone that -- a Mr. James Wiley [pho-  
2 netic]. He had -- he clearly said that hey, I seen  
3 this guy jump out of the car, you know? And I was  
4 like -- just like I tell -- like I telled them, hey,  
5 look, I don't even know the dude, so there ain't no  
6 reason to asking me who he is, you know? But, yeah,  
7 that's the only thing they had was that ID and they  
8 went off of that and went and found him someplace in  
9 another state or something and --

10 Q. And did that --

11 A. -- had him come testify saying that he wasn't -- he  
12 don't know me. He was like I don't know him, you know?

13 Q. -- and you saw him testify during your trial?

14 A. Yes.

15 Q. And he was the alleged fourth person?

16 A. He was the alleged -- he -- he was the person on the  
17 ID. He was not the fourth person.

18 Q. Okay. And was that Darrell Lassiter? [Phonetic]

19 A. Yes, ma'am.

20 Q. Okay. But that was Darrell Lassiter is not the person  
21 that was in the car with you that day?

22 A. No, ma'am. When this guy -- that wasn't the same guy.

23 Q. Okay.

24 A. I don't even know how he even got this man's ID in his  
25 possession.

1 Q. And so, did Mr. Kazmierski ever advise you of what the  
2 State would have to prove to find you -- for the jury  
3 to find you guilty?

4 A. Well, what he did tell me is that what they can prove  
5 against the people that were in my car, which will  
6 make -- which will make me guilty of the same thing  
7 because they were in my car. That's what he did tell  
8 me about it. It was my understanding you did it as  
9 well, even though you didn't -- you wasn't in the  
10 building when it got robbed, you know?

11 Q. And did you talk about any specific defenses you might  
12 have if you went to trial?

13 A. No. No, I don't -- I don't recall. Defenses -- well,  
14 no. [Inaudible -- muffled/muted].

15 Q. And you had -- you had a defense, was that right?

16 A. Yes. I was -- I was thinking that, I mean, like I  
17 said, I don't know the law. I was thinking fairly and  
18 sure that I was thinking that it was like a jurisdic-  
19 tion issue. But my real issue was I -- I didn't have  
20 anything to do with it. That was my real issue. I  
21 was just simply giving somebody a ride. That I don't  
22 -- I didn't [Inaudible -- muffled/muted], you know what  
23 I mean? That was my issue.

24 Q. And so, -- so, were you -- did you tell Mr. Kazmierski  
25 that that fourth person held a gun to your head?

1     **A.** Yes, I did.

2     **Q.** Okay. And so, did you discuss that defense with Mr.  
3     Kamierski -- Kazmierski?

4     **A.** I did. Well, I discussed it -- well, on the day that  
5     we started the trial, yeah, I did. Eventually, I did  
6     discuss that with him, you know? And on the day of  
7     the trial -- I mean, the day that the trial started it  
8     was -- he -- I don't know he kind of went off -- like,  
9     you know, he kinda -- he didn't -- he didn't inquire  
10    about the things that I needed him to inquire about.  
11    I didn't -- he didn't cross -- he didn't cross-examine,  
12    he didn't -- he just -- his performance is -- it -- it  
13    felt like below standard to me. I don't -- like I  
14    said, I don't know the law, but I know that -- when  
15    someone is doing their job, you know what I mean?  
16    Like, -- I know that you know?

17   **Q.** Okay. And do you feel like when you -- when you  
18    testified that you didn't really have any discussions  
19    with him about the evidence the State had against you.  
20    Did you feel like you had a full understanding of --  
21    of the charges against you?

22   **A.** I had a full -- well, yeah. I had a -- I had a full  
23    understanding because I -- I was asking how could I  
24    have a bank robbery and a armed robbery at the same  
25    time. He was like it is a bank robbery because of the

1 fact that it's still a bank robbery classified -- it's  
2 -- it's still classified as bank robbery instead of a  
3 robbery charge, you know? And he was just like well,  
4 I don't even remember what he said. It was about ten  
5 years ago, Ms. Fennell, I don't know.

6 Q. Okay.

7 A. Yeah.

8 Q. Now, did you all discuss beforehand what witnesses  
9 that you would call to testify on your behalf?

10 A. No. Before that, we did not. We discussed witnesses  
11 both on -- during the trial. That's why I said just  
12 call Lewis Garvin because he told me -- he said you  
13 had nothing to do with it; I'm going to testify on  
14 your behalf, you know? And that's what he did.

15 Q. Okay.

16 A. So, I -- I wasn't [Inaudible -- muffled/muted]. I  
17 wasn't mad at him, because he was supposed to, you  
18 know?

19 Q. So, -- Mr. Kazmierski called one witness on your be-  
20 half?

21 A. Yes, ma'am.

22 Q. And that was Lewis Garvin?

23 A. Yes, ma'am.

24 Q. One of the co-defendants?

25 A. Yes, ma'am.

1 Q. And did Mr. Garvin had he entered a guilty plea at  
2 that point in time?

3 A. Yes, he did. He was -- he had entered a guilty plea,  
4 and he did not -- and he was not sentenced yet.

5 Q. And you -- do you feel -- did -- strike that. Do you  
6 feel like Mr. Garvin's testimony was beneficial to you?

7 A. To an extent. It's like Mr. Garvin is -- is -- is --  
8 I guess he's been -- well, the Judge [Inaudible --  
9 muffled/muted] mental health to discredit because he  
10 was really like straddling defenses like -- he -- he  
11 came in and he said that I was the driver, but he also  
12 said that I didn't have any knowledge of what was going  
13 on, you know what I mean? And then he turned around  
14 and said he didn't have any knowledge of what was going  
15 on.

16 So, I'm thinking to myself like, you know what I  
17 mean, like -- how would -- you know what I mean? Like,  
18 I -- I didn't understand that what -- what he -- what  
19 -- I did not know what was going on. That's why he  
20 said that -- at this point, I have nothing to do with  
21 what he -- like I said, I had nothing to do with what  
22 was going on. But he did say that -- let them know  
23 that I didn't have anything to do with it. He testi-  
24 fied to that.

25 Q. Okay. Do you think -- well, when you went to court

1           that day, did you intend to testify?

2     **A.**   Ma'am?

3     **Q.**   When you went to court, did you intend to testify?

4     **A.**   No. Ma'am, I -- I was going to testify -- yes, I was  
5           going to testify initially because I didn't do it, you  
6           know what I mean? So, I wanted to tell -- let people  
7           know what was going on, at least with my perspective  
8           of things. Yes, I was going to.

9     **Q.**   And did you ultimately testify?

10    **A.**   No, I did not.

11    **Q.**   Why --

12    **A.**   I -- I was advised not to because my -- the thing from  
13           when I was fifteen years old would have come out and,  
14           you know what I mean? He was like you don't want them  
15           to talk about your past record and that will make you  
16           look bad. And I was discouraged to -- to testify  
17           really.

18    **Q.**   And do you feel like -- do you feel like you made that  
19           decision with -- after having advice from your counsel  
20           that -- that you could rely on?

21    **A.**   Ma'am?

22    **Q.**   Well, let me -- strike that. Let me ask you a different  
23           way. Did you make that decision based on Mr. Kazmier-  
24           ski's advice?

25    **A.**   Yes, ma'am. When he told me that I was like well, you

1 know, I committed an armed robbery when I was fifteen  
2 years old and you know, if I go and -- if I have -- if  
3 I get on the stand and they're going to be like hey,  
4 that guy committed an armed robbery before, who is to  
5 say he didn't do it this time. So, it would -- it  
6 kinda deterred me -- or, to even thinking about tes-  
7 tifying. I really should have so that people could -  
8 - would know what -- what was really going on, you  
9 know?

10 **Q.** And do you think if you had testified, would it have  
11 raised a reasonable for the jury that you committed  
12 this crime?

13 **A.** Yes, I -- I do. I do, because the jury does -- the  
14 notes that the jury was sending back says Judge, as  
15 far as the charging forms, you know, you've got them.  
16 I can't [Inaudible -- muffled/muted].

17 **Q.** Okay. And then, the next allegation - ineffective  
18 assistance of counsel for failing to thoroughly inves-  
19 tigate the defense. Regarding the identity of the  
20 fourth person, as it relates to any available defense  
21 on behalf of Applicant as to his involuntary presence  
22 on the day in question.

23 **A.** Mmm hmm. [Affirmative].

24 **Q.** You have testified that there is a fourth person that  
25 nobody actually ever identified?

1     **A.** They identified him through the DNA with some tangible  
2       items that was -- that had another person's DNA on it  
3       that was there. They identified him through DNA of  
4       things that were in the car -- that were found in the  
5       car. And also, you know, they just had things that -  
6       - that, you know, that showed it. And there was noth-  
7       ing -- Lewis, you know, Garvin, he testified of finding  
8       the guy, you know?

9     **Q.** And is that -- is that Darren Lassiter?

10    **A.** No, that's -- he's -- no, that's not who that was.  
11       That guy, that's whose ID it was that they found from  
12       the vehicle.

13    **Q.** Okay. Did your attorney ever go speak with the fourth  
14       person?

15    **A.** No, not to my knowledge. I'm not sure -- I mean, the  
16       fourth person, was never -- the guy was never inves-  
17       tigated because the lead investigator said that he  
18       didn't feel that it was necessary to sort it out to -  
19       - to [Inaudible -- muffled/muted] to him.

20    **Q.** Okay. But that is the individual that you told Mr.  
21       Kazmierski was holding a gun to your head?

22    **A.** Yes.

23    **Q.** Okay.

24    **A.** A .40 caliber [Inaudible -- muffled/muted].

25    **Q.** But Mr. -- Mr. Kazmierski never identified who that

1 individual was or spoke with that individual?

2 A. No, ma'am.

3 Q. Okay. And was there a receipt found in the car, when  
4 the car was recovered, showing --

5 A. Yes. It was kinda -- it was a few receipts. But there  
6 was receipts from that day that were found. .

7 Q. Okay.

8 A. Mmm hmm. [Affirmative].

9 Q. And was there a Walmart receipt that was recovered?

10 A. Yes, there was.

11 Q. And did the car you were driving that day, whose car  
12 was that?

13 A. It belonged to a female friend of mine and that's whose  
14 car it was.

15 Q. Okay. So, you were driving the car with permission?

16 A. Yes. But really I had -- I -- it was my car, but it  
17 was in her name.

18 Q. Okay.

19 A. You know, they was just, you know.

20 Q. And did you stop for gas that day?

21 A. Yes, ma'am. I stopped at a Walmart on [Inaudible --  
22 muffled/muted]. And I stopped at a Walmart and took  
23 a stretch.

24 Q. When you stopped at Walmart, was the fourth person in  
25 the car?

1     **A.**   Yes, ma'am.

2     **Q.**   And did -- did anyone ever recover any video surveil-  
3           lance from Walmart or from the gas station in -- while  
4           investigating things?

5     **A.**   No.  No, ma'am.  They were -- they was missing a lot  
6           of things.  They were missing a lot of things.  A lot  
7           of footage.

8     **Q.**   And do you think if -- if counsel had -- had sought to  
9           obtain that footage that that could have helped your  
10          case?

11    **A.**   Yes.

12    **Q.**   And how could it have helped your case?

13    **A.**   It would have shown every person that was with me,  
14          every person that rode in my car.

15    **Q.**   Okay.

16    **A.**   Yes.

17    **Q.**   and you don't know -- you didn't know that person that  
18          was in the car?

19    **A.**   No.  No.

20    **Q.**   Okay.

21    **A.**   He came with the -- he came with my -- with someone  
22          that I did know.  He was introduced to me as a guy  
23          named D, so I called him D.  I mean, cool, he could  
24          ride.  Not a problem, you know?

25    **Q.**   Okay.  And then the next allegation - ineffective

1 assistance of counsel for failing to raise issues re-  
2 garding the validity of the Indictment, including the  
3 fact that the Indictments were not file stamped, pur-  
4 suant to Rule 3 of the South Carolina Rules of Criminal  
5 Procedure. What is the -- what is the basis of that  
6 allegation?

7 **A.** Well, the basis of that allegation, it was -- I believe  
8 there was something about a date that was -- was on  
9 it. The day that the Grand Jury had stamped -- written  
10 true there, it wasn't -- there wasn't no date on it.  
11 The date that they put on it, they put a date on there  
12 when I was found guilty, which was the date that the  
13 Grand Jury found me -- well, they decided to charge me  
14 with additional charges and I was figuring -- trying  
15 to figure out that why did that make it, but --

16 **Q.** So, the Grand Jury -- are you aware that the Grand  
17 Jury met in October of 2014?

18 **A.** Yes.

19 **Q.** Okay. And you went to trial in --

20 **A.** December.

21 **Q.** -- November of --

22 **A.** November.

23 **Q.** -- 2015, is that right?

24 **A.** Yes.

25 **Q.** Okay. But on the Indictment, the 2015 date doesn't

1 occur on there, does it?

2 A. Excuse me?

3 Q. The -- what date is on the Indictment? The -- the  
4 October [Inaudible -- muffled/muted]?

5 A. October 16<sup>th</sup>, 2014.

6 Q. Okay.

7 A. If I'm not mistaken.

8 Q. Okay. And so, you believe that it was not signed at  
9 the time the Grand Jury convened?

10 A. I -- I didn't believe that it was true billed [phonetic]  
11 at the time because it was written in, but then never  
12 became within the true billed. I got a copy of it in  
13 the true bills.

14 Q. Okay. Did you discuss that with your attorney?

15 A. Yes. Briefly. I asked for what was going on because  
16 I didn't get any advice or anything like that that  
17 would do anything for me.

18 Q. Okay.

19 A. Yeah.

20 Q. Okay. And then the next allegation - ineffective  
21 assistance of counsel for failing to raise the issue  
22 of the presence of the third party in the deliberation  
23 room after the jury started deliberating. Do you --

24 A. Yes, ma'am. During my trial, when they went to delib-  
25 erate, Mr. Ed Darnell [phonetic], he was the sheriff

1 of the county at the time, he had went to the door  
2 with the -- where the -- where the jury goes into like  
3 the way the courtroom is built, the deliberation --  
4 say that's the deliberation room going back there.  
5 When he said it was time to deliberate, they single  
6 file went through that door and they [Inaudible --  
7 muffled/muted] down there with the [Inaudible -- muf-  
8 fled/muted] that he was in there.

9 And the thing about it is I didn't -- I didn't -  
10 - I didn't know even that that was illegal, you know  
11 what I mean? I -- but I paid attention to what he was  
12 -- he was back there. [Inaudible -- muffled/muted].

13 Q. Okay. So, -- so, you watched Mr. Darnell walk into  
14 the jury deliberation room with the jury?

15 A. Yes, ma'am.

16 Q. Okay. Did you remain in the courtroom then during  
17 deliberation?

18 A. Yes. I was there the entire time.

19 Q. And how long did the jury deliberate?

20 A. I mean, they may have deliberated maybe for forty-five  
21 minutes.

22 Q. Okay.

23 A. Maybe.

24 Q. Was it actually a little longer than forty-five  
25 minutes?

1     **A.** It may have been. It may have been.

2     **Q.** Okay. Do you recall that the jury began deliberations  
3       a little after 1:00 that day?

4     **A.** I'm not sure what time.

5     **Q.** Okay. But you remained in the courtroom the whole  
6       time?

7     **A.** The entire time, yes.

8     **Q.** Did you ever see Mr. Darnell come out of the jury  
9       deliberation room?

10    **A.** No, ma'am. I didn't see him come out because out there  
11       is another door. When he came out -- when he came  
12       back into the courtroom, he came through another door  
13       -- the other door. Back there is a door on the outside.  
14       He came through that door; he didn't come back in with  
15       the jurors.

16    **Q.** Okay. Did you tell Mr. Kazmierski, at that time, what  
17       you saw?

18    **A.** I -- I didn't tell him what I seen because I didn't  
19       know that that was illegal. But I told him after-the-  
20       -- after-the-fact, I was like bro, I -- I say what the  
21       hell? I say what's going on with, excuse me. I was  
22       like well, what's going on with, you know what I mean?  
23       I -- I didn't know it was illegal, you know what I  
24       mean? But I -- I -- I've cried about it. It was  
25       brushed off.

1 Q. Okay. And was Sheriff Darnell wearing a uniform at  
2 that point in time?

3 A. I don't think -- no, I -- no, he was not wearing a  
4 uniform. He -- he had his badge exposed though, like,  
5 the little clip in thing that they wear. Every [In-  
6 audible -- muffled/muted] -- and I'm not from there,  
7 but I'm pretty sure they know who their sheriff is,  
8 you know?

9 Q. And had other officers testified during your trial?

10 A. Yes. There was a few officers that testified.

11 Q. Okay. Ed Williams of the Bamberg County Sheriff's  
12 Office testified during your trial?

13 A. Williams?

14 Q. Yes.

15 A. Yes, ma'am.

16 Q. Okay. And then there was James Wally, he was an officer  
17 with the Olar Police Department --

18 A. Mmm hmm. [Affirmative].

19 Q. -- he testified?

20 A. Yes.

21 Q. And -- then also a -- a Barnwell County Police Officer  
22 Scott Peterson testified?

23 A. Yes.

24 Q. Did you -- did you believe that Mr. Darnell's presence  
25 in the jury room was an improper influence on the jury?

1     **A.**   Yes, I believe it was.

2     **Q.**   And -- and why do you believe it was an improper  
3       influence?

4     **A.**   Because he had -- him being the sheriff he has a lot  
5       of influence and people there know who he is, just his  
6       presence alone, was put -- would sway -- it's enough,  
7       you know what I mean? I was struggling -- I was -- I  
8       was opposed definitely. At that point in time, you  
9       know, we don't want no problems with the sheriff, you  
10      know?

11    **Q.**   And do you believe that due to that fact that that you  
12       -- your Sixth Amendment guarantee of the right to a  
13       trial with an impartial jury was violated?

14    **A.**   Yes, ma'am. I do.

15    **Q.**   And that was a -- an -- an allegation -- a separate  
16       allegation?

17    **A.**   Yes, ma'am.

18    **Q.**   Okay. And what is the relief that you are seeking  
19       today?

20    **A.**   The relief that I am seeking today is, I mean, I -- a  
21       new trial, a resentencing, you know, anything that --  
22       is any type of relief, other than having to serve a  
23       life sentence, you know?

24    **Q.**   Okay.

25    **A.**   [Inaudible -- muffled/muted].

1 Q. Okay. Anything further that we have not discussed?

2 A. Mmm ... no. There's nothing else.

3 Q. Okay. I don't have any further questions, so please  
4 answer any questions Mr. Mitchell has for you.

5 A. Okay.

6 THE COURT: Alright. [Inaudible -- muf-  
7 fled/muted].

8 MR. MITCHELL: I have no questions for this wit-  
9 ness, Your Honor.

10 THE COURT: Alright. Thank you, sir. You may  
11 step down. Applicant can call its next witness.

12 MS. FENNELL: Nicole James.

13 THE COURT: Alright. Ms. Nicole, can you hear  
14 me? Come on up.

15 MS. JAMES: Good morning -- it's good after-  
16 noon. I didn't mean to say good morning.

17 CLERK: You'll want to place your left hand on  
18 the Bible and raise your right hand. Do you solemnly  
19 swear or affirm the testimony you should give the Court  
20 in this case should be the truth, the whole truth, and  
21 nothing but the truth, so help you God?

22 MS. RAY: Yes, ma'am.

23 CLERK: Please take a seat in the witness stand  
24 and [Inaudible -- muffled/muted] the Court.

25 THE COURT: Alright.

## DIRECT EXAMINATION OF NICOLE JAMES

1

2 BY MS. FENNELL

3 Q. Ms. James, please state your name for the record?

4 A. My name is Nicole James.

5 Q. and how are you related to Mr. James?

6 A. I'm his mother.

7 Q. And were you at the trial in Dec -- November and  
8 December of 2015?

9 A. Yes, ma'am.

10 Q. Were you there every day?

11 A. Yes, ma'am.

12 Q. Were you -- were you there on the day the jury rendered  
13 their decision?

14 A. Yes, ma'am.

15 Q. Okay. Did you see the jury leave the courtroom?

16 A. Yes, ma'am.

17 Q. And what -- what did you see?

18 A. I saw the -- the sheriff, go in the deliberating room.  
19 I knew it was illegal. So, the door that led to the  
20 outside, I wanted to make sure that he just didn't  
21 escort them in and leave out. So, when he got up and  
22 was -- was the -- when they went in, I went into the  
23 -- into the outside door to see if he ever came out,  
24 but he never came out. He didn't come out. I didn't  
25 see him again until after the jury was coming in. But

1 he didn't leave out that door, not any time since, but  
2 I stayed out there in the hallway -- hallway, just  
3 like that. But I sit and waited to see when he would  
4 come out of the room. And when they said the jury was  
5 coming back in, my boy [Inaudible -- muffled/muted]  
6 friend of the family. Had I known I could testify  
7 today I would have brought them as well.

8 But I was sitting behind the [Inaudible -- muf-  
9 fled/muted] and my son, so I don't even know why he  
10 didn't see it. He said he didn't, but if I saw it and  
11 everybody else saw it, I don't know where -- what he  
12 was doing.

13 **Q.** And were you in the courtroom when the jury came back  
14 into the courtroom?

15 **A.** I -- yeah, I was walking and my daughter said the jury  
16 was coming in, I came back in then because I wanted to  
17 see if the sheriff was going to come out. So, I was  
18 standing in the hallway, which I never saw him enter  
19 or come out. It's -- it's -- it's -- okay, it's a  
20 doorway to go into the deliberating room. And in their  
21 hallway, it's made up pretty much like that, it's a -  
22 - it's a side door to -- there's two doors to the  
23 deliberating room.

24 The one -- so, I knew that because I had got there  
25 early, just like I got here early today, I got here at

1 8:00. So, I set outside -- and outside the -- and I  
2 never saw him come back in. My daughter said the jury  
3 is coming back in. Well, I -- so, I went back in there  
4 when the jury -- as the jurors were coming in. But  
5 what -- I didn't see him, but I saw all of the other  
6 jurors.

7 Q. Okay.

8 A. But --

9 Q. So, did you remain out in the hallway the whole time  
10 the jury was deliberating?

11 A. -- yes.

12 Q. Okay.

13 A. Because I wanted to see where he went at.

14 Q. Okay. And you never saw him come out of the door?

15 A. No, ma'am.

16 Q. Okay. Is there anything else you want to tell the  
17 Court today about that?

18 A. Yes. I felt like it was a form of intimidation.  
19 There's a lady that may frequent the courtroom, that's  
20 what she does. But I have a cousin that does it. He  
21 sits -- he goes down to the courthouse and sits in the  
22 courthouse every day and listen to the trials. There  
23 was a heavysset lady sitting in the back and when the  
24 trial was over, she cried. She said I knew when he  
25 went in there they were going to give him the guilty

1        verdict. And I knew it was a form of intimidation  
2        because in a small town, I'm quite sure out of that  
3        twelve jury, those twelve jurors, at least half of  
4        them had [Inaudible -- muffled/muted]. This is a small  
5        town. And this was -- it was a form of intimidation.  
6        That's what I felt like because why was he even have  
7        to go in there? You are the sheriff, you're not de-  
8        liberating. You're not the bailiff. I can see the  
9        bailiff going in there, the bailiffs had -- all of  
10       them had on burgundy jackets. He wasn't even availa-  
11       ble. So, I'm like why aren't a bailiff escorting them  
12       into the deliberating room.

13    Q.    Okay. I don't believe I have any further questions  
14       for you. Please answer any questions Mr. Mitchell has  
15       for you.

16       THE COURT:        Mr. Mitchell?

17       MR. MITCHELL:    No questions for this witness.

18       THE COURT:        Thank you, ma'am.

19       MS. RAY:    Alright. You're welcome.

20       THE COURT:        Alright. You can call your next  
21       witness.

22       MS. FENNELL:    No further witnesses, Your Honor.

23                            **APPLICANT RESTS**

24       THE COURT:        Alright. Applicant rests. Al-  
25       right, Mr. Mitchell?

1 MR. MITCHELL: Your Honor, the State calls Mr.  
2 Janek Kazmierski to the stand.

3 THE COURT: Alright sir.

4 CLERK: Do you solemnly swear or affirm the  
5 testimony you should give the Court in this case should  
6 be the truth, the whole truth, and nothing but the  
7 truth, so help you God?

8 MR. KAZMIERSKI: Yes.

9 CLERK: Please take a seat [Inaudible -- muf-  
10 fled/muted].

11 DIRECT EXAMINATION OF JANEK KAZMIERSKI

12 BY MR. MITCHELL

13 Q. Alright. Thank you, sir.

14 A. Janek Kazmierski.

15 THE COURT: Thank you.

16 MR. MITCHELL CONTINUES

17 Q. Good afternoon, Mr. Kazmierski.

18 A. Good afternoon.

19 Q. Did you represent the Applicant in this case?

20 A. Yes.

21 Q. Will you explain how you came to represent him?

22 A. I was contacted by the Public Defender's Office and  
23 since there were three potential defendants, I think  
24 they -- they had to take one of the cases and assign  
25 it to a private attorney outside their office.

- 1 Q. So, you -- were you -- you were appointed in this case?
- 2 A. Mmm hmm. [Affirmative].
- 3 Q. Do you know how long before trial you were appointed?
- 4 A. I don't, but I know there were several continuances
- 5 that were granted prior to -- from the time I was
- 6 appointed until trial.
- 7 Q. So, would you say it was over a month when they --
- 8 A. Yes. It was more than a month.
- 9 Q. -- did you meet with Mr. James before trial?
- 10 A. Yes.
- 11 Q. And did you review all of the discovery with him?
- 12 A. Yes.
- 13 Q. Did you review all of the elements of the crime?
- 14 A. Yes.
- 15 Q. Did you go over any defenses with him?
- 16 A. Yes.
- 17 Q. And what's the defense strategy you ended up proceeding
- 18 on at trial?
- 19 A. It was -- he was there involuntarily, under duress.
- 20 Q. Is that something you came up with based on conversa-
- 21 tions you had with Mr. James?
- 22 A. Yes. During my initial visit with him. We talked
- 23 about what had happened and he said he was basically
- 24 forced to drive and he was being held at gunpoint.
- 25 Q. And did he say who did this to him?

1     **A.**   It was -- no, he didn't know the person that did it.  
2           There was -- there was a fourth person, he said, in  
3           the vehicle that didn't know that individual.

4     **Q.**   Did he provide you with any information as to how to  
5           find this alleged fourth person?

6     **A.**   Well, there was identification -- there was an iden-  
7           tification card and -- and the individual's name was  
8           Darrell Lassiter. And that was something that the  
9           sheriff's department had not investigated, and so,  
10          that's -- I pursued that, yes.

11    **Q.**   And then did law enforcement eventually investigate  
12          that?

13    **A.**   Yes, they did.

14    **Q.**   And did Mr. Lassiter testify at trial?

15    **A.**   Yes. He testified at trial and had a video confirmed  
16          alibi and had -- and testified that he lost his ID  
17          several months prior to the bank robbery.

18    **Q.**   Alright. So, there was no information, other than Mr.  
19          Lassiter, that -- about the identity of this fourth  
20          person?

21    **A.**   Correct.

22    **Q.**   And had you had any information, would you have inves-  
23          tigated that?

24    **A.**   Yes.

25    **Q.**   And -- failing to question Rebecca Templeton, the bank

1 teller, did you cross-examine her?

2 A. No.

3 Q. Do you believe she gave you any testimony that was  
4 hurtful to your defense?

5 A. No. I think she actually provided the testimony that  
6 confirmed that Mr. James entered the bank twice and  
7 then the bank was robbed by two individuals who -- and  
8 Leon, Mr. James, was not one of them. So, her testi-  
9 mony would not damage [Inaudible -- muffled/muted].

10 Q. And there was no dispute that Mr. James had entered  
11 the bank prior --

12 A. Correct.

13 Q. -- to the robbery. And she never identified Mr. James  
14 as one of the people who robbed her?

15 A. Correct.

16 Q. And so, did you believe there was any reason to cross-  
17 examine her?

18 A. No. From -- from our perspective, Ms. Templeton pro-  
19 vided corroborating testimony.

20 Q. And do you recall the discussions you had with Mr.  
21 James regarding whether he was going to testify or  
22 not?

23 A. Yes.

24 Q. And what was the plan with [Inaudible -- muf-  
25 fled/muted]?

1     **A.** From the start Mr. James wanted to, and was adamant  
2         that he was going to testify. And that was our -- an  
3         essential piece of our trial strategy.

4     **Q.** And why did he not -- do you know why he didn't end up  
5         testifying?

6     **A.** Yes. After trial, each day we'd go back over to the  
7         jail, and -- or speak with Mr. James prior to him being  
8         transported back to the jail. And the evening before  
9         he was supposed to testify, we were doing our final  
10        preparations and -- and he -- and he just said I can't  
11        do it. Basically, he couldn't keep the story straight  
12        and he asked me what should I do? And I said well,  
13        you tell the truth, you've got to tell the truth. And  
14        that's why -- that shouldn't be difficult.

15           And -- and he made that decision. I said well,  
16        you can sleep on it. So, then the next morning when  
17        -- when he was supposed to testify, he declined to do  
18        so.

19     **Q.** And his decision to testify -- not to testify was his  
20         decision?

21     **A.** Yes.

22     **Q.** And you didn't coerce him or pressure him into it one  
23         way or the other?

24     **A.** Correct.

25     **Q.** So, you did call one defense wet -- witness, correct?

1     **A.**   Yes.

2     **Q.**   Was that Mr. Lewis Garvin?

3     **A.**   Yes.

4     **Q.**   And were you originally planning on calling him?

5     **A.**   No.

6     **Q.**   What made you change your mind about calling Mr. Lewis  
7       Garvin?

8     **A.**   Throughout trial, to include my opening statement, I  
9       mentioned that you were going to hear evidence from  
10      Mr. James himself that he was not involved in this  
11      bank robbery. And that was based off of an under-  
12      standing that Mr. James was going to testify. And --  
13      myself and my co-counsel scrambled and tried to find  
14      somebody who could fill in for that testimony that Mr.  
15      James decided not to do.

16           And -- and Lewis Garvin, even though he was -- he  
17      did not want to testify, he was -- he -- we called him  
18      and that was kind of the -- the best we could do.

19    **Q.**   And was Mr. Garvin able to testify to anything that  
20      was beneficial to your defense?

21    **A.**   He testified that not only was Mr. James -- coerced,  
22      but he was coerced [Inaudible -- muffled/muted]. It  
23      was a little bit scattered; it was a little bit hard  
24      to -- you know, hard for the jury to understand his  
25      testimony and I don't think he came off as credible.

1       So, I think he had a slight impact, but not much.

2       **Q.** But the reason for calling him was based on -- the  
3       plan all along was Mr. James testifying and then him  
4       not after you already promised the jury that he was --  
5       -- you were going to hear from the defense. So, does  
6       that mean you had to call Mr. Lewis Garvin?

7       **A.** Yes. It was -- it was a -- a necessity to do that.

8       **Q.** And do you recall a deputy sheriff being present during  
9       the deliberations of the jury?

10      **A.** I don't. And, you know, Mr. -- Mr. James indicated  
11      that Sheriff Ed Darnell entered the deliberations  
12      room. I -- I never saw it. I am not aware of it, and  
13      it wasn't until several years after the fact that I  
14      became aware of it. And I -- and I believe it was Mr.  
15      Darnell that -- or maybe the PCR application that --  
16      that I became aware of that allegation.

17      **Q.** In that courthouse were you able to see the delibera-  
18      tion -- who enters in and out of the deliberation room  
19      from the courtroom?

20      **A.** So, off to the right of the Judge, the jury box and --  
21      -- and a door that leads into the deliberations room.  
22      And -- but, I do not know the layout from that door to  
23      the deliberations room. I know once you get into the  
24      deliber -- deliberation room, there is an exit to a

1 hallway and then -- and then going back to the court-  
2 room. So, I don't know the setup and -- and like I  
3 said, I did not see Ed Darnell go in there.

4 Q. So, you were never aware of this until the allegation  
5 was raised?

6 A. Correct.

7 Q. That's all the questions I have for you, Mr. -- Kazm-  
8 ierski. Thank you.

9 THE COURT: Alright.

10 MS. FENNELL: If I may request the Court's in-  
11 duldence?

12 THE COURT: Yes.

13 MS. FENNELL: No questions for this witness.

14 THE COURT: Alright. Thank you, sir. You can  
15 step down. The State can call its next witness.

16 MR. MITCHELL: The State has no further witness,  
17 Your Honor.

18 THE COURT: Alright. Brief closing state-  
19 ments? If you all wish to make them, you don't have  
20 to, but if want to, go ahead.

21 MS. FENNELL: I'd beg the Court's indulgence?

22 THE COURT: Sure.

23 **CLOSING ARGUMENT OF APPLICANT**

24 MS. FENNELL: Thank you, Your Honor. To receive  
25 a relief in a post-conviction appl -- Post-Conviction

1 Relief Application, the Applicant is required to show  
2 that counsel was deficient and that counsel's defi-  
3 ciency caused prejudice.

4 Prejudice is defined as a reasonable probability  
5 that, but for counsel's unprofessional errors, the re-  
6 sult of the proceeding would have been different. A  
7 reasonable probability is a probability sufficient to  
8 undermine confidence in the outcome.

9 In this case, specifically, the -- the allega-  
10 tions regarding counsel's failure to investigate cer-  
11 tain videos that would have -- would have been  
12 available and other -- other issues that were raised  
13 to counsel and failing to discuss with Applicant the  
14 witnesses that would be called, we believe that that  
15 -- that was prejudicial to Mr. James in moving forward  
16 and prejudicial in -- in failing to raise a reasonable  
17 doubt in the jury's mind.

18 Additionally, the Sixth Amendment - in all crim-  
19 inal prosecutions, the accused shall enjoy the right  
20 to a speedy and public trial by an impartial jury. The  
21 allegations today and the evidence provided today is  
22 that someone from the sheriff's department entered the  
23 deliberate -- the jury deliberation room.

24 We believe that based on that, you know, although  
25 there's no testimony as to what may have happened in

1       there, the mere presence of an individual from the  
2       sheriff's department who, you know, in -- in this case,  
3       multiple individuals from various police departments  
4       testified against Mr. James during his trial. And we  
5       believe that the presence of that individual in the  
6       jury room, regardless of how long or how short, was  
7       unduly prejudicial and was plain error, *per se* judicial  
8       -- *per se* prejudicial and requires a new trial.

9           THE COURT:       Alright. Thank you, ma'am. Yes,  
10       sir?

11                           **CLOSING ARGUMENT OF THE STATE**

12           MR. MITCHELL: Just briefly, Your Honor. The Ap-  
13       plicant has failed to meet his burden establishing  
14       post-conviction relief in this case.

15           I believe the first issue we'd brought up was the  
16       fifteen year old crime used as an enhancement. He was  
17       tried in General Sessions for it. The case law is  
18       clear that even if you commit it as a juvenile, but  
19       tried in adult court, it can be used for enhancement  
20       purposes.

21           Ineffective for failing to cross-examine Rebecca  
22       Templeton, as Mr. Kazmierski testified to, she -- her  
23       testimony at trial was -- was not hurtful to the de-  
24       fense. As such, there was really nothing more to say,  
25       but -- and not only that, the defense -- excuse me,

1 Mr. James has not presented any evidence of how further  
2 cross-examination of this witness would have led to a  
3 different outcome at trial.

4 Investigation of the identity of the fourth per-  
5 son. Your Honor, the only evidence of a fourth person  
6 was this Darrell Lassiter, who testified at trial and  
7 he said he was not there. Mr. Kazmierski said if he  
8 had evidence of other than that of the identity of the  
9 fourth person he would have investigated it. Applicant  
10 today has presented no evidence about who this fourth  
11 person may be, or even if he even exists at all.

12 Your Honor, with regard to the enting the -- en-  
13 tering the deliberation room, there has been no tes-  
14 timony that -- not only was the deputy in the room,  
15 besides the Applicant and his mother's testimony. But  
16 there's no statement presented from any jurors that  
17 said that they were prejudiced by the remarks -- any  
18 sort of presence or the remarks of the deputy, if he  
19 was even in there. The State, obviously, does not  
20 concede that he was in the deliberation room at all.

21 THE COURT: Well the issue raised in the di-  
22 rect appeal or in post-trial motions or has a motion  
23 for a new trial been made on after discovered evidence  
24 or any of that, is that [Inaudible -- muffled/muted]?

25 MR. MITCHELL: No, Your Honor. This is a -- issue

1       -- as far as I am aware this issue has never been  
2       raised until this Application.

3               THE COURT:        Alright.

4               MR. MITCHELL:   As Mr. Kazmierski testified, he  
5       didn't know about it so he couldn't -- he can't be  
6       ineffective for not raising something he didn't know  
7       about.

8               THE COURT:        Okay.

9               MR. MITCHELL:   So, for those reasons, Your Honor,  
10       this Application should be denied.

11              THE COURT:        Alright.   Thank you both.   Obvi-  
12       ously, I'm going to have to take this matter under  
13       advisement.   I've got -- and I know everybody wants an  
14       answer just as soon as possible.   But that's how thick  
15       the transcript is.

16              I know you've read it.   You've been living it,  
17       okay, I get it.   But this is the first time I've ever  
18       heard about this case.   I'm going to read through it  
19       to make sure I understand everything and then I will  
20       be in touch with your attorney as well as the State's  
21       attorney with my decision as soon as I make it.   Okay?  
22       Thank you very much.   That concludes your trial in  
23       this case.

24              MS. FENNELL:    Thank you, Your Honor.

25              MR. MITCHELL:   Thank you, Your Honor.

1           THE COURT:       We're going to take about a five,  
2       ten minute recess and refresh ourselves.   We'll come  
3       back [Inaudible -- muffled/muted].

4                               (End of Proceeding)

CERTIFICATE

I, Tina M. Steinmetz, a court-approved transcriber, 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 Circuit Court 2 for Bamberg County, South Carolina, on the 16<sup>th</sup> day of July 2024.

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

August 13, 2025

*Tina Steinmetz*  
Tina M. Steinmetz, Transcriber

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

Leon Amos Jason James, SCDC #291860,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2018-CP-05-00258

**ORDER OF DISMISSAL**

FILED  
BAMBERG COUNTY  
2025 MAR 28 PM 3:35  
JANNIE C. JOHNSON

**INTRODUCTION**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Leon Amos Jason James ("Applicant") on December 28, 2018. On Tuesday, July 16, 2024 a hearing into the matter was convened before the Honorable Brian M. Gibbons at the Aiken County Courthouse. Applicant was present and represented by Nancy C. Fennell, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant, Applicant's mother, and Janek C. Kazmierski, Esquire.

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections following convictions in Bamberg County. During its October 2014 term, the Bamberg County Grand Jury indicted Applicant for armed robbery (2014-GS-05-0202) and entering a bank with intent to steal (2014-GS-05-0204). Applicant was presented by Janek Kazmierski, Esquire. The case was

prosecuted by Deputy Solicitor David Miller, Assistant Solicitor Jack Hammack, and Assistant Solicitor Wilder Harte.

On October 27, 2015, Applicant, alongside co-defendants Homer Arthur James and Lewis Garvin, appeared for pre-trial hearings before the Honorable Roger M. Young, Sr., circuit court judge. Thereafter, on November 30, 2015, Applicant proceeded to trial before Judge Young. On December 3, 2015, the jury convicted Applicant as indicted. Judge Young sentenced Applicant to confinement for life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

On February 11, 2016, all parties reconvened before Judge Young for a hearing on Applicant's post-trial motion challenging his conviction based on the sufficiency of the evidence. Judge Young denied the motion.

Thereafter, Applicant filed a notice of an appeal and an appeal as perfected on his behalf by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense-Division of Appellate Defense. (Appellate Case No. 2016-001155). Appellate Defender Hackett filed a brief of appellant pursuant to *Anders v. California*, 386 S.S. 738 (1967) and moved to be relieved as counsel for Applicant. Applicant then filed his *pro se* brief. On June 27, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal. *State v. James*, Unpub. Op. No. 2018-UP-284 (Ct. App. filed June 27, 2018). The Remittitur was issued on July 13, 2018.

#### **CURRENT APPLICATION**

Applicant timely commenced this PCR application on December 28, 2018. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Lack of subject matter jurisdiction
  - a. "Indictments"
2. Ineffective Assistance of Counsel
3. Violation of Due Process of the Law

On May 3, 2021, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel for:
  - a. "failing to timely object to state presented evidence of flight."
  - b. "failing to raise the issue that Applicant's first offense was when he was fifteen years old and should not have counted toward seeking life without parole."
  - c. "failing to question Rebecca Templeton, whose name appears on the indictment, regarding Applicant's involvement in the robbery."
  - d. "failing to object to the burden shifting that occurred on p. 364 – lines 4-6 and 16-19."
  - e. "failing to prepare for trial with Applicant and failing to discuss with Applicant a trial strategy."
  - f. "failing to investigate the defense regarding the identity of the fourth person."
  - g. "failing to raise issues regarding the validity of the indictment, including the fact that indictments were not filed stamped pursuant to Rule 3 of the South Carolina Rules of Criminal Procedure."
  - h. "failing to raise the issue of the presence of a third party in deliberation room after the jury started deliberating. A deputy entered the deliberation room."
  - i. "failing to put forth a defense on Applicant's behalf, including evidence of Applicant's involuntary presence on the day in question."

On January 25, 2022, Applicant filed a second amended application to include the following additional allegations:

1. Ineffective Assistance of Counsel for:
  - a. "failing to raise the issue of the presence of a third party in the deliberation room after the jury started deliberating. Sheriff Ed Darnell entered the deliberation room."

Before this Court are the records of the Bamberg County Clerk of Court regarding the underlying convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's direct appeal, and the records of this post-conviction relief action.

#### **INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY**

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule

71.1(e), SCRCPP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there

is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.



**Failure to Raise Issue that Applicant was 15 during Enhancement Conviction**

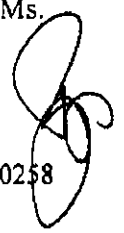
Applicant contends Counsel was ineffective for failing to raise the issue that Applicant's first offense was when he was fifteen years old and should not have counted toward seeking life without parole. This Court finds this allegation is without merit. Under the recidivist statute, a defendant convicted of a most serious offense must be sentenced to life without parole if that defendant was previously convicted of another most serious offense, upon proper notice to defendant from Solicitor's office. *See* S.C. Code Ann. § 17-25-45.

Here, it was entirely appropriate that his prior armed robbery conviction was used to enhance his sentence to life without parole, even though he was a juvenile at the time of the offense, because he was tried as an adult in general sessions court. *See State v. Hall*, 437 S.C. 107, 876 S.E.2d 328 (Ct. App. 2022) ("When a juvenile is tried and adjudicated as an adult in general sessions court, the guilty plea is a conviction for purposes of the recidivist statute."). Additionally, the record reflects Applicant was given proper notice of the State's intent to seek life without parole. Applicant testified at the evidentiary hearing that Counsel informed him, prior to trial, that the life without parole notice had been served.

Because Applicant was previously convicted of a most serious offense in the general sessions court, and Applicant was given proper notice of the State's intent to seek life without parole, his life without parole sentence was proper pursuant to S.C. Code Ann. § 17-25-45. Therefore, this Court finds this allegation is DENIED.

**Failure to Cross-Examine Rebecca Templeton**

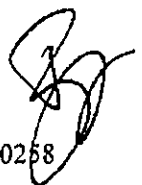
Applicant contends Counsel was ineffective for failing to question Rebecca Templeton, whose name appears on the indictment, regarding Applicant's involvement in the robbery. This Court finds this allegation is without merit. Rebecca Templeton testified at Applicant's trial. Ms.



Templeton testified that she was working as a bank teller the day of the incident when a man twice entered the bank requesting to open a bank account. (R. p. 249). Around half an hour later, a man entered the bank, told everyone to get down, and then asked her to give him all the money. (R. p. 250). The man then jumped on the counter repeating his demand to give him all the money. (R. p. 251). Ms. Templeton testified she gave him the money from her three different drawers in the bank and from the drawer in the drive thru area. (R. pp. 351–352). Ms. Templeton then pulled the money that activated the bank's alarm system. (R. p. 253). Ms. Templeton did not identify either the man who requested to open the bank nor the man who demanded the money. Counsel did not cross-examine Ms. Templeton.

At the evidentiary hearing, Applicant averred that Counsel should have questioned Ms. Templeton since her name was on the indictment. Counsel explained Ms. Templeton's testimony was not harmful to the defense because she never identified Applicant as the man who robbed the bank which corroborated their defense theory. This Court finds this a valid reason for not cross-examining her. "[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010).

Furthermore, Applicant has failed to present what questions Counsel should have asked Ms. Templeton and failed to present her as a witness at the PCR hearing; thus, it is pure speculation how she would have responded to any additional cross-examination. Our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." *Bannister v. State*, 333 S.C. 298,



303, 509 S.E.2d 807, 809 (1998). Therefore, this Court finds Applicant has failed to prove prejudice as to this allegation.

Accordingly, this allegation is DENIED.

**Failure to Investigate the Defense Regarding the Identity of the Fourth Person<sup>1</sup>**

Applicant contends Counsel was ineffective for failing to prepare for trial with Applicant and for failing to discuss a trial strategy. Specifically, Applicant alleges Counsel failed to investigate the defense regarding the identity of the fourth person. This Court finds this allegation is without merit. At the evidentiary hearing, Applicant testified Counsel met with him three times and only briefly discussed defenses with him. Applicant testified the fourth person involved in the robbery was never identified. Applicant explained that Darryl Lassiter testified for the State, but he was not the alleged fourth person involved, law enforcement just found his driver's license in the car used in the robbery. Applicant contends that Counsel was never able to identify the alleged fourth person involved. Counsel testified he met with Applicant who told him he was forced at gun point to participate in the robbery by an alleged fourth person. Counsel explained Applicant provided no information regarding the alleged fourth person; however, law enforcement did find a driver's license of a Darryl Lassiter. Counsel followed up on this information and learned that Mr. Lassiter had a video-confirmed alibi. No other information regarding the alleged fourth person was provided to him.

This Court finds Counsel adequately met with Applicant and discussed defenses with him. Specifically, this Court finds Counsel adequately investigated the identity of the alleged fourth person based on the information he had. Counsel credibly testified Applicant provided

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<sup>1</sup> Allegations 1(e) and (f) will be addressed in this section.

him no information regarding the alleged fourth person. At trial, Counsel argued Applicant was coerced by a fourth individual. Thus, Counsel was not deficient for failing to investigate this alleged co-conspirator's identity when he took every investigative action possible based on the information he had.

Furthermore, Applicant has failed to meet his burden establishing prejudice. Applicant has wholly failed to show how additional investigation would have led to the identity of the alleged fourth person. This Court further finds Applicant has failed to demonstrate this alleged fourth person even existed. The only evidence presented, both at trial and the evidentiary hearing, regarding the existence of a fourth co-conspirator was the self-serving testimony of Applicant and his co-defendant. Applicant has further failed to demonstrate how additional consultations with Counsel would have led to a different outcome at trial.

Accordingly, this allegation is DENIED.

#### **Failure to Object to Burden Shifting**

Applicant alleges Counsel was ineffective for failing to object to burden shifting.

Applicant cites to the following portions of the record in support of his argument:

The Court: There's no evidence that there was anybody participating in this other than those three guys, two of whom went in to the bank.

(R. p. 364, ll. 4-6).

Your Honor, whether that fourth person is actually Darrell Lassiter, or anyone else for that matter, I don't know that we have to prove that to be able deal with this issue.

(R. p. 364, ll. 16-19).

This conversation occurred during arguments before the trial court on whether the SLED case agent would be allowed to testify as to a statement Applicant made to him following the robbery.

These arguments were made outside the presence of the jury to determine the admissibility of

testimony. Since these comments were merely evidentiary arguments made outside the presence of jury, they were not burden shifting and Counsel was not ineffective for failing to object to them.

Accordingly, this Court finds this allegation is DENIED.

### **Failure to Object to Evidence of Flight**

Applicant alleges Counsel was ineffective for failing to timely object to State presented evidence of flight. This Court finds this allegation is without merit. "Flight from prosecution is admissible as guilt." *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262 (2006). Evidence of flight is relevant when there is a nexus between the flight and the offense charged. *Pagan* 369 S.C. 201. This evidence is admissible if circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. *Id.*

First, Counsel did object to evidence of flight being admitted. R. pp. 31–33. The Trial Court ruled the evidence of Applicant fleeing was part of the *res gestae* of the case and therefore admissible. Thus, this Court finds Counsel was not deficient for failing to object to State presented evidence of flight.

Irregardless, the evidence the State presented clearly justified an inference that Applicant was fleeing from law enforcement following the bank robbery. The State presented evidence that Applicant was driving the getaway vehicle used in the armed robbery when he crashed into a tree while fleeing from law enforcement. Applicant then exited the vehicle and continued fleeing on foot. Law enforcement set up a perimeter surrounding the cornfield and Applicant was eventually arrested after exiting the cornfield. This Court finds this was admissible testimony which demonstrated a nexus between the Applicant's flight and the bank robbery. Therefore, this Court



finds Applicant has failed to prove he was prejudiced by any alleged deficiency in the timeliness of Counsel's objection.

Accordingly, this Court finds this allegation is DENIED.

**Failure to Present a Defense Including Applicant's Involuntary Precense at the Scene**

Applicant alleges Counsel was ineffective for failing to adequately present a defense that Applicant was at the scene involuntarily. This Court finds this allegation is without merit. Cocrcion by an alleged fourth party was the exact defense Counsel argued at trial. Counsel presented testimony from Applicant's co-defendant who testified they were both cocrced into committing the robbery by an unknown alleged fourth person. As noted in previous section, Counsel testified at the evidentiary hearing that he investigated the identity of the alleged fourth party, but Applicant gave little to no details in which Counsel could identify this person. Any difficulty in identifying this alleged fourth person or inability to adequately make this argument at trial was not the fault of Counsel, but was due to the spurious nature of Applicant's claim he was coerced by a fourth party. Counsel made this arguement at trial and the jury rejected it. Therefore, Counsel was not deficient for failing to present this defense at trial.

Furthermore, Applicant has not, to date, presentend any evidence whatsoever of this alleged fourth party's identity. Applciant's mere allegation Counsel should have more adequately presented this defense is wholly inadequate to demonstrate Counsel was constitutionally ineffective. Therefore, Applicant has further failed to prove he was prejudiced as to this allegation.

Accordingly, this Court finds this allegation is DENIED.



### **Failure to Raise Issue of Sherriff Entering the Deliberation Room**

Applicant alleges Counsel was ineffective for failing to raise the issue a third party (Sherriff Ed Darnell) entered the deliberation room after the jury began deliberating. This Court finds this allegation is without merit.

Applicant presented no evidence regarding this allegation besides his own self-serving testimony and testimony from his mother. This Court finds the testimony from Applicant and his mother not credible in this regard. Counsel testified he did not recall any issue with an unauthorized individual entering the jury deliberation room, Sherriff or otherwise.. Therefore, Applicant has failed to meet his burden establishing the sherriff actually entered the deliberation room. Additionally, since Counsel was unaware of the sherriff allegedly entering the deliberation room, he was not deficient for failing to raise this issue.

Applicant argues the presence of the sherriff in the deliberation room is per se prejudicial. This is an incorrect interpretation of the law. Applicant has the burden to prove he was denied a right to a fair trial based on the unauthorized presence of a party in the deliberation room. *State v. Grovenstein*, 335 S.C. 347, 517 S.E.2d 216 (1999). This Court finds Applicant has failed to present evidence that any juror was unduly influenced by the alleged presence of the sherriff in the deliberation room. Thus, Applicant has failed to prove he was prejudiced by the alleged presence of the sherriff in the deliberation room.

Accordingly, this Court finds this allegation is DENIED.

### **Failure to Raise Issue of Indictments**

Applicant's allegations regarding jurisdiction are without merit. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Applicant alleges the indictments were not filed stamped;

thus, the Circuit court lacked subject matter jurisdiction to try his case. This is without merit. The record reflects all indictments were true billed and filed stamped with the Bamberg County Clerk of Court. Therefore, Applicant's allegations regarding jurisdiction, and every part of the application based thereupon, shall be dismissed.

Applicant's allegation that the trial court lacked subject matter jurisdiction because his indictments were not filed stamped is without merit. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). With respect to Applicant's claims concerning the sufficiency of the indictment, Applicant was required to raise such a challenge prior to the swearing of the jury. S.C. Code Ann. §17-19-90 (2003). Regardless, "[a]n indictment is merely a notice document." *State v. Baker*, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing *Gentry*, 363 S.C. at 102-103, 610 S.E.2d at 500. Whether or not the indictment could be made more definite and certain is irrelevant. *Baker*, 390 S.C. at 62, 700 S.E.2d at 442. The court in *Baker* noted the following:

[T]he court must look at "the indictment with a practical eye in view of all the surrounding circumstances. The sufficiency of the indictment is determined by whether: (1) the offense charged is stated with sufficient certainty and particularity to enable a court to know what judgment to pronounce, and the defendant to know what he or she is called upon to answer and whether he or she may plead an acquittal or conviction thereon, and (2) whether it apprises the defendant of the elements of the offense that are intended to be charged.

Id. (citing *Gentry*, 363 S.C. at 102-103, 610 S.E.2d at 500).

Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." *Id.* 390 S.C. at 63, 700 S.E.2d at 443 (citing *State v. Tumbleston*, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007)); S.C. Code Ann. § 17-19-20.

When the indictment references the statute the elements of the charge are thereby incorporated into the indictment. See *State v. Owens*, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001) (murder statute) *overruled on other grounds by Gentry*, 363 S.C. 93, 610 S.E.2d 494; see also *State v. Beam*, 336 S.C. 45, 50-51, 518 S.E.2d 297, 300 (Ct. App. 1999) (video piracy statute); *State v. Crenshaw*, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980) (bribery statute).

Applicant's indictment allegation is not proper for PCR. Applicant's failure to raise this challenge before the jury was sworn prevents him from raising this allegation in this action. Additionally, the indictments charged Applicant substantially in the language of the statute prohibiting the crime, and thus pass legal muster. Furthermore, the indictments were properly filed stamped with the Bamberg County Clerk of Court. As such, Applicant's allegation as it pertains to the indictments shall be dismissed.

Furthermore, Applicant has presented no facts whatsoever to support his claim that the trial court lacked subject matter jurisdiction. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *Brown v. State*, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001), *overruled in part by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. See also S.C. Const. Art. V, § 11. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in the Court of General Sessions. Accordingly, the circuit court had subject matter jurisdiction. Applicant has failed to present any facts or evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the



authority to provide. Therefore, Applicant's allegation as it pertains to subject-matter jurisdiction is DENIED.

### CONCLUSION

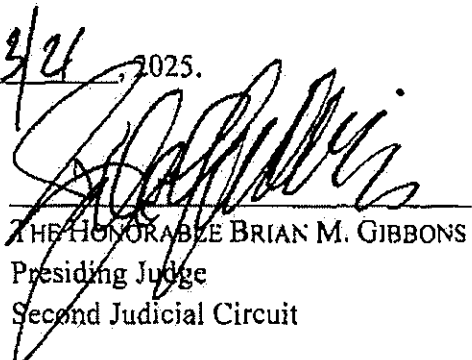
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the State.

AND IT IS SO ORDERED this \_\_\_\_ day of 3/24, 2025.

  
THE HONORABLE BRIAN M. GIBBONS  
Presiding Judge  
Second Judicial Circuit

                    , South Carolina