

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Mar 17 2026**

**S.C. SUPREME COURT**

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Certiorari to Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

\_\_\_\_\_  
JAQUESE KAVON HYATT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000388

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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APRIL HERRON  
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1 THE COURT: Okay, let's call to bar the case of  
2 Jaquese Kavon Hyatt.

3 Is he in the holding cell?

4 All right, we call to bar the case of The State  
5 of South Carolina vs. Jaquese Kavon Hyatt. That is  
6 indictment numbers 2014-GS-23-11579 and 11556. The  
7 jury's outside and we're prepared to select our jury.  
8 Strikes fiver and five, gentleman, is that your  
9 understanding?

10 MR. TIMMONS: Yes, Your Honor.

11 MR. TONEY: Five strikes?

12 THE COURT: Five for The State ten for the  
13 Defense.

14 MR. TONEY: Yes, sir, okay. Thank you.

15 THE COURT: Okay. And I have the witness list,  
16 just standard voir dire, I presume?

17 MR. TIMMONS: Yes, Your Honor.

18 MR. TONEY: Yes.

19 THE COURT: All right. And I recognize that  
20 there are two, there are two issues that we're going  
21 to take up with respect to the introduction of  
22 evidence. A Biggers identification hearing, a  
23 Jackson v. Denno confession hearing. So, after we  
24 select the jury, I'll send them out and we'll do  
25 those very briefly and then we'll come back in, okay.

1           Let me ask you this, can you do your opening  
2           statements before having those pretrial hearings?

3           MR. TONEY: I'm ready to do it right now.  
4           Whenever you want.

5           MR. ELLIS: Yes, sir Your Honor, we can.

6           THE COURT: All right. So, what we'll decide is  
7           that with respect to identification and with respect  
8           to any confessions, you avoid making any mention of  
9           that until it's determined by The Court that those  
10          are, at a threshold, admissible, okay?

11          MR. ELLIS: Yes, sir Your Honor.

12          MR. TONEY: In my opening statement, I'm sure I  
13          will probably tell jury that this is an  
14          identification case.

15          THE COURT: And you're welcome to do that as  
16          long as you're comfortable with it and then you can  
17          mention it as well then. Y'all have an agreement  
18          between you that you can discuss it in opening, that  
19          I'm entirely comfortable with that.

20          MR. TONEY: I wouldn't want to bring up the  
21          confession or the photo lineup. What I will say is  
22          this is a identification case. And the jury has to  
23          pay attention. So, I would intend to waive any  
24          objections to -- under Neil vs. Biggers.

25          THE COURT: I got you.

1 MR. TONEY: Thank you.

2 THE COURT: All right. So, generally you can  
3 reference the identification.

4 MR. ELLIS: Generally, yes, sir.

5 THE COURT: You comfortable with that?

6 MR. ELLIS: Yes, sir, Your Honor.

7 THE COURT: Okay, good enough.

8 All right, would you bring the jury in please?

9 (WHEREUPON, the jury venire came into open court  
10 at approximately 9:45 a.m.)

11 THE COURT: All right, good morning ladies and  
12 gentlemen, welcome back. I see some familiar faces.  
13 Some of who have you come up here several times and  
14 not be selected. Some you who have been select and  
15 served on a jury. So, welcome back. We again, are  
16 going to go through the process that we have gone  
17 through at least twice in this courtroom and I know  
18 you may have done it other courtrooms as well. I may  
19 explain things again to you that I've already  
20 explained to you previously but it's important that  
21 as we approach each and every separate trial we're  
22 reminded of the fundamentals and of the basics and  
23 the respective constitutional rights of all the  
24 parties involved. So, I'm sorry if you have to  
25 listen to me once again say the same things that

1           you've heard me say twice already this week.

2           But let's go ahead and start out by reminding  
3           you that in the State of South Carolina, the County  
4           of Greenville and the United States of America, that  
5           any criminal defendant is presumed innocent until he  
6           or she is proven guilty beyond a reasonable doubt by  
7           the State. Now, it is incumbent upon The State to  
8           prove each and every element of the offense beyond a  
9           reasonable doubt. And a jury of 12 deliberating  
10          jurors will determine whether, in fact, The State has  
11          proven its case based on the facts and the evidence  
12          that's been presented.

13          Now, ladies and gentlemen, until such time that  
14          a jury of 12 deliberating jurors determines that The  
15          State has met its burden of proof, the Defendant  
16          retains a presumption of evidence [verbatim]. And as  
17          he sits here he is presumed innocent [verbatim]. If  
18          you will, imagine that he's wearing a cloak of  
19          evidence [verbatim] and that will not be removed  
20          until such time as a jury, after deliberation,  
21          determines that The State has met its burden of  
22          proof.

23          I'm going to read for you the indictments. I  
24          know that you've heard me read indictments before and  
25          I remind you that these indictments are just charging

1 papers. These are the allegations presented by The  
2 State to formally institute the suit against the  
3 Defendant. When I read these charges to you, I'm not  
4 suggesting to you that they are the facts. I'm not  
5 suggesting to you that it is the truth. What I'm  
6 suggesting to you that these are the allegations in  
7 the formal indictments.

8 So, ladies and gentlemen, the first case that's  
9 before The Court today is The State vs. Jaquese Kavon  
10 Hyatt. And that is case number 2014-GS-23-11556.

11 And this is an indictment for armed robbery and  
12 possession of a weapon during the commission of a  
13 violent crime. Ladies and gentlemen, The State would  
14 allege that the Defendant did in Greenville County on  
15 or about September 17, 2014, while armed with a  
16 deadly weapon or while alleging -- or while alleging  
17 either by actions or words that he was armed with a  
18 deadly weapon, did take means by way of force or  
19 intimidation goods or monies described as Xbox gaming  
20 system, ID, U.S. currency, a cell phone from the  
21 person or presence of Lee Michael Roads.

22 Second count of that indictment, ladies and  
23 gentlemen, is possession of a weapon during the  
24 commission of a violent crime. And The State would  
25 allege that Mr. Hyatt did in Greenville County on or

1       about 17 day of September 2014, possess or visibly  
2       display a hand gun during the commission of or  
3       attempt to the commission to a violent crime.

4               Ladies and gentlemen, the second indictment in  
5       this case is Indictment 2014-GS-23-11579 and that is  
6       an indictment for, again, armed robbery and  
7       possession of a weapon during the commission of a  
8       violent crime. And this instance, ladies and  
9       gentlemen, The State would allege that Mr. Hyatt did  
10      in Greenville County on or about September 17th,  
11      2014, while armed with a deadly weapon or while  
12      alleging that he was armed with a deadly weapon, did  
13      commit the commission of a robbery by means of force,  
14      intimidation, goods or monies described as  
15      PlayStation gaming system, video games and cell phone  
16      from the person or presence Luis Perez.

17             The second count of that indictment, ladies and  
18      gentlemen, again, is possession of a weapon during  
19      the commission of a violent crime. Wherein The State  
20      would allege that the Defendant did in Greenville  
21      County on or about 17th September 2014, possess or  
22      visibly display a hand gun during the commission of a  
23      violent crime. Sometimes those indictments are  
24      worded very inartfully. So, sometimes when I  
25      stammer, it's because I'm trying to convey the

1 substance as opposed to reading to you some verbiage  
2 that frankly doesn't flow very well.

3 In any event, ladies and gentlemen, as you know  
4 I've read those indictments to you so that you can  
5 intelligently answer the question that I'm about to  
6 pose. And that is, is there anyone among you who has  
7 any prior opinion, predisposition, bias regarding the  
8 parties and or the alleges in this case?

9 All right, let the record reflect no affirmative  
10 response.

11 Ladies and gentlemen, in this case The Defendant  
12 is Mr. Jaquese Kavon Hyatt.

13 Did I pronounce that correctly, Mr. Hyatt?

14 MR. HYATT: Yes, sir.

15 THE COURT: Okay.

16 Is there anyone among you who has a personal  
17 professional or family relationship with Mr. Hyatt?

18 There was no response.

19 Ladies and gentlemen, The Defendant is  
20 represented by Mr. Ivan Toney of the Greenville  
21 County Bar. Is their anyone among you who has a  
22 personal, professional or family relationship with  
23 Mr. Toney?

24 There was no response.

25 Ladies and gentlemen, this case will be

1 prosecuted by Mr. William Timmons and Mr. Sloan Ellis  
2 of the 13th Circuit Solicitor's Office. I will ask  
3 you, is there anyone among you who has a personal,  
4 professional, family relationship with Mr. Timmons or  
5 Mr. Ellis or anyone employed by the 13th Circuit  
6 Solicitor's Office?

7 There was no response.

8 All right, ladies and gentlemen, the potential  
9 witnesses in this case include Luis Perez, William  
10 Davis, Lee Rhodes, Sergeant David Weiner or Weiner  
11 with the Greenville County Sheriff's Office, Ricky  
12 Abercrombie, Master Deputy Devin Hoover, Greenville  
13 County Sheriff's Office, Investigator Ricky Motes,  
14 Greenville County sheriff's office. Ladies and  
15 gentlemen, I ask you, is there anyone among you who  
16 has a personal, professional or family relationship  
17 with any of those proposed witnesses?

18 There was no response.

19 Ladies and gentlemen, is there anyone among you  
20 who is a member or contributor to an organization  
21 which advocates for victims rights or for criminal  
22 prosecution? And by way of example I mean SADD or  
23 MADD or like organizations?

24 All right, let the record reflect no affirmative  
25 response.

1           Ladies and gentlemen, is there anyone among you  
2           has an immediate family member or a very close  
3           personal friend who is employed by law enforcement?

4           Yes, ma'am. Name and--

5           PROSPECTIVE JUROR: Jennifer Payne, 128. My  
6           brother is a sheriff for Lexington County.

7           THE COURT: Okay. Do you think you can still be  
8           fair and impartial in this case, ma'am?

9           PROSPECTIVE JUROR: Yes, sir.

10          THE COURT: Okay, thank you very much. I  
11          appreciate your telling me.

12          Anyone else?

13          There was no response.

14          All right. Is there anyone among you who for  
15          whatever reason feels as though you could not be a  
16          fair and impartial juror in the trial of this case?

17          There was no response.

18          All right, counsel any additional questions in  
19          voir dire?

20          MR. TONEY: May I approach for a minute?

21          THE COURT: Sure.

22          (WHEREUPON, a bench conference was held in the  
23          presence of the jury but out of the hearing of  
24          the jury.)

25          THE COURT: Ladies and gentlemen, I may have

1       been articulate and misspoken. Counsel advised me  
2       that I said he's clocked with the presumption of  
3       evidence, that's not correct. Clocked with the  
4       presumption of innocence. I apologize for that.

5             Okay, anything in addition?

6             MR. TONEY: I do have a couple objections to the  
7       jury panel.

8             THE COURT: Okay. You have objections to the  
9       jury panel?

10            MR. TONEY: Well, to a couple of jurors.

11            THE COURT: Okay, are you saying that you'd like  
12       to make motions to strike for cause?

13            MR. TONEY: Yes.

14            THE COURT: Okay. As those -- as those persons  
15       are called you may articulate your motion. But we  
16       won't go through them all because it maybe that you  
17       have selected your 12 and one alternate. And they  
18       may not be on the list up to that time. So, we'll  
19       take them as they arise, okay.

20            MR. TONEY: Okay.

21            MR. TIMMONS: Nothing from The State, Your  
22       Honor.

23            THE COURT: Okay. Good enough.

24            Ladies and gentlemen, you've been through this  
25       process before. When your name is called please

1 stand up and the attorneys will exercise their  
2 peremptory challenges. The State has five strikes  
3 and The Defense has ten. We'll select one alternate  
4 each side will -- The State will have one strike for  
5 an alternate and the defense will have two. Okay.

6 You may proceed.

7 THE CLERK: Juror No. 90, Kristin Kipper.

8 (Kristin Kipper, a white female, came forward.)

9 What says the state?

10 MR. TIMMONS: Please present the juror.

11 THE CLERK: What says the Defendant?

12 MR. TONEY: Please excuse the lady.

13 THE CLERK: You may have your seat.

14 Juror No. 56, Martin Galehouse.

15 (Martin Galehouse, a white male, came forward.)

16 What says The State?

17 MR. TIMMONS: Please present Mr. Galehouse.

18 THE CLERK: What says The Defendant?

19 MR. TONEY: Please swear the gentleman.

20 THE CLERK: You may bring your things and have a  
21 seat in the jury box.

22 Juror No. 7, Tracy Baker.

23 (Tracy Baker, a black female, came forward.)

24 What says The State?

25 MR. TIMMONS: Please excuse Ms. Baker.

1 THE CLERK: You may have your seat.

2 Juror No. 55, John Gaillard.

3 (John Gaillard, a white male, came forward.)

4 What says The State?

5 MR. TIMMONS: Please present Mr. Galliard.

6 THE CLERK: What says The Defendant?

7 MR. TONEY: Please excuse the gentleman.

8 THE CLERK: You may take your seat.

9 Juror No. 52, Michael Thomas Flot.

10 (Michael Thomas Flot, a white male, came  
11 forward.)

12 What says The State?

13 MR. TIMMONS: Please present Mr. Flot.

14 THE CLERK: What says The Defendant?

15 MR. TONEY: Please excuse the gentleman.

16 THE CLERK: You may take your seat.

17 MR. TONEY: I'm sorry, beg your pardon, please  
18 swear the gentleman.

19 THE CLERK: Bring your things and come have a  
20 seat in the jury box.

21 Juror No. 25, Ronald Chitty.

22 (Ronald Chitty, a white male, came forward.)

23 What says The State?

24 MR. TIMMONS: Please present Mr. Chitty.

25 THE CLERK: What says The Defendant?

1 MR. TONEY: Please excuse the gentleman.

2 THE CLERK: You may take your seat.

3 Juror No. 162, Barbara Squires-Roehl.

4 (Barbara Squires-Roehl, a white female, came  
5 forward.)

6 What says The State?

7 MR. TIMMONS: Please present Ms. Squires-Roehl.

8 THE CLERK: What says The Defendant?

9 MR. TONEY: That's 161, ma'am?

10 THE CLERK: 162.

11 MR. TONEY: Please swear the lady.

12 THE CLERK: You may bring your things and have a  
13 seat in the jury box.

14 Juror No. 147, Cherry Robinson.

15 (Cherry Robinson, a black female, came forward.)

16 What says The State?

17 MR. TIMMONS: Please present Ms. Robinson.

18 THE CLERK: What says The Defendant?

19 MR. TONEY: Please swear the lady.

20 THE CLERK: You may bring your things and have a  
21 seat in the jury box.

22 Juror No. 165, Wayne Stryjek.

23 (Wayne Stryjek, a white male, came forward.)

24 What says The State?

25 MR. TIMMONS: Please present Mr. Stryjek.

1 THE CLERK: What says The Defendant?

2 MR. TONEY: Please excuse him.

3 THE CLERK: You may take your seat.

4 Juror No. 12, Debra Benner.

5 (Debra Benner, a white female, came forward.)

6 What says The State?

7 MR. TIMMONS: Please present Ms. Benner.

8 THE CLERK: What says The Defendant?

9 MR. TONEY: Please swear the lady.

10 THE CLERK: You may bring your things and have a  
11 seat in the jury box.

12 Juror No. 62, Andrew Greisinger.

13 (Andrew Greisinger, a white male, came forward.)

14 What says The State?

15 MR. TIMMONS: Please Mr. Greisinger.

16 THE CLERK: What says The Defendant?

17 MR. TONEY: Please swear the gentleman.

18 THE CLERK: Bring your things and have a seat in  
19 the jury box.

20 Juror No. 13, Glenda Fuller Bolding.

21 (Glenda Fuller Bolding, a white female, came  
22 forward.)

23 What says The State?

24 MR. TIMMONS: Please excuse Ms. Bolding.

25 THE CLERK: You may take your seat.

1 Juror No. 53, Steven Fowler.

2 (Steven Fowler, a white male, came forward.)

3 What says The State?

4 MR. TIMMONS: Please Mr. Fowler.

5 THE CLERK: What says The Defendant?

6 MR. TONEY: Please excuse the gentleman.

7 THE CLERK: You may take your seat.

8 Juror No. 188, Anita Whitfield.

9 (Anita Whitfield, a white female, came forward.)

10 What says The State?

11 MR. TIMMONS: Please present Ms. Whitfield.

12 THE CLERK: What says The Defendant?

13 MR. TONEY: Please excuse the juror.

14 THE CLERK: You may take your seat.

15 Juror No. 153, Kathryn Landrum.

16 (Kathryn Landrim, a white female, came forward.)

17 What says The State?

18 MR. TIMMONS: Please.

19 MR. TONEY: I don't have 153 on my list for some  
20 reason.

21 MR. TIMMONS: I don't either.

22 Please present Ms. Landrum.

23 THE CLERK: What says The Defendant?

24 MR. TONEY: Your Honor.

25 THE COURT: Yes, sir.

1 MR. TONEY: Respectfully may you ask where she  
2 works and where her husband works?

3 THE COURT: Ms. Landrum, how are employed?

4 PROSPECTIVE JUROR: I'm an administrative  
5 assistant at a company called Air Mark. We're a  
6 contract employee with St. Francis Hospital.

7 THE COURT: Okay. Are you married?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Okay. Good. Thank you.

10 MR. TONEY: Please excuse her.

11 THE CLERK: You may take your seat.

12 Juror No. 161, Monica Spencer.

13 (Monica Spencer, a white female, came forward.)

14 What says The State?

15 MR. TIMMONS: Please present Ms. Spencer.

16 THE CLERK: What says The Defendant?

17 MR. TONEY: Please excuse the lady.

18 THE CLERK: You may take a seat.

19 Juror No. 168, Susan Suloff.

20 (Susan Suloff, a white female, came forward.)

21 What says The State?

22 MR. TIMMONS: Please present Ms. Suloff.

23 THE CLERK: What says The Defendant?

24 MR. TONEY: Please swear the lady.

25 THE CLERK: You may bring your things and have a

1 seat in the jury box.

2 Juror No. 98, Michael Lining.

3 (Michael Lining, a white male, came forward.)

4 What says The State?

5 MR. TIMMONS: Please present Mr. Lining.

6 THE CLERK: What says The Defendant?

7 MR. TONEY: Please excuse the gentleman.

8 THE CLERK: You may take a seat.

9 Juror No. 123, Heather Nix.

10 (Heather Nix, a white female, came forward.)

11 What says The State?

12 MR. TIMMONS: Please present Ms. Nix.

13 THE CLERK: What says The Defendant?

14 MR. TONEY: Is that 128?

15 THE CLERK: 123.

16 MR. TONEY: Sorry.

17 THE CLERK: That's okay.

18 MR. TONEY: Please swear the lady.

19 THE CLERK: You may bring your things and have a  
20 seat in the jury box.

21 Juror No. 51, Stephanie Fletcher.

22 (Stephanie Fletcher, a white female, came  
23 forward.)

24 What says The State?

25 MR. TIMMONS: Please excuse Ms. Nix.

1 THE CLERK: You may take a seat.

2 Juror No. 70, Angelia Harrison.

3 (Angelia Harrison, a black female, came  
4 forward.)

5 What says The State?

6 MR. TIMMONS: Please present Ms. Harrison.

7 MR. TONEY: Pleaser swear her.

8 THE CLERK: You may bring your things and have a  
9 seat in the jury box.

10 Juror No. 108, Cecilia McCurdy.

11 (Cecilia McCurdy, a Hispanic female, came  
12 forward.

13 What says The State?

14 MR. TIMMONS: Please present Ms. McCurdy.

15 THE CLERK: What says The Defendant?

16 MR. TONEY: What number what was that again?

17 THE CLERK: 108.

18 MR. TONEY: Please swear her.

19 THE CLERK: You may bring your things and be  
20 seated in the jury box.

21 Juror No. 107, Karen Mccombe.

22 (Karen Mccombe, a white female, came forward.)

23 What says The State?

24 MR. TIMMONS: Please present Ms. Mccombe.

25 What says The Defendant?

1 MR. TONEY: I don't have information on 107.

2 THE COURT: Ms. Mccombe, where do you work?

3 PROSPECTIVE JUROR: I'm retired. I was a  
4 physical therapy manager at a teaching hospital in  
5 Virginia.

6 THE COURT: Okay. Are you married, ma'am.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What does your husband do?

9 PROSPECTIVE JUROR: My husband is retired. He  
10 was a IT manager for the State of Virginia.

11 THE COURT: Okay. All right. Thank you, I  
12 appreciate that.

13 MR. TONEY: Please swear her.

14 THE CLERK: Bring your things and have a seat in  
15 the jury box.

16 Juror No. 171, Keylana Thomason.

17 (Keylana Thomason, a black female, came  
18 forward.)

19 What says The State?

20 MR. TIMMONS: Please present Ms. Thomason.

21 THE CLERK: What says The Defendant?

22 MR. TONEY: Please swear the lady.

23 THE CLERK: You may bring your things and have a  
24 seat in the jury box.

25 Juror No. 8, Jaylen Ballenger.

1 (Jaylen Ballenger, a black male, came forward.)

2 THE COURT: So this is your first alternate,  
3 strikes are one and two.

4 THE CLERK: What says The State?

5 MR. TIMMONS: Please present Mr. Ballenger.

6 THE CLERK: What says The Defendant?

7 MR. TONEY: Swear the gentleman.

8 THE CLERK: You may bring your things and have a  
9 seat in the jury box.

10 THE COURT: All right, ladies and gentlemen, for  
11 the remainder of you, please go back down to the jury  
12 assembly room today. I don't know whether they will  
13 be selecting another jury today. I honestly don't  
14 know if they will or not. But to the extent that you  
15 may be done with your week's work, I appreciate  
16 everything that you've done. I appreciate you being  
17 here. Simply by virtue of you being here ready to  
18 preside over cases, the County of Greenville, State  
19 of South Carolina resolved a significant number of  
20 cases. And not just those cases which have be called  
21 to trial, it's a significant amount more that have  
22 resolved of their own weight because of you being  
23 ready and prepared to preside over those cases. So,  
24 thank you and if you don't see you again have a great  
25 week and have a great weekend. Okay.

1           (WHEREUPON, the jury venire left open court at  
2           approximately 10:13 a.m.)

3           THE COURT: All right, counsel, any issues or  
4           matters of law that we need to take up with respect  
5           to the qualification or selection of this jury?

6           MR. TONEY: No, sir.

7           MR. TIMMONS: Not from The State, Your Honor.

8           THE COURT: Good enough.

9           All right, ladies and gentlemen,  
10          congratulations. I know we've got a few frequent  
11          flyers on the jury now this week. To the extent,  
12          again, that I restate something that you may have  
13          already heard, I apologize. There may be a few of  
14          you who have not served on a jury yet. So, those of  
15          who have may have to suffer through me explaining  
16          things once again. But I'll try to be quick and  
17          efficient about it.

18          This case I suspect, based on my conversation  
19          with the attorneys, should resolve today. That is we  
20          should be able to present all of the evidence and  
21          move to argument and charge today. That's not a  
22          guarantee because I never know exactly how long it  
23          will take because I haven't heard the witnesses and I  
24          haven't seen the evidence. So -- but my hope is that  
25          we will finish and resolve the same today.

1           It's always helpful for me to tell you what your  
2           role as juror in the case and to give you an idea of  
3           how we'll proceed so you will know as we proceed  
4           forward. Your role is to be the finders of the fact.  
5           You will determine what the facts are in this case  
6           based on the evidence that is presented during the  
7           conduct of the trial. Evidence will be presented by  
8           and through the introduction of witnesses and other  
9           types of evidence to include, perhaps, documentary  
10          evidence, video tapes, audio tapes, actual physical  
11          objects. But you'll receive all that evidence. And  
12          from that evidence you will weigh that evidence and  
13          you will determine from that evidence what the facts  
14          are. Then when you deliberate you will apply the law  
15          as I give it to you to the facts as you determine  
16          them to be and determine whether The State has met  
17          its burden of proving The Defendant guilty beyond a  
18          reasonable doubt.

19          Now, as I just suggested, my job is to give you  
20          the law. I'm the Judge of the law. Which means that  
21          generally speaking, I'm the objective referee, the  
22          umpire calling balls and strikes. I make sure that  
23          we proceed in accordance with the law and the rules  
24          of procedure and the rules of evidence. At the end  
25          of the case I will give you a charge on the law that

1 explains the law as it relates to the evidence.

2 However, I wait until the end because I haven't seen  
3 the evidence, I don't know necessarily what is  
4 applicable as I sit here right now. I'm in the same  
5 position that y'all are in. That is, I haven't seen  
6 any of the evidence or heard any of these witnesses.  
7 So, we'll be seeing them all for the first time.

8 Ladies and gentlemen, during the course of the  
9 trial I'll rule on objections and motions from either  
10 of the respective parties or both. Understand that  
11 when I rule on an objection, I will necessarily have  
12 to rule for one side and against the other. Please  
13 don't think that I have a preference for or bias  
14 against either said when I rule in favor of or  
15 against one particular side. I'm making an objective  
16 decision based on my understanding of the rules of  
17 court and rules of law. So, don't think that I have  
18 a bias or prejudice either way. And don't think that  
19 I have an opinion as to what y'all should do  
20 ultimately. Truly my only job in this case is to  
21 make sure that each party gets a fair trial. And by  
22 extension, that all of you get a fair trial as well.

23 Now, the way we will start after I give you this  
24 opening charge on the law, the parties -- the  
25 attorneys will have the opportunity to make opening

1 statements to you. Opening statements are not  
2 evidence. They're not to be considered evidence.  
3 Simply the opportunity for the attorneys to introduce  
4 themselves and their theories of the case to you.  
5 After each attorneys had the opportunity to make a  
6 opening statement, then we'll proceed with the  
7 production of evidence. The State goes first because  
8 The State has the burden of proof. The State will  
9 call witnesses to the stand. Those witnesses will be  
10 examined and or asked questions by The State. And  
11 then The Defense will have the opportunity to  
12 cross-examine those very same witnesses.

13 After The State has exhausted all of its  
14 witnesses, then The Defense will have the  
15 opportunity, if he elects to, to put evidence into  
16 the record as well. Again, we'll call witnesses,  
17 introduce evidence, then there will be  
18 cross-examination from The State. After The Defense  
19 has exhausted all of its witnesses, then we will  
20 proceed to closing arguments and charge. Closing  
21 arguments, again, are just like opening statements.  
22 In that they are not evidence. You will have already  
23 heard all of the evidence that's to be presented in  
24 the case. And the attorneys will simply be arguing  
25 in an attempt to persuade you to their respective

1 sides by commenting on the evidence that has been  
2 presented.

3 After you've heard closing arguments, then I'll  
4 give you a closing charge on the law. Again, I wait  
5 until the end so that I know what's applicable to the  
6 law. Please don't start your deliberations until  
7 such time as I tell you to. When I tell you to it  
8 will be very direct and it will be very clear. Now,  
9 you can't start your deliberations and you shouldn't  
10 start your deliberations until I tell you to. And  
11 that will be all the way at the end of the case.  
12 That's because you will not be armed with all the  
13 sufficient knowledge, all of the sufficient evidence  
14 to begin deliberations and make an intelligent  
15 decision until you've heard everything. Until you've  
16 heard both -- until you've heard all of the evidence  
17 that's going to be presented.

18 Just like in any other setting in your life, you  
19 can never make an informed decision until you've  
20 heard everything that bears upon the issue. So,  
21 please don't discuss it. When we take brakes during  
22 the conduct of the trial and I send you back to your  
23 jury room or I send you to lunch, please don't  
24 discuss the case. Don't discuss the demeanor of  
25 witnesses, don't discuss what they had to say, don't

1 discuss the lawyers, don't discuss anything about the  
2 case. When you deliberate you will have the  
3 opportunity to do that okay.

4 Also, when you take a break don't get on your  
5 cell phone or computer and talk to anybody else about  
6 it. Don't try to do any self-help to see if there's  
7 any media reporting or coverage regrading this case.  
8 All of that is inappropriate. The only thing that's  
9 appropriate for your consideration is that which is  
10 presented in accordance with the laws and rules in  
11 this courtroom.

12 So, ladies and gentlemen, during the course of  
13 the case we'll be taking routine breaks. I'm not  
14 holding you hostage in that jury box. We will take a  
15 break every hour to hour and a half, okay. So, that  
16 everybody can refresh and everybody will be in a  
17 position to concentrate on the evidence that's being  
18 presented. If for whatsoever reason you need to take  
19 a break, please get my attention or the bailiffs  
20 attention and we'll take a break. You are the 13  
21 most important people in this courtroom. And it's  
22 important that you're paying attention to the  
23 evidence that's being presented. And if you're  
24 distracted for whatever reason, for whatever reason,  
25 then I'd rather know that so we can take a break and

1           then come back and we can focus on the evidence  
2           that's being presented, okay.

3           So, haven't said that, ladies and gentlemen, I'm  
4           going to ask the clerk of court to swear you in and  
5           give you the oath of jurors.

6           THE CLERK: Would you please rise, raise your  
7           right hand. The correct response to the oath is, I  
8           will.

9           (WHEREUPON, the jury was sworn.)

10          THE COURT: Okay, Mr. Timmons, Mr. Sloan.

11                           OPENING STATEMENT

12          MR. ELLIS: Your Honor, may it please the Court?

13          THE COURT: Yes, sir.

14          MR. ELLIS: Mr. Toney.

15               On September 17, 2014, Jaquese Hyatt in  
16               Greenville County robbed two different people at gun  
17               point. He went on this crime spree starting about  
18               8:00 o'clock in the morning. This case is about  
19               those two armed robberies. This case is about how  
20               when he was holding the gun up to these two different  
21               people, he threatened to kill them if they didn't  
22               give them his [verbatim] property. He even took one  
23               of them's ID card and said, Now I know where you  
24               live. And if you tell the police, I'm coming to kill  
25               you. This case is about those two armed robberies

1           that happen that day.

2           My name is Sloan Ellis and this is William  
3 Timmons. We're prosecutors. We represent The State.  
4 And as The Judge told you, hell tell you again, we  
5 have the burden of proof beyond a reasonable doubt  
6 that this Defendant committed these two crimes. He's  
7 actually charged with the four crimes. Armed  
8 robbery, possession of a weapon during the commission  
9 of that armed robbery on two separate occasions on  
10 the morning of the 17th.

11           Beyond a reasonable doubt does not mean beyond  
12 all doubt or beyond a shadow of a doubt. It simply  
13 means that we offer proof which leaves you firmly  
14 convinced of his guilt. And you can be firmly  
15 convinced that he did the things that he did that  
16 day.

17           Today we're going to be telling you about two  
18 young men. These two young men both happen to be  
19 selling video game consoles on Craig's list. They  
20 had their console listed and they were contacted by  
21 an individual that turned out to be the man sitting  
22 right over there, about being a potential buyer for  
23 these game consoles. Luis Perez was one of those two  
24 young men that you're going to hear from today.

25           He was contacted by The Defendant. He showed up

1 at Welcome Park in Greenville County with his game  
2 system to sale. The Defendant showed up. And during  
3 that exchange, this Defendant pulled out a gun, which  
4 you'll see in the courtroom, robbed Mr. Perez, took  
5 the gaming system and fled. Just about 90 minutes  
6 later, there's a individual named Lee Rhodes who  
7 you're also going to hear from. And Lee Rhodes was  
8 also contacted by this Defendant. Because Mr. Rhodes  
9 was selling his Xbox on Craig's list. Same ammo,  
10 ladies and gentlemen. He was contacted, said let's  
11 meet at the car wash. And I'll buy the video game  
12 console from you. Well, Mr. Rhodes shows up, this  
13 Defendant shows up, about half way through their  
14 conversation, he pulls a gun, points it at  
15 Mr. Rhodes, says, Give me everything you got. Give  
16 me the game console, your wallet, whatever money you  
17 have, your cell phone and he took it. Fortunately,  
18 for us that robbery is on video. And you're going to  
19 see that today.

20 In order to prove what we have to prove to you,  
21 like I said, you're going to here from victims and  
22 you're going to hear from some police officers.  
23 You're also going to hear from another witness. The  
24 police officers responded immediately and were able  
25 to very quickly track down this Defendant and prove

1       that he committed both of these crimes. After you  
2       hear from the officers and all of our witness and you  
3       see the evidence and you see the video tapes, William  
4       is going to come back in front of you and talk to you  
5       about the law that the Judge is going to charge you  
6       at the end of the case. He's going to talk about how  
7       the facts that we presented apply to the law that The  
8       Judge will charge you on. And when you go back in  
9       your jury room at the end of today, and apply the law  
10      as The Judge gives you to the facts that you'll see  
11      and hear from the witness stand, we're confident that  
12      you'll return a verdict of guilty to both of these  
13      armed robberies. Thank you.

14               THE COURT: Yes, sir.

15                       OPENING STATEMENT

16               MR. TONEY: Ladies and gentlemen, my name is  
17       Ivan Toney. I'm proud to represent Jaquese Hyatt.  
18       You listen to the solicitor, the case would be over  
19       already. But the fact is we do have a jury system  
20       and you're here to access all the facts in this case  
21       and look very carefully at them. My client's life is  
22       in your hands. This is one of the most serious  
23       things you'll ever do in your entire life. And I  
24       understand that people have a tendency to want to  
25       arrive at conclusions. But the reason we have a jury

1 system and the reason we have a court is to make  
2 everybody slow down and look at all the facts in the  
3 case. And look exactly what evidence The State has.

4 Now, The Judge is going to instruct you as to  
5 what reasonable doubt means. Reasonable doubt is a  
6 high standard. And this Judge is going to explain it  
7 in great deal. I ask that you pay attention to what  
8 the Judge says. This case is going to be about  
9 identification. And my client is going to inform the  
10 Court, inform this jury that he did nothing. That he  
11 was--

12 MR. ELLIS: Your Honor, may we approach?

13 THE COURT: Sure.

14 (WHEREUPON, a bench conference was held in the  
15 presence of the jury but out of the hearing of  
16 the jury.)

17 MR. TONEY: At the end of the case he will have  
18 his chance to have his say. And at that point,  
19 assuming he explains what happened, you'll have a  
20 chance to access his credibility. You will also  
21 during this case have the ability to access the  
22 evidence The State brings forward. You will be able  
23 to look at each piece of evidence and see whether or  
24 not there's just circumstantial evidence maybe points  
25 to my client, which would not be sufficient evidence

1 to convict him. Or whether or not The State has met  
2 its burden of proof. Thank you very much for your  
3 attention.

4 THE COURT: All right, ladies and gentlemen,  
5 there are two issues that I need to take up with  
6 regard to the introduction of evidence in this case.  
7 And before we start introducing evidence, I have to  
8 take up those issues outside of your presence because  
9 they involve potential testimony that may not be  
10 admissible. And I have to make that determination as  
11 to whether it's going to be admissible or not.  
12 Ultimately, it will speed us up because we'll know  
13 when we actually start trying the case, what comes in  
14 and what doesn't come in. So, if you'll be patient  
15 with me for just a few minutes. Maybe as much as 15  
16 or 20 minutes. I hope not any longer than that.  
17 We're going to take up these issues and then we'll  
18 bring you back in and we'll resume -- or we'll begin  
19 the introduction of evidence in this case. Please  
20 don't discuss the case.

21 (WHEREUPON, the jury left open court at  
22 approximately 10:28 a.m.)

23 MR. TONEY: My --

24 THE COURT: Yes, sir.

25 MR. TONEY: My client wants to speak to The

1 Court.

2 THE COURT: Okay.

3 MR. TONEY: He won't tell me what it's about,  
4 otherwise, I would have screened it.

5 THE COURT: Okay.

6 MR. TONEY: But since he's asked, I figure would  
7 at least convey that to you and The Court can do what  
8 he wishes.

9 THE COURT: Okay.

10 Mr. Hyatt, you recognize that you have a right  
11 to remain silent, you don't have to say anything?  
12 But if you'd like to be heard, I'll be happy to hear  
13 from you, sir.

14 MR. HYATT: Yes, sir. How you doing, Your  
15 Honor?

16 THE COURT: All right.

17 MR. HYATT: I just want to say I don't want to  
18 waive presentment to the Grand Jury. And my lawyer  
19 didn't file to dismiss indictment because of no Grand  
20 Jury true bill. And criminal Rule 109(a)(b)(c)(d),  
21 violation--

22 THE COURT: I'm going stop you real quick  
23 Mr. Hyatt. Both of you indictments have been true  
24 billed by the Grand Jury.

25 MR. HYATT: Yes, sir. What five jurors to sign

1           on with those?

2           THE COURT: It's been signed by the foreman of  
3           the Grand Jury and that's all that required.

4           MS. HYATT: Yes, Your Honor. Basically why I'm  
5           bringing to this your attention.

6           THE COURT: Yes, sir.

7           MR. HYATT: I want to obtain another lawyer for  
8           ineffective assistance of counsel.

9           THE COURT: Okay. On what grounds?

10          MR. HYATT: On the grounds of I attained Ivan  
11          Toney a month ago.

12          THE COURT: Yes, sir.

13          MR. HYATT: We haven't went over my case at all.  
14          Just two weeks ago, that's when I knew I was actually  
15          coming to a jury trial. Absolutely. And we haven't  
16          went over things. He hasn't called any alibis of  
17          mine. This is not just how it's supposed to be. And  
18          those are my reasons beside what I just brought to  
19          your attention.

20          THE COURT: All right. Good enough.

21          Mr. Toney, do you feel as though you're prepared  
22          to try this case, sir.

23          MR. TONEY: I do. And I've kept detailed  
24          records. I don't know how many times I've met with  
25          Mr. Hyatt, maybe 13 or 14 times before yesterday.

1 And yesterday was spent on this case. I have spent  
2 52.45 hours working on this case. As for the calling  
3 alibis, I'm unaware that there were any alibi  
4 witnesses. I have inquired about that. I'm not  
5 certain that there are. Even at this time. This is  
6 the first I've heard of it, so.

7 THE COURT: Okay. All right.

8 Mr. Hyatt, I do want to tell that you that I  
9 take your motion very seriously and I give it due  
10 consideration. In the United States of America, each  
11 and every criminal defendant is entitled to counsel.  
12 Now, in this instance, it's my understanding that you  
13 had Ms. Manigault who was appointed to represent you.  
14 And you had a conflict with her. And she was  
15 dismissed and Mr. Toney was substituted as counsel.  
16 I've heard the representation from Mr. Toney that he  
17 has appropriately prepared for the case. This case  
18 has been on the docket for quite some time. And it  
19 is arrived at the day and time of reckoning, as it  
20 were. So, I don't -- I find no prejudice toward you  
21 in regards to your counsel. I don't see any  
22 indication that he has been ineffective or  
23 inefficient in any way. And I'll respectfully deny  
24 your motion.

25 Yes, ma'am, you are?

1 MS. HYATT: I'm his mom, Jaquese mom.

2 THE COURT: What's your name.

3 MS. HYATT: My name is Queenie Hyatt.

4 THE COURT: Okay, ma'am, I'll be happy to hear  
5 from you.

6 MS. HYATT: Yes, Mr. Toney promised at the time  
7 that I obtained him for Jaquese's lawyer.

8 THE COURT: Yes, ma'am.

9 MS. HYATT: He promised that he should only  
10 get -- he would only get charged for accepting stolen  
11 property. And it was only two weeks ago that we had  
12 learned that he were offered a plea deal. And I made  
13 numerous attempt to contact Mr. Toney but he would  
14 not answer the phone, he would not return my phone  
15 call up until Monday of this week. So, by that I  
16 think that, you know, he's not prepared, you know, to  
17 represent the case at this time.

18 THE COURT: Okay. And your concern is that he  
19 made a representation to you that in your estimation  
20 has turned out not to be correct?

21 MS. HYATT: Yes.

22 THE COURT: Okay.

23 What was the -- what was the offer that was  
24 extended to Mr. Hyatt?

25 MR. TIMMONS: Just for the record, I'd like to

1 clarify a few things. I met with Dorothy Manigault  
2 four or five times about this case. She was very  
3 prepared. I met with Dorothy Manigault and The  
4 Defendant once to try to work out a plea. The  
5 original offer was eight years, he refused that.  
6 I've talk today Ivan Toney I'm going to say 25 times  
7 in the last month to try to get this worked out by a  
8 plea. He has been refused each time. I just want to  
9 put that on the record. Thank you, Your Honor.

10 THE COURT: I understand.

11 MR. HYATT: Your Honor.

12 THE COURT: Yes, sir.

13 MR. HYATT: Sad thing is he's talked to my  
14 lawyer more than I have. I only spoke to him a  
15 couple of times. I've been at the LEC for close to a  
16 month. Which is the time that I obtained him. He's  
17 only been my lawyer for a little over three weeks. I  
18 only seen him a couple of times.

19 THE COURT: Yes, sir.

20 MR. HYATT: Five minute space, we haven't talked  
21 about anything. I haven't been prepared for trial,  
22 he didn't prepare me for trial at all. And this is  
23 the grounds for ineffective assistance of counsel.  
24 Because he hasn't happened me. I told him about my  
25 alibis and he chose not to research into that, get

1 the names or numbers.

2 THE COURT: Okay. All right. You stated that  
3 on the record, Mr. Hyatt. And I understand that.  
4 That might be an appropriate grounds for some  
5 collateral attack. It may very well be appropriate  
6 grounds for a complaint of some sort. But with  
7 respect to the trial in this case, I'm not going  
8 to -- I'm not going to grant your motion. We're  
9 going to go forward today.

10 MR. HYATT: Can I say one more thing?

11 THE COURT: Yes, sir.

12 MR. HYATT: The indictment wasn't in the Brady  
13 motion, whatsoever. I was just brought the  
14 indictment. They didn't file a continuance on it, it  
15 was filed three months afterwards. So, it was longer  
16 than it was supposed to be, it wasn't a continuance  
17 on the true bill. And besides that, the exculpatory  
18 for -- I didn't get any disclosed evidence in my  
19 favor in the Brady motion as well. So, all these  
20 things are the reason that I need better and to  
21 obtain a lawyer. That's going to help me. This is  
22 not him right now.

23 THE COURT: Mr. Timmons, did you disclose any  
24 and all exculpatory evidence pursuant to discovery  
25 motions?

DEVIN HOOVER-DIRECT BY MR. ELLIS

1 MR. TIMMONS: Yes, sir, Your Honor.

2 THE COURT: Okay. All right. Okay. Got a  
3 representation from an officer of the court that he  
4 did disclose exculpatory evidence. Now, if you find  
5 out after the fact that he's withheld, some then you  
6 may have a justification for collateral attack, okay.  
7 So, we're going to proceed with a jury trial, okay.  
8 I appreciate your motion, Mr. Hyatt. I appreciate  
9 it, okay.

10 All right, we need to proceed with your Biggers  
11 and -- Brady -- excuse me.

12 MR. ELLIS: Thank you, Your Honor, may it please  
13 the Court. The State calls Devin Hoover to the  
14 stand.

15 DEVIN HOOVER, after being duly sworn,  
16 testified as follows:

17 THE CLERK: Please have a seat. State your name  
18 for the record.

19 THE WITNESS: Devin Hoover.

20 DIRECT EXAMINATION

21 BY MR. ELLIS:

22 Q Master Deputy Hoover, where do you work?

23 A Uniform patrol Greenville County Sheriff's  
24 Office.

25 Q Did you conduct a photographic lineup display in

DEVIN HOOVER-DIRECT BY MR. ELLIS

1 this case?

2 A Yes, sir, I did.

3 (WHEREUPON, State's Exhibits Nos. 1 & 2 were  
4 marked for identification only.)

5 BY MR. TIMMONS:

6 Q How did you conduct that photo lineup?

7 A The victim was asked to come down to the office,  
8 the armed robbery office. The photos were selected from a  
9 data base through a system which we placed the name in  
10 there and the photographs--

11 THE COURT: Yes, sir.

12 MR. TONEY: My client would like to change his  
13 plea at this point.

14 THE COURT: Okay.

15 MR. TONEY: I'm not trying to interrupt the  
16 officer, I know he's in the middle of testimony but I  
17 understand the court's time is important. He's given  
18 me instructions. I have to follow them.

19 THE COURT: Mr. Hyatt, you wish to enter a plea  
20 at this point, sir?

21 MR. HYATT: Yes, sir.

22 THE COURT: Okay. Now, understand when and if  
23 you elect to enter a plea of guilty, I'm going to ask  
24 you some very poignant questions. And those questions  
25 are going to be, you know, are you pleading guilty

1           because you are guilty? They're going to be, are you  
2           pleading guilty freely and voluntarily of your own  
3           choice? So, you need to be prepared to answer those  
4           questions. Because if you evocate and you hedge, I'm  
5           not going to accept your plea and we're going to go  
6           to trial. So are you prepared to answer those  
7           questions, sir?

8           MR. HYATT: Yes, sir.

9           THE COURT: Okay.

10          All right, officer, you may step down. Thank  
11          you.

12          THE WITNESS: Thank you, Your Honor.

13          THE COURT: All right, do you have sentencing  
14          sheets, sir?

15          MR. ELLIS: Yes.

16          MR. TONEY: Your Honor, may I have five minutes  
17          with my client to go over this?

18          THE COURT: Yes, sir.

19          MR. TONEY: May we go in the back?

20          THE COURT: Yes, sir.

21          (WHEREUPON, a short break was taken.)

22          THE COURT: All right, do you have any  
23          resolution?

24          MR. TONEY: We are going to continue with the  
25          trial.

1 THE COURT: All right.

2 Okay, can you call the officer back to the  
3 stand, please.

4 I remind you officer, you continue under your  
5 oath.

6 THE WITNESS: Yes, sir.

7 BY MR. ELLIS:

8 Q Master Deputy Hoover, I'm going to hand you  
9 what's marked as State Exhibit 1 and State's Exhibit 2  
10 just for purposes of this hearing. And I'd like you take  
11 a look at State's Exhibit 2 and tell me what that is.

12 A This is the photo lineup that I put together for  
13 Mr. Rhodes.

14 Q Is The defendant pictured in that photo lineup?

15 A Yes, he is.

16 Q And are other individuals pictured in that  
17 lineup of a similar physical descriptions as The  
18 Defendant?

19 A Yes, sir.

20 Q And please identify State's Exhibit No. 1 to the  
21 Court.

22 A This is the affidavit of photograph  
23 identification?

24 Q Did you show both of those -- both of those  
25 things to Mr. Rhodes?

1           A     Yes, sir, I did.

2           Q     Do you remember what date and time approximately  
3 you showed those to him?

4           A     September 17th, 2014 at approximately 4:00 p.m.

5           Q     And when you showed that photo lineup to him,  
6 did you tell him that the person that robbed him was  
7 definitely in the photo lineup?

8           A     No, sir.

9           Q     Did you lead him to believe in any way that any  
10 of these individuals were the person that robbed him?

11          A     No, sir.

12          Q     Did you tell him that he should or had to pick  
13 someone out?

14          A     No, sir.

15          Q     Did you in any way influence him as to what  
16 photograph to select?

17          A     No, sir.

18          Q     Did he, in fact, select a photo out of that  
19 photo lineup?

20          A     I believe he, did yes, sir.

21          Q     Which photo did he select?

22          A     The photo marked as number three.

23          Q     How certain was he that that was the person that  
24 robbed him?

25          A     He wrote in the top corner, This is the man 100

1 percent sure that robbed me at gun point. And went on to  
2 say a few other things.

3 Q And the photo number three that he picked out,  
4 is that The defendant.

5 A Yes, sir.

6 Q After he wrote on those items -- or did he  
7 always indicate that on state Exhibit 1?

8 A Yes, sir.

9 Q After he picked that person out of the photo  
10 lineup, what did you do with those two documents?

11 A They were placed into property and evidence.

12 Q Are those two documents substantially similar as  
13 they were when he picked that person out?

14 A Yes, sir.

15 MR. ELLIS: Officer Hoover, that's all the  
16 questions I have for you. Please answer any  
17 questions Mr. Toney has.

18 CROSS-EXAMINATION

19 BY MR. TONEY:

20 Q When you talked to him about -- when you sat him  
21 down with the photo lineup, what did you say to him  
22 exactly, if you can recall?

23 A Yes, sir, I usually go through pretty much the  
24 same spill with everybody. I let them know that the  
25 person that did this may or may not even be in the photo

## DEVIN HOOVER-CROSS BY MR. TONEY

1 lineup. To go through each picture individually, try to  
2 recall what happened, if they see somebody in the  
3 photograph they recognize, stop me and tell me why.

4 Q Okay. What did he say?

5 A He stopped on number three and identified him as  
6 the person that robbed him at gun point, stole his Xbox  
7 360 controllers and Samsung Galaxy 5.

8 Q And did you tell him to write anything on that  
9 paper? On the photo, I mean.

10 A I -- on the actual photos, yes, sir I have them  
11 document their initials, the date, the time. And on the  
12 one that they identify I have them write basically a  
13 version of their small statement identifying how they  
14 recognize the person in that photo.

15 Q When he picked out the picture that's identified  
16 as Mr. Hyatt, what did you say to him at that point?

17 A I noticed he was number three.

18 Q Did he go through number 4 and 5 and 6 before he  
19 wrote on number three?

20 A Yes, sir. He -- I also have them look at every  
21 photo carefully. That's one of the directions that we do  
22 give them.

23 Q All right.

24 That's all the questions I have for this  
25 witness.

LEE RHODES-DIRECT BY MR. ELLIS

1 THE COURT: Okay, any follow up?

2 MR. ELLIS: Nothing further for this officer,  
3 Your Honor.

4 THE COURT: Thank you, you can step down. I  
5 appreciate it.

6 MR. ELLIS: The State calls Lee Rhodes to the  
7 stand.

8 THE CLERK: Place your left hand on the Bible,  
9 raise your right.

10 LEE RHODES, after being duly sworn,  
11 testified as follows:

12 THE CLERK: Please have a seat. Would you state  
13 your full name for the record?

14 THE WITNESS: Lee Michael Rhodes.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. ELLIS:

18 Q Mr. Rhodes, were you the victim of a armed  
19 robbery on September 17th, 2014?

20 A Yes, I was.

21 Q After that robbery took place did you call the  
22 police?

23 A Yes, I did.

24 Q And at some point did you give those police  
25 officers a description of the person that robbed you?

## LEE RHODES-DIRECT BY MR. ELLIS

1 A Yes, sir.

2 Q At some point after you gave those officers the  
3 description of the person that robbed you, were you shown  
4 a photo lineup?

5 A Yes, I was.

6 Q Let me get you to look at what is in front you  
7 that has been marked as State's Exhibit 2. Can you  
8 identify what that six page document is?

9 A Yeah, I was shown this by Officer Hoover.

10 Q Did you pick anyone out of that lineup?

11 A Yes.

12 Q Which one?

13 A I picked number three.

14 Q And is the number three you picked out, is that  
15 gentleman sitting right over there?

16 A Yes, sir.

17 Q I want to talk to you about the robbery itself.  
18 When the robbery was going on, please tell The Court about  
19 how far away The Defendant was from you while he was  
20 robbing you?

21 A Anywhere from one to five feet.

22 Q And how about how long did the robbery take  
23 place? How long were you in his presence?

24 A Around five minutes.

25 Q Did you get a good view of his face during that

## LEE RHODES-DIRECT BY MR. ELLIS

1 time?

2 A Yes, I did.

3 Q Did you -- was it daylight outside?

4 A Yes.

5 Q Was your view during that five to three to ten  
6 minutes obstructed in any way?

7 A Not at all.

8 Q When the officers showed you that photo lineup,  
9 did he tell you who to pick out?

10 A No.

11 Q Did he make any suggestions about who the person  
12 was -- or who you should pick out?

13 A No.

14 Q Did you look over the lineup closely?

15 A Yes, I did.

16 Q After you picked out number three in that photo  
17 lineup, did you also fill out an affidavit saying that  
18 photograph number three was the person?

19 A I did.

20 Q Can you look at State's Exhibit No. 1 and tell  
21 me what that is?

22 A It's just a document saying that the person in  
23 photo number three was the person that robbed me.

24 Q Is that your signature on the document?

25 A Yes, it is.

1           Q     How -- going back to photo number three and what  
2     you wrote on there, how certain are you that the person  
3     pictured in photograph number three is person that robbed  
4     you that day?

5           A     100 percent.

6           MR. ELLIS: Mr. Rhodes, that's all the questions  
7     I have. If you'd please answer any questions  
8     Mr. Toney may have.

9                               CROSS-EXAMINATION

10    BY MR. TONEY:

11           Q     After you -- after you met with the -- whoever  
12     robbed you, you say it's Mr. Hyatt, how long was it before  
13     this individual pulled a gun on you?

14           A     We talked for about three minutes about the Xbox  
15     that was for sale. And it was after that that I thought  
16     we were going to have the transaction of money that he  
17     pulled the weapon on me.

18           Q     Ever had a gun pulled on you before?

19           A     No.

20           Q     Was it scary?

21           A     Very.

22           Q     Okay. And while the gun was pointed at you,  
23     what were you looking at, what were you thinking of?

24           A     I was in shock that he pulled a gun on me. And  
25     I was just thinking about what I should do to get out of

1 it. Then I just did what he asked for.

2 Q Okay. You had never seen Mr. Hyatt before,  
3 correct?

4 A Not before that day, no.

5 Q You've never seen him since, correct?

6 A No, not until now.

7 Q You met him a total of three minutes before the  
8 gun was pulled, correct?

9 A Correct?

10 Q The total transaction lasted maybe five minutes?

11 A Five to ten minutes, yeah.

12 Q How many times did you look at him that period?

13 A Pretty much the whole time.

14 MR. TONEY: That's all the questions I have for  
15 this witness.

16 THE COURT: Anything additional?

17 MR. ELLIS: Nothing further from The State, Your  
18 Honor.

19 THE COURT: Okay, you can step down. Thank you.

20 All right. All right, counsel do you have any  
21 arguments or comments to make with respect to the  
22 identification evidence?

23 MR. TONEY: Move to suppress the identification  
24 evidence.

25 THE COURT: Okay.

1 MR. TONEY: It's not sufficiently reliable.  
2 It's -- the meeting with the officer was unduly  
3 suggestive. And on those basis I move to suppress.

4 THE COURT: Okay. All right.

5 Yes, sir.

6 MR. ELLIS: I was going to say, Your Honor,  
7 under Neil v. Biggers and State v. Ford, the burden  
8 is on the defendant to show by preponderance of the  
9 evidence that the identification procedure was  
10 impermissibly suggestive. And that under the  
11 totality of circumstances, there's a very substantial  
12 likelihood of irrevocable misidentification. He  
13 cannot meet that burden, Your Honor. And we ask that  
14 this be admitted and allow the jury to see it under  
15 those cases.

16 THE COURT: Okay. After reviewing the lineup I  
17 do not find that the same is unduly suggestive.  
18 Also, after having heard the testimony under oath of  
19 the officer, I don't find that he said anything or  
20 did anything that would suggest an outcome. Also,  
21 with respect to the victim in the case, he clearly  
22 had the opportunity to see The Defendant, the time  
23 that he had to view him and the circumstances under  
24 which he had to view him. Coupled with the time  
25 between the incident and the identification suggests

DAVID WEINER-DIRECT BY MR. TIMMONS

1 to me that it meets the threshold of question of  
2 reliability for admissibility. Therefore, I'll allow  
3 the identification to be admitted. Certainly, the  
4 jury will have the opportunity to determine  
5 ultimately whether the identification was credible  
6 and believable or not. Okay. Now, we got a Jackson  
7 v. Denno?

8 MR. TIMMONS: Yes, Your Honor. The State calls  
9 Officer Weiner to the stand.

10 DAVID WEINER, after being duly sworn,  
11 testified as follows:

12 THE CLERK: Please have a seat. State your name  
13 for the record.

14 THE WITNESS: David Weiner.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. TIMMONS:

18 Q Were you one of the investigators on this case?

19 A Yes, sir?

20 Q Were you there when The Defendant was taken into  
21 custody?

22 A Yes, sir.

23 Q At some point after he was taken into custody  
24 did you speak with him?

25 A I did, yes, sir.

## DAVID WEINER-DIRECT BY MR. TIMMONS

1 Q When did you speak with him?

2 A He was handcuffed seated in the back of a patrol  
3 car probably five minutes after the initial arrest.

4 Q Was anyone with you?

5 A There were other investigator on scene but it  
6 was just Mr. Hyatt and I just talking.

7 Q And you said he was in handcuffs.

8 A Yes, sir.

9 Q And where were you when you spoke with him?

10 A I was standing outside the car, he was seated  
11 inside the car.

12 Q Okay. And when you spoke with The Defendant,  
13 did you inform him of his Miranda rights?

14 A I did, yes, sir.

15 Q How did you advise him of those rights?

16 A Just verbally.

17 Q And did he indicate that he understand those  
18 rights?

19 A He did.

20 Q Did he ask any questions about his rights?

21 A No, he had no questions.

22 Q Did he ever ask for an attorney?

23 A No, sir.

24 Q Despite being in custody and in handcuffs, did  
25 he appear to be reasonable by comfortable?

## DAVID WEINER-DIRECT BY MR. TIMMONS

1 A Yes, sir.

2 Q Did he every ask for a break?

3 A No, sir.

4 Q Did he every ask for something to eat or drink?

5 A No, sir.

6 Q Did you force or threaten him in order to get  
7 him to answer your questions?

8 A No, sir.

9 Q Did you make him any promises in order to get  
10 him to answer your questions?

11 A No, sir.

12 MR. TIMMONS: One second, Your Honor.

13 Q How did you give him mind I can't?

14 A When I say verbally, would you like me to repeat  
15 it for you what I told him?

16 Q Did you just read your Miranda card or do you  
17 know it by heart?

18 A Know it by heart.

19 Q Okay. And what did he say to you once he was  
20 under Miranda seated in the back seat of the car?

21 A He initially denied any involvement in the  
22 robbery. I confronted him and told him that that was not  
23 a true statement. That when he was arrested he appeared  
24 to have one of the victim's telephones in his possession.  
25 And also, I had spoken with another witness who identified

## DAVID WEINER-DIRECT BY MR. TIMMONS

1 Mr. Hyatt as the one who brought him the gaming systems  
2 that were stolen.

3 Q So, at that point did he actually say that he  
4 had done it?

5 A He confessed to me initially that another  
6 individual had done it. By the name of Robert Smith. And  
7 that Mr. Smith had given him the gaming systems. I told  
8 him I felt that was a boldface lie. He started talking  
9 about how he needed a place to stay and I give the gaming  
10 systems to Mr. Abercrombie, maybe Mr. Abercrombie would  
11 allow him to live there.

12 I told him that somebody could have easily  
13 gotten hurt doing this.

14 And he said, Nobody was supposed to get,  
15 nobody is going to get hurt.

16 And I told him, Even you yourself could get  
17 hurt because one of these victims could have been armed.  
18 And he admitted to doing the robberies, however, he stated  
19 that Mr. Smith, it was his idea and Mr. Smith was waiting  
20 in the car for him.

21 Q Okay. So, he did finally admit to you that he  
22 had, in fact, done both of these robberies?

23 A Yes, sir.

24 Q Will you please recite exactly what you said,  
25 your Miranda?

## DAVID WEINER-CROSS BY MR. TONEY

1           A     Yes, sir.

2                     You have the right to remain silent,  
3 anything you say can and will be used against you in a court  
4 of law. You have the right to an attorney. And if you  
5 cannot afford one The State will provide one to you free  
6 of charge. Do you understand these rights as I've just  
7 explained them to you?

8                     Once he verbally acknowledges that, I let  
9 him know that he does not have to speak with me. And he  
10 can stop at any time.

11           Q     One final question, did he ever ask for an  
12 attorney?

13           A     No, sir, not in my presence.

14                     MR. TIMMONS: Please answer any questions that  
15 the defense counsel may have for you.

16                                 CROSS-EXAMINATION

17 BY MR. TONEY:

18           Q     When you say he admitted to committing the  
19 robberies, what words did he use?

20           A     Do you mind if I look at what I documented?

21           Q     I don't mind at all, sir.

22           A     As I stated earlier, he was telling me about he  
23 had no place to go. His first admission to me was that  
24 nobody was going to get hurt. Then he -- I just  
25 documented how he admitted to me that he robbed the

## DAVID WEINER-CROSS BY MR. TONEY

1 people. But represented that Mr. Smith was waiting in the  
2 car for him and it was Mr. Smith's idea.

3 Q The incident report says, Hyatt started talking  
4 how he had nowhere to go, that he was getting evicted from  
5 his house the next day and needed somewhere to stay?

6 A Correct.

7 Q And you construe that as admission?

8 A No. You can keep reading.

9 Q Said nobody was going to get hurt.

10 A Correct.

11 Q But he didn't directly refer to the robbery, did  
12 he? You're inferring this, correct?

13 A Again, if you just go a couple more lines, sir.

14 Hyatt then admitted that he robbed the  
15 people.

16 Q But you don't remember what words he used?

17 A Not the exact words he used. He just admitted  
18 that he had done it.

19 Q So where he admitted it, which is a legal  
20 conclusion, is merely your characterization of what said  
21 and you can't remember the exact words?

22 A Not the exact words, no, sir.

23 MR. TONEY: That's all the questions I have for  
24 this witness.

25 THE COURT: Any additional questions, sir?

## DAVID WEINER-CROSS BY MR. TONEY

1 MR. TIMMONS: No, Your Honor.

2 THE COURT: Okay, you can step down, sir. Thank  
3 you.

4 All right.

5 MR. TIMMONS: Your Honor, the second witness  
6 is -- potentially need to do Jackson v. Denno. Is a  
7 recording of about three to four minutes of an  
8 interview where Miranda was never actually concluded.  
9 But we will be admitting it for other purposes,  
10 identification of what he's wearing, what he looks  
11 like. If Mr. Toney would like to do Jackson v. Denno  
12 or The Court would prefer it, we're happy to do that.

13 THE COURT: It's his statement?

14 MR. TIMMONS: It has him on video for three to  
15 four minutes talking with Officer Motes about --

16 THE COURT: Subsequent to the --

17 MR. TIMMONS: Subsequent --

18 THE COURT: -- Jackson v. Denno? Yeah. Okay,  
19 if you intend to provide it in a constitutes a  
20 confession, then let's tee it up and let's take a  
21 look at it, okay?

22 MR. TIMMONS: Thank you, Your Honor.

23 State calls officer Motes to the stand.

24 RICKY MOTES, after being duly sworn,  
25 testified as follows:

## RICKY MOTES-DIRECT BY MR. TIMMONS

1 THE CLERK: Please have a seat. Will you state  
2 your full name for the record?

3 THE WITNESS: Ricky Motes.

4 (WHEREUPON, State's Exhibit No. 3 was marked for  
5 identification only.)

6 DIRECT EXAMINATION

7 BY MR. TIMMONS:

8 Q Were you the investigator on this case?

9 A Yes, I was.

10 Q And you were there when Jaquese Hyatt was taken  
11 into custody?

12 A Yes, I was.

13 Q Did you speak with him later at the law  
14 enforcement center?

15 A I did.

16 Q This is marked as State's Exhibit 3. Is this  
17 the interview that you provided?

18 A It is.

19 Q During this video, I'm going to play it for The  
20 Court, you are attempting to give him Miranda but he had  
21 received Miranda previously; is that correct?

22 A That is correct.

23 Q So, he was technically already mirandized but  
24 you were re-mirandizing him in a sign way in order to  
25 pre-state; is that correct?

## RICKY MOTES-CROSS BY MR. TONEY

1           A     That is correct.

2           Q     All right. I'll play this for you.

3                     (WHEREUPON, State's Exhibit 3 was played.)

4 BY MR. TIMMONS:

5           Q     Officer Motes, is that the extent of your  
6 conversation that you had with him that day?

7           A     Yes, it is.

8           Q     Again, that was at the law enforcement center?

9           A     That correct.

10          Q     Any point did he ask for a break or food or  
11 drink?

12          A     No, sir.

13          Q     Despite being in custody and in handcuffs, he  
14 did appear to be reasonably comfortable?

15          A     Yes.

16          Q     Did you force or threaten him before or after  
17 that video to get him to speak with you?

18          A     No, I did not.

19          Q     Did you make any promises?

20          A     No, I did not.

21                     MR. TIMMONS: Thank you. Please answer any  
22 questions the defense counsel may have.

23                             CROSS-EXAMINATION

24 BY MR. TONEY:

25          Q     Mr. Hyatt informed you that he waived his rights

## RICKY MOTES-CROSS BY MR. TONEY

1 on several -- wouldn't waive his rights on several  
2 occasions, correct?

3 A Yes.

4 Q And yet you continued to question him, at least  
5 about waiving his rights. And he also mentioned that he  
6 had a lawyer. I don't know who that was but he did  
7 mention his lawyer, correct?

8 A He didn't mention any specific lawyer, he just  
9 said a lawyer.

10 Q He said, My lawyer.

11 He didn't say a lawyer's name.

12 A Okay.

13 Q So, he invoked his right to counsel in there  
14 somewhere, correct?

15 A No, he never did say, I want a lawyer right now.  
16 No, he didn't.

17 Q But he did say he had a lawyer.

18 A Said he had a lawyer, yes, sir.

19 Q And he wouldn't waive his rights.

20 A He went back and forth on whether he was going  
21 to waive or talk or whatever.

22 Q After you kept questioning him, sometime later  
23 in the interview, before the interview was terminated, he  
24 stated, What does it mean to waive my rights? Correct?

25 A Correct.

## RICKY MOTES-CROSS BY MR. TONEY

1           Q     So, even up to that point, he didn't understand  
2 fully what it meant to waive his rights?

3           A     No, I think he understood. He was -- I don't  
4 know why he kept questioning me on that. He kept  
5 answering for himself.

6           Q     When you say you think he understood, this  
7 conclusion as to his understanding, it's not based on his  
8 words because his words say, What does it mean to waive my  
9 rights?

10          A     And I explained that. He explained a lot of  
11 things to me. He knows who I am, he knows my type because  
12 his brother's a police officer or police commissioner.  
13 So, that made it very clear to me that he knew exactly  
14 what was going on in this process.

15          Q     But he mentioned, what does it mean to waive my  
16 rights after the part in the CD where he mentions his  
17 brother was a commissioner, whatever that means?

18          A     I kept explaining. My job is to explain to him  
19 to see if he understands. He said he understood. I was  
20 just waiting on him to either say, I want an attorney, no  
21 I don't want to talk to you. He never said none of those  
22 things.

23          Q     You would agree that the invocation of a right  
24 to counsel doesn't have to be in the specific form of I  
25 want an attorney, would you not?

## RICKY MOTES-CROSS BY MR. TONEY

1           A     He never said anything about not wanting to  
2 talk. He said he wanted to talk. So, I was talking to  
3 him.

4           Q     The -- there were no admissions -- any possible  
5 admissions were made before the statement, What does it  
6 mean to waive my rights, correct? Which was towards the  
7 later part of the CD.

8           A     No, I think he -- I think he might have before  
9 that when he said that -- made the statement, if I recall  
10 correctly here, that he knew what happened out there. So,  
11 that would suggest to me that he was there and present.

12               MR. TONEY: That's all the questions I have.

13               THE COURT: Any follow up questions, sir?

14               MR. TIMMONS: No, Your Honor. Thank you.

15               THE COURT: You can step down, officer. Thank  
16 you, I appreciate it.

17               All right, motions related to the admissibility  
18 of those statements?

19               MR. TONEY: I think this last video should be  
20 excluded. My violent invoked his right to counsel in  
21 some level. I don't think he used the phrase, I want  
22 a lawyer. I'm not sure where, what, if there's a  
23 magic phrase but he said his lawyer. He was asked if  
24 he wanted to waive his rights?

25               He said, No.

## RICKY MOTES-CROSS BY MR. TONEY

1           And the officer continued to question him on  
2           that. At that point, I think the officer should have  
3           said fine, you don't want to talk, that's fine. Any  
4           admissions, potential admissions about the gun or I  
5           know what went down, happened well after he said, I'm  
6           not going to sign this. And the officer testified,  
7           you know, he said, This is -- I mean, the sheet says  
8           you don't have to sign it, your doing this freely and  
9           voluntarily. He asked him if he was under the  
10          influence, if he understood?

11           He said, No.

12           And at that point, he should have ended. And on  
13          that basis I move to suppress that.

14           THE COURT: Anything from The State?

15           MR. TIMMONS: Thank you, Your Honor. He was  
16          under Miranda five minutes after he was arrested.  
17          And that was previously discussed. It was clearly  
18          voluntarily. The video shows that he was not under  
19          any duress or threatened or coerced. As for knowing  
20          waiver, he previously was given Miranda. And, in  
21          fact, he didn't sign at a later point, he waffled on  
22          it. You saw the video, he goes back and forth as to  
23          what's going on. He clearly knew what was going on.  
24          He never said I want an attorney. He asked about a  
25          potential scenario when he gets an attorney in the

## RICKY MOTES-CROSS BY MR. TONEY

1 future. So, I think under State v. Reid the video  
2 comes in.

3 MR. TONEY: I'm sorry, I didn't mean to  
4 interrupt.

5 MR. TIMMONS: Go ahead.

6 MR. TONEY: Just a brief response, what he said,  
7 the solicitor is saying contemplating getting an  
8 attorney in the future. He didn't say that.

9 He just said, My lawyer.

10 And I do want to be addressed on Officer  
11 Weiner's statement, also.

12 THE COURT: Go ahead.

13 MR. TONEY: Well, the officer said he made an  
14 admission but he doesn't recall the exact words. He  
15 merely characterized it and drew a conclusion. To  
16 say there was an admission made, which is very  
17 damning and very probative. And that a jury is  
18 liable to convict based on that statement alone.  
19 Without any recollection of the words, nothing in the  
20 incident report states what was said. It's so  
21 lacking in probative value, it's merely a conclusory  
22 statement. It has the ability to paralyze the mind  
23 of the jury. Without actually presenting any  
24 evidence because the officer at that point is getting  
25 up and saying, Well, we have a confession but I don't

## RICKY MOTES-CROSS BY MR. TONEY

1       remember what was said. I think it should be  
2       excluded.

3               THE COURT: Okay. All right, good enough. All  
4       right, with respect to both of the statements, I find  
5       that they do meet the requirements for admissibility  
6       under the salient case law. It's clear that the --  
7       by a preponderance of the evidence, which is the  
8       standard for admissibility of statements, that  
9       Miranda rights were issued and that any and all  
10      statements that were made were voluntarily. With  
11      respect to its probative value, I think that's  
12      quintessentially a jury question to determine whether  
13      it was a credible, whether the statements as  
14      interpreted by the officer are actually credible and  
15      should be considered as such by the jury.

16             With respect to the video, the Miranda rights  
17      had been administered, they were administered again.  
18      And I don't know that the video actually amounts to a  
19      confession. It sounds to me like all of the  
20      statements that were offered by The Defendant were  
21      offered by The Defendant. That is, the officer was  
22      trying to administer the Miranda rights and get the  
23      signature on the actual document. And the officer  
24      was more in a mode of responding to questions posed  
25      by The Defendant, as to other way around. Matter of

## RICKY MOTES-CROSS BY MR. TONEY

1 fact, it's very clear to me that the officer tried to  
2 stop him from talking and interrupting him when he  
3 started talking about the substance of it. And  
4 indicated he hadn't put a gun in anyone's face. The  
5 officer was actually in a position of asking him to  
6 stop and execute the document before he began to  
7 discuss it in any meaningful or substantive way.

8 I also note that at some point during the video,  
9 the officer said, This interview is over. And The  
10 Defendant was the one who continued to discuss it and  
11 continued to have discourse regarding the incident  
12 and the salient rights. Therefore, under, again, the  
13 threshold analysis by preponderance of the evidence,  
14 I find that it was voluntary and it is admissible.  
15 Okay.

16 All right. Ladies and gentlemen, any other  
17 issues that we need to take up as a preliminary  
18 matter?

19 MR. TIMMONS: Your Honor, not that Mr. Toney  
20 would ever do this, but we would like The Court to  
21 instruct that any length of sentence should not be  
22 discussed at any point.

23 THE COURT: Yeah.

24 You understand that Mr. Toney, I'm sure you got  
25 that.

## RICKY MOTES-CROSS BY MR. TONEY

1 MR. TONEY: I wouldn't do that.

2 THE COURT: I wouldn't think so.

3 Okay, how many witnesses do you intend to put on  
4 the stand, Mr. Timmons?

5 MR. TIMMONS: Six, Your Honor.

6 THE COURT: Six. Okay. All right.

7 Do you intend to put any witness on the stand,  
8 sir?

9 MR. TONEY: No. Not unless Mr. Hyatt chooses to  
10 to testify.

11 THE COURT: All right, then, we'll going to come  
12 back in and we'll begin with the introduction of  
13 evidence. We'll take a quick five minute comfort  
14 break, then we'll come back in and we'll begin the  
15 trial. All right.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: Okay, bring the jury, please.

18 (WHEREUPON, the jury came into open court at  
19 approximately 11:52 a.m.)

20 (WHEREUPON, State's Exhibits Nos. 4-9 were  
21 marked for identification only.)

22 THE COURT: All right, ladies and gentlemen, I  
23 apologize. I told you 15, 20 minutes and I was just  
24 wrong. It took much longer and being more complexed  
25 than I had anticipated. I apologize to you for that.

LUIS PEREZ-DIRECT BY MR. TIMMONS

1 Just know that I sent you back menus to order for  
2 lunch. So, that when and if we take a lunch break,  
3 we can hopefully accomplish that more quickly and we  
4 can proceed with the trial. So, having said that,  
5 ladies and gentlemen, I'm going to turn it over to  
6 The State to call their first witness.

7 MR. TIMMONS: Thank you, Your Honor. The State  
8 calls Luis Perez.

9 THE CLERK: If you would, please come forward.  
10 Place your left hand on the Bible, raise your right  
11 hand.

12 LUIS PEREZ, after being duly sworn,  
13 testified as follows:

14 THE CLERK: Have a seat. State your name for  
15 the record.

16 THE WITNESS: Luis Perez.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. TIMMONS:

20 Q Mr. Perez, where do you live now?

21 A [REDACTED] Stegall Circle.

22 Q Where did you live on September 17, 2014?

23 A [REDACTED] Welcome Avenue.

24 Q [REDACTED] Welcome Avenue. I'm going to show you  
25 State's Exhibit 4. Can you see where you live on here?

LUIS PEREZ-DIRECT BY MR. TIMMONS

1 A Yes.

2 Q Are you familiar with this?

3 A Yes.

4 Q Is this an accurate map of the area around your  
5 house?

6 A Where I use to live, yes.

7 Q I'm going to move this over here and I'm going  
8 to put a smaller version up.

9 Your Honor, The State moves to introduce  
10 State's Exhibit 4 into evidence.

11 MR. TONEY: Your Honor, I'm not sure what it  
12 represents or how it's relevant.

13 THE COURT: Would you get him to authenticate  
14 what it is, sir?

15 BY MR. TIMMONS:

16 Q What is this, Mr. Perez?

17 A That where I got robbed, Welcome Park?

18 Q It is a map of the area around that location?

19 A Yes.

20 Q Okay.

21 THE COURT: All right, any objection to its  
22 admission, sir?

23 MR. TONEY: None.

24 THE COURT: Okay. All right, then without the  
25 same is admitted as State's Exhibit.

LUIS PEREZ-DIRECT BY MR. TIMMONS

1 MR. TIMMONS: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit No. 4 was admitted  
3 into evidence.)

4 BY MR. TIMMONS:

5 Q So, on September 17th, 2014, did you have an add  
6 on Craig's list?

7 A Yes.

8 Q What were you selling?

9 A MP3.

10 Q Anything else?

11 A With games. With games and remote. Remote  
12 control.

13 Q Okay. And did you range to -- were your  
14 contacted to sell those items?

15 A Yeah, I was conducted the night before.

16 Q Will you tell the jury what that conversation  
17 entailed?

18 A He call me, it was around 10:00 or 11:00 p.m.  
19 He called me, he wanted my MP3. He wanted to meet me. I  
20 told him that it was kind of late already. And we meet in  
21 a public place, I would do it. I told him we could meet  
22 at the Spinx. He said no because his girlfriend worked  
23 there. And he said that we could meet -- there's a school  
24 called Buncombe Elementary School right there.

25 And I said, No.

LUIS PEREZ-DIRECT BY MR. TIMMONS

1                   I mean, we stopped talking and later in the  
2 morning he texted again. He said that he wanted to meet  
3 me.

4           Q     Speak up just a bit, sorry.

5           A     Later in morning he texted me and he said he  
6 wanted to meet me. He said he know a park called  
7 Buncombe.

8                   I said, oh yeah, that's fine.

9                   It was around 8:20. I went there. And I  
10 didn't saw a car, I just saw him walking. He was onto the  
11 to park walking. And I parked beside the basketball  
12 court. And he got close to the car and I showed him--

13          Q     Briefly, can you point to the jury where on that  
14 map?

15          A     Right here.

16          Q     Right there. Okay. How about I hand you a  
17 stack of photos. Do you recognize those? Will you look  
18 at those?

19          A     Yes, this MP3 I was selling.

20          Q     Okay.

21          A     That's my car. That's where I parked.

22          Q     Okay.

23          A     That's my car.

24          Q     There's one more, I believe. Would you describe  
25 what that is to the jury?

LUIS PEREZ-DIRECT BY MR. TIMMONS

1           A     The cell phone that he took.

2                   MR. TIMMONS: Your Honor, The State moves to  
3           enter State's Exhibit 5, 6, 7, 8 and 9 into evidence.

4                   THE COURT: All right, without objection the  
5           same is moved into evidence.

6                   (WHEREUPON, State's Exhibits Nos. 5-9 were  
7           admitted into evidence.)

8 BY MR. TIMMONS:

9           Q     All right, would you please continue? You said  
10          that your car was parked in Welcome Park. Is this your  
11          vehicle?

12          A     Yes.

13          Q     Okay. For reference for The Court; is that your  
14          vehicle?

15          A     Yes.

16          Q     Okay. Take it back to this one. Please  
17          continue your story.

18          A     And after I got out of the car I showed him the  
19          stuff, video games, the remotes and MP3. And--

20          Q     Is this the video game, the MP3 that you showed  
21          him?

22          A     Yes.

23          Q     Okay. Keep going.

24          A     And after that he said he did want to buy it.  
25          So, I turned around to put the stuff in the bag. When I

LUIS PEREZ-DIRECT BY MR. TIMMONS

1 turned around he had the gun pointed at me. Then he said  
2 to give him the stuff. And to give him the keys. And the  
3 cell phone and whatever I had. But then he told me to  
4 take off my pants and to go to the road to lay down in the  
5 road. And he said if I will turn around he will shoot me.  
6 He said it like two or three times. That's when I didn't  
7 turn around. And I saw a man, an old man, getting stuff  
8 out of his car. I waited for a few seconds for him to  
9 leave, I guess. Then I turn around he was gone already  
10 and that's when I started running to the old man's house.

11 Q Okay. And the person that robbed you had a  
12 pistol; is that correct?

13 A Yes.

14 (WHEREUPON, State's Exhibit No. 10 was marked  
15 for identification only.)

16 BY MR. TIMMONS:

17 Q Will you describe the gun that you saw that day?

18 A It was -- I saw, I think, stripped, it had  
19 stripes, gray stripes and it was black.

20 Q Could this be the gun that you saw?

21 A Yeah, it was a small gun.

22 Q Okay. Did you -- so you fled the scene and what  
23 did you do next?

24 A I ran to the old man's house and I told him what  
25 happened. I told him that he could call the police. And

LUIS PEREZ-DIRECT BY MR. TIMMONS

1 he called the police.

2 Q And the police --

3 A Arrive and started asking me questions.

4 Q Okay. What did you tell the police?

5 A Told them what happened and everything what  
6 happened the night before when he texted me first.

7 Q Okay. Did you give them your phone number or  
8 any other information about your cell phone?

9 A Yeah, I gave them the -- the cell phone he stole  
10 and I only gave the number of my uncle.

11 Q Okay. Did you go to the law enforcement center  
12 to make a statement?

13 A Yes.

14 Q And later that day did you call back to the law  
15 enforcement center?

16 A Yeah, they called me, they had the stuff.

17 MR. TONEY: Objection, hearsay.

18 THE COURT: Okay, restate the question, sir.

19 BY MR. TIMMONS:

20 Q Did you go back to the law enforcement center  
21 and have your personal belongings that were stolen from  
22 you that morning returned to you?

23 A Yes, sir.

24 Q This is what law enforcement gave you back?

25 A Yes.

## LUIS PEREZ-CROSS BY MR. TONEY

1 Q And you received your phone back as well; is  
2 that correct?

3 A Yes.

4 Q Does this man sitting here fit the general,  
5 physical description of the person that you saw that day?

6 A Yes.

7 MR. TIMMONS: No further questions. Please  
8 answer any questions that the defense counsel may  
9 have.

10 CROSS-EXAMINATION

11 BY MR. TONEY:

12 Q Did the police give you a lineup to chose from  
13 to identify this Defendant, Mr. Hyatt?

14 A Yes.

15 Q They gave you six people that were similar or  
16 reasonably similar to choose from, correct?

17 A Yes.

18 Q Were you able to identify him from those  
19 pictures?

20 A Yes.

21 Q You were able to pick him out?

22 A Yes.

23 Q And you signed one of those pictures saying he  
24 was the one.

25 A Yes.

## LUIS PEREZ-CROSS BY MR. TONEY

1 Q Are you sure?

2 A Yes.

3 Q How long did you watch -- or how long did you  
4 meet the person that robbed you? How long was this  
5 meeting?

6 A Like 10 minutes.

7 Q Okay. Did you have occasion to look at him?

8 A Yes.

9 Q How close were you from him?

10 A Three feet.

11 Q Three feet. Have you ever seen Mr. Hyatt  
12 before?

13 A No.

14 Q Have you ever seen him since?

15 A No.

16 MR. TONEY: That's all the questions I have for  
17 this witness.

18 THE COURT: Redirect, sir?

19 MR. TIMMONS: No further questions, Your Honor.

20 THE COURT: Okay. Mr. Perez, you may step down.

21 Thank you very much for being here, I appreciate it.

22 You may call your next witness.

23 MR. TIMMONS: The State calls William Davis.

24 THE CLERK: Place your left hand on the Bible,  
25 raise your right.

## WILLIAM DAVIS-DIRECT BY MR. TIMMONS

1 WILLIAM DAVIS, after being duly sworn,  
2 testified as follows:

3 THE CLERK: Have a seat. State your name for  
4 the record.

5 THE WITNESS: William Davis.

6 DIRECT EXAMINATION

7 BY MR. TIMMONS:

8 Q Mr. Davis, where do you live currently?

9 A Currently, I live in Spartanburg.

10 Q Okay. Where did you live on November 17th,  
11 2014?

12 A ■ --

13 Q I'm sorry, excuse me. September 17th, 2014--

14 A -- ■ York Drive.

15 Q I'm going to show you a map of that area and  
16 request that you point out to the jury why you lived. One  
17 second, let me get it nice and zoomed.

18 A This house right here.

19 Q Can you say that again louder? Sorry.

20 A Lived in this house right here.

21 Q Okay. Were you sitting on the porch outside  
22 that morning?

23 A Yes, sir.

24 Q Will you please tell the jury what you saw?

25 A Well, when I first went outside wun't [verbatim]

## WILLIAM DAVIS-DIRECT BY MR. TIMMONS

1 nobody out there. After about five minutes of being out  
2 there, Mr. Perez had pulled up and sat there for about  
3 another five minutes. And then I seen someone matching  
4 The Defendant's description walking up to the park, coming  
5 from this direction, from the left. They sat there and  
6 talked on the passenger side of the car for 10, 15  
7 minutes. After which, I saw Mr. Perez hands go in the air  
8 and heard, If you turn around you'll get shot. After  
9 which, you can't see it but there's a pillar on the porch.  
10 I hid behind it and continued to listen. After which, I  
11 took a peek around the pillar to see Mr. Perez being  
12 walked to the road, was told to lay down, phase down, do  
13 not turn around or he would get shot. And then The  
14 Defendant proceeded to run this direction. After which,  
15 about 30 seconds Mr. Perez proceeded to run the opposite  
16 direction to Lee, I'm not sure of his last name but I do  
17 know who the guy was because I always help him carry in  
18 his groceries.

19 Q Is this the car you saw?

20 A Yes.

21 Q Is that the pillar on the top left corner you're  
22 talking about?

23 A Yes, sir.

24 Q And did you get a fairly good like at the  
25 individual with the gun?

## WILLIAM DAVIS-CROSS BY MR. TONEY

1           A     Yes, sir.

2           Q     But you couldn't identify him but this  
3 individual matches the general, physical description; is  
4 that correct?

5           A     Yes, sir.

6                     MR. TIMMONS: No further questions. Please  
7 answer any questions defense counsel may have.

8                             CROSS-EXAMINATION

9 BY MR. TONEY:

10          Q     So, you were behind the pillar?

11          A     Yes, sir.

12          Q     Then you took a peek?

13          A     (The witness nods.)

14          Q     So, how long were your not peeking? How long  
15 were you not looking?

16          A     All of maybe two minutes.

17          Q     Okay. And you only peeked and saw this,  
18 correct?

19          A     Yes, sir.

20          Q     How far away from -- from the actual incident  
21 were you?

22          A     Less than 10 feet away.

23          Q     You didn't tell the police that you identified  
24 who it was?

25          A     No, sir.

LEE RHODES-DIRECT BY MR. TIMMONS

1 MR. TONEY: All right, thank you.

2 THE COURT: Redirect, sir?

3 MR. TIMMONS: No questions, Your Honor. Thank  
4 you.

5 THE COURT: Mr. Davis, I appreciate it, you may  
6 step down.

7 MR. ELLIS: May it please the Court, Your Honor,  
8 The State calls Lee Rhodes to the stand.

9 THE CLERK: Place your left hand on the Bible,  
10 raise your right.

11 LEE RHODES, after being duly sworn,  
12 testified as follows:

13 THE CLERK: Pleases have a seat. State your  
14 full name for the record.

15 THE WITNESS: Lee Rhodes.

16 DIRECT EXAMINATION

17 BY MR. ELLIS:

18 Q Good morning, Mr. Rhodes?

19 A Good morning.

20 Q Will you please tell the jury where you grew up?

21 A Well, I grow up in Ohio but I spent, up until  
22 the incident, I spent three years living in Asheville,  
23 North Carolina. And then, a month prior to the incident I  
24 was living with my parents in Easley, South Carolina. And  
25 preparing to move to Portland, Oregon.

## LEE RHODES-DIRECT BY MR. TIMMONS

1 Q And is that where you live now?

2 A Yes.

3 Q What do you do in Portland, Oregon now?

4 A I work at a ski and snowboard.

5 Q And were you living in Easley on September 17th,  
6 2014?

7 A Yes.

8 Q At some point before September 17th, 2014, did  
9 you have something for sale on Craig's list?

10 A I did.

11 Q What did you have for sale?

12 A My Xbox 360.

13 Q Any controllers with that?

14 A Three controllers.

15 Q And on or before September 17th, did you receive  
16 any phone calls or text messages from an individual who  
17 might be interested in buying that from you?

18 A Yeah, I received a phone call late that night  
19 before the incident. And we decided that it was too late  
20 to do anything. And I got a call the next morning. And  
21 then we set up a time to meet and place to meet that was  
22 convenient for both of us.

23 Q Where was that time and place to meet?

24 A That was at a car wash. It was about 20 minutes  
25 from where I lived in Easley.

## LEE RHODES-DIRECT BY MR. TIMMONS

1           Q     I'm going so show you what has been into  
2 evidence as, I believe, State's Exhibit No. 4. I'm jut  
3 going to blow it up on the big screen for you. So, this  
4 is State's Exhibit 4. And there is something labeled as  
5 the Gorilla Carwash right there. Is that -- what  
6 significance does that have to this case?

7           A     That is the place that we agreed to meet.

8           Q     Okay. And I am going to see if I can zoom in  
9 even a little bit more. Looking at the carwash. So,  
10 about what time did you set up this meeting?

11          A     We set up the meeting at 10:30 that morning.

12          Q     And did you get to this carwash around 10:30  
13 that morning?

14          A     I probably arrived at like 10:25.

15          Q     Where did you park?

16          A     I initially parked up here. And then I saw that  
17 there was a camera right here, so I parked right there.

18          Q     Okay. So, tell the jury about what happened  
19 when you got to the carwash.

20          A     Got to the carwash, waited around for about five  
21 minutes. And so, I got approaching on foot. And  
22 apparently the guy that wanted to buy my Xbox. He said  
23 his car had run out of gas about a mile down the road.  
24 So, we talked for a little bit. I got out the Xbox and  
25 the controllers. Went over the condition and everything,

LEE RHODES-DIRECT BY MR. TIMMONS

1 said it worked fine. And at that point I thought, you  
2 know, he was going to give me the money. He said he  
3 wanted it.

4 And at that point he pulled a gun on me.  
5 And demanded that I give him my phone and my ID. Tried to  
6 reason with him about the ID and the phone because I was  
7 moving in like four days and I really wanted to hold on to  
8 those. And at that point, he said he was going to count  
9 down from five and if he didn't have my ID and my phone  
10 that he was going to shoot me. So, at that point, I  
11 reached into my car slowly to get my phone and I gave him  
12 my phone and my ID. And he took that, looked at my ID,  
13 told me that he knew where I lived so if I called the cops  
14 he was going to shoot me. And then he slowly backed away  
15 from my car and repeated that. And I tried to reason with  
16 him to get my ID and phone back but that didn't work.

17 And after he was out of eye sight, I got  
18 into my car and drove to the neighbors, asked to use their  
19 phone, called the cops. Cops showed up. I gave them the  
20 report, filled out a statement. And went from there.

21 Q I'm going to show you some photographs. We're  
22 going to get them marked as exhibits first, so bear with  
23 me, please.

24 (WHEREUPON, State's Exhibits Nos. 11-17 were  
25 marked for identification only.)

LEE RHODES-DIRECT BY MR. TIMMONS

1 BY MR. ELLIS:

2 Q Thank you for your patience, Mr. Rhodes. First  
3 photograph I'm going to show you has been marked as  
4 State's Exhibit 11. Can you tell the jury what State's  
5 Exhibit 11 is?

6 A A picture of the box that I put my Xbox in. My  
7 Xbox and the two controllers.

8 MR. ELLIS: Your Honor, at this time, the State  
9 moves to admit State's Exhibit 11 into evidence.

10 MR. TONEY: No objection.

11 THE COURT: All right, without objection the  
12 same is admitted.

13 MR. ELLIS: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit No. 11 was admitted  
15 into evidence.)

16 BY MR. ELLIS:

17 Q Mr. Rhodes, you just said what that is but I'm  
18 just showing it to the jury. So, can you please tell us,  
19 is that you're Xbox?

20 A That is my Xbox.

21 Q Is that the box that you had your Xbox in that  
22 day?

23 A Correct.

24 Q When is the last time you saw that Xbox and box  
25 before you got it back from law enforcement?

## LEE RHODES-DIRECT BY MR. TIMMONS

1           A     When I was trying to make a transaction via  
2 Craig's list?

3           Q     Who had it?

4           A     What's that?

5           Q     Who took it from you?

6           A     That man right there.

7                   MR. ELLIS: Let the record reflect he's pointed  
8 out The Defendant.

9 BY MR. ELLIS:

10          Q     Thank you, Mr. Rhodes. Let me talk to you now  
11 about the gun. Can you please describe the gun that The  
12 Defendant used?

13          A     It was a pistol. It was black. It looked like  
14 in a mat black, not a polished black. Yeah.

15          Q     I'm going to show you what has not be entered  
16 into evidence but what has been marked for identification  
17 purposes as State's Exhibit No. 10. I'm going to ask you,  
18 does this resemble the gun that was used to rob you?

19          A     Yes.

20          Q     Just so the jury knows, the gun has been made  
21 safe by but all these deputies in the room.

22                   What type of phone did he take from you  
23 that day?

24          A     Samsung Galaxy 5.

25          Q     You mentioned previously that you picked that

LEE RHODES-DIRECT BY MR. TIMMONS

1 specific parking place because there was a camera there?

2 A Correct.

3 Q I'm going to show you what has been marked as  
4 State's Exhibit 17. And ask you if you recognize this  
5 disk. I'll pull it out the thing for you.

6 A Yes, I do recognize that.

7 Q How do you recognize that disk?

8 A It is a video surveillance from the carwash.  
9 And I initialed it and dated it.

10 Q So, your initials indicate that you watched the  
11 whole thing?

12 A Yes, I did.

13 Q And is the video on that disk what you remember  
14 happening to you that day at the carwash?

15 A Yes, sir.

16 Q Anything different about it?

17 A No.

18 Q Okay.

19 MR. ELLIS: Your Honor, at this time The State  
20 moves to admit State's Exhibit 17 into evidence.

21 THE COURT: Objection, sir?

22 MR. TONEY: I do have an objection.

23 THE COURT: Yes, sir.

24 MR. TONEY: I'd like to be heard on that.

25 THE COURT: Okay. You may state your objection,

LEE RHODES-DIRECT BY MR. TIMMONS

1       sir.

2               MR. TONEY: The material on the video is so  
3       unclear that its probative value is very slight. And  
4       on that basis, I move to exclude it.

5               THE COURT: All right, I respectfully overrule  
6       your obligation.

7               MR. ELLIS: Thank you, Your Honor. I'd like to  
8       publish to the jury at this time.

9               THE COURT: Yes, sir.

10              (WHEREUPON, State's Exhibit No. 17 was admitted  
11       into evidence.)

12   BY MR. ELLIS:

13       Q     Mr. Rhodes, while we're watching that, I might  
14       ask you some questions as we go along. It runs about 10  
15       minutes. Do you recognize that car?

16       A     That is my car.

17       Q     Is that you?

18       A     That is me.

19       Q     So, what's going on right here?

20       A     Here he walked up and said his car had run out  
21       of gas and was asking if I had any containers that he  
22       could put some gas into to walk back. So, I was getting  
23       it out of the trunk, I had a container for him that he  
24       could use.

25       Q     What's the substance of the conversation going

## LEE RHODES-DIRECT BY MR. TIMMONS

1 on now?

2 A I had a tent in the back seat and he saw that I  
3 had a tent so we were talking about camping. Just, you  
4 know. And now I'm getting out the Xbox.

5 Q Okay. Is that the box that you just showed us?

6 A Yeah, that's the box.

7 Q Your showing him the controllers, is that what's  
8 going on?

9 A Yeah.

10 Q What's going on here?

11 A Here, just kind of finalizing the sale. He kind  
12 of just making sure he wants to buy it. I'm just -- I'm  
13 waiting on the money.

14 Q Then what happens just then?

15 A There he pulled out the gun.

16 Q Does it have it in his right hand?

17 A Yeah, he has it in his right hand.

18 Q What is he telling you?

19 A Here he's telling me that he wants my phone and  
20 my ID.

21 Q What are you doing right there?

22 A Trying to reason with him that -- earlier we  
23 were talking that I was moving to Portland, that I needed  
24 my phone and my ID to make the trip next week.

25 Q What did you put in the box?

## LEE RHODES-DIRECT BY MR. TIMMONS

1           A     That was, I believe, it was ID and \$10 cash out  
2 of my wallet. Right there, yep. And now he's starting to  
3 do the count down thing.

4           Q     What did he tell you about the count down again.

5           A     He said he was going to count down from five and  
6 after that he was going to shoot me. And then he began  
7 counting down. He's now reaching into my glove box to get  
8 my cell phone.

9           Q     Is the gun still in his hand at this point?

10          A     Yes.

11          Q     What is he telling you right here?

12          A     He's telling me that he had has my ID, he knows  
13 where I live, that I can't call the cops or he's going  
14 find me and shoot me.

15          Q     What are you trying to do?

16          A     Still trying to get my ID and cell phone back.  
17 He told me that he was going to bring it back in an  
18 hour -- he told me to leave and that he would put it back  
19 in an hour. And then he left.

20          Q     Is he gone now?

21          A     Yeah, he's gone.

22          Q     Where are you headed?

23          A     I backed out, take a left out of here, see my  
24 car go up here where I saw somebody outside of their house  
25 and a cable guy. I drove into their driveway, got their

## LEE RHODES-DIRECT BY MR. TIMMONS

1 attention, used the cable guy's phone to call the cops and  
2 waited for the cops.

3 Q Is that your car?

4 A That's my car.

5 Q So, when you were with the cable guy, did the  
6 police show up?

7 A Yeah.

8 Q Did you give them a description of the suspect?

9 A Yes, I did.

10 Q The Defendant? Did you also give them a  
11 statement?

12 A Yes, I did.

13 Q And at some point later -- where did you give  
14 them this initial statement?

15 A We drove back over to the same spot at the  
16 carwash. Then Detective Hoover came and I gave him my  
17 statement right there.

18 Q And at some point did you get a call from the  
19 police later that afternoon?

20 A Later that day.

21 Q Later that day. What was the nature of that  
22 call?

23 A They said they had caught a possible person that  
24 related to my case and to come in to ID a person.

25 Q And did you go to the police station?

## LEE RHODES-DIRECT BY MR. TIMMONS

1           A     Yes, I did.

2           Q     Did they show you a photo lineup?

3           A     Yes, they did.

4           Q     I'm going to show you what's been previously  
5 marked as State's Exhibit No. 2. And ask you if you  
6 recognize what this six page document is?

7           A     That's what they showed me when I got there.

8           Q     And how do you know?

9           A     I have initialed, dated and time.

10          Q     Did you initial, date and time all six pages?

11          A     Yes, I did.

12          Q     And in that six person photo lineup, when they  
13 showed it to you, did the police officers tell you who to  
14 pick out?

15          A     No.

16          Q     Did they say the person that robbed you was  
17 definitely in there?

18          A     No.

19          Q     Did they make any statement whatsoever that led  
20 you to believe that you were supposed to pick somebody  
21 out?

22          A     Not at all.

23          Q     Did they suggest the person that you were  
24 supposed to pick out?

25          A     No.

LEE RHODES-DIRECT BY MR. TIMMONS

1 Q And when you saw that did you -- was the person  
2 that robbed you in that photo lineup?

3 A Yes, he was.

4 MR. ELLIS: Your Honor, at this time, we move to  
5 admit State's Exhibit 2 into evidence.

6 THE COURT: Objection, sir?

7 MR. TONEY: No objection.

8 THE COURT: All right, without objection the  
9 same is moved into evidence.

10 MR. TONEY: Other than the objection previously  
11 stated.

12 THE COURT: I understand, yes, sir.

13 (WHEREUPON, State's Exhibit No. 2 was admitted  
14 into evidence.)

15 BY MR. ELLIS:

16 Q And did you pick out the person that robbed you  
17 from that photo lineup?

18 A Yes, I did.

19 Q How did you indicate to the officer that that  
20 was the person that robbed you?

21 A Well, I looked at all the pictures like the  
22 officer told me to. And right away I recognized this  
23 picture was the guy that stole my stuff. And so, I told  
24 the officer that it was picture number three.

25 Q Okay. And did you write anything on that

## LEE RHODES-DIRECT BY MR. TIMMONS

1 picture?

2 A I always wrote a note there saying I'm 100  
3 percent sure that this was the man that robbed me.

4 Q And today sitting here in court, are you still  
5 100 percent sure that this is the man that robbed you?

6 A I am still.

7 Q This the Exhibit 2, I'm showing photograph No. 3  
8 to the jury. Is that you're handwriting?

9 A It is.

10 Q Did you also sign an affidavit indicating that  
11 person number three was the person that robbed you?

12 A I did.

13 Q I'm showing you what's been previously marked as  
14 State's Exhibit No. 1. Can you tell the jury what that  
15 is?

16 A This is the document confirming that photo  
17 number three was the man that robbed me earlier that  
18 morning. And that it has my signature and the date.

19 MR. ELLIS: Your Honor, The State moves to admit  
20 State's Exhibit 1 into evidence.

21 THE COURT: Objection, sir?

22 MR. TONEY: No objection.

23 THE COURT: All right, without objection, the  
24 same is admitted into evidence.

25 (WHEREUPON, State's Exhibit No. 1 was admitted

LEE RHODES-DIRECT BY MR. TIMMONS

1           into evidence.)

2   BY MR. ELLIS:

3           Q    Is this the affidavit that you signed?

4           A    Yes, sir.

5           Q    I'm going to show you four items which have been  
6 marked as State's Exhibits 12, 13, 14 and 15, get you to  
7 tell me what these are.

8           A    Looks like this first picture is at the scene  
9 where it happened. And looks like this is when he is  
10 bringing the gun out. I see a reflection from the gun in  
11 this first picture. This is photo number 14 is after the  
12 incident happened, my arms are raised and I'm obviously  
13 upset. And picture number 13 is with my arms raised,  
14 similar to picture 14. And 15 is of me and the person  
15 that robbed me and he's demanding me to put down my ID and  
16 my cell phone in this picture.

17           MR. ELLIS: Your Honor, at this time, The State  
18 moves to admit State's 12, 13, 14 and 15 into  
19 evidence.

20           THE COURT: Objection, sir?

21           MR. TONEY: No objection.

22           THE COURT: All right, without objection the  
23 same is admitted.

24           (WHEREUPON, State's Exhibits Nos. 12-15 were  
25 admitted into evidence.)

LEE RHODES-DIRECT BY MR. TIMMONS

1 BY MR. ELLIS:

2 Q I'm going to go through these briefly since  
3 you've already described what they are to the jury. This  
4 is State's 12, is that -- I know it's hard to see and the  
5 resolution is poor in these still shots, but what is that  
6 shinning thing about The Defendant's waste?

7 A That is the pistol.

8 Q This is State's 14 and is that -- what did you  
9 say that one was?

10 A It's me right after the person robbed me walked  
11 away.

12 Q State's 13?

13 A That is as he's walking away and my hands up.

14 Q And State's 15?

15 A That's just where he's demanding my ID and cell  
16 phone.

17 Q And at some point after, during the  
18 investigation of this case -- well, I'm going to show you  
19 what's been marked as State's Exhibit 16. Can you tell  
20 the jury what that is?

21 A That is a picture of the man who robbed me.

22 Q How do you know?

23 A I know because I saw him for five minutes face  
24 to face, I recognize him. I recognize his facial features.  
25 I recognize his shirt. It is a perfect match.

## LEE RHODES-CROSS BY MR. TONEY

1 MR. ELLIS: Your Honor, The State moves to admit  
2 State's Exhibit 16 into evidence.

3 THE COURT: Objection, sir?

4 MR. TONEY: No objection.

5 THE COURT: All right, without objection the  
6 same is admitted.

7 (WHEREUPON, State's Exhibit No. 16 was admitted  
8 into evidence.)

9 BY MR. ELLIS:

10 Q Is that him?

11 A That is him.

12 Q Finally, do you see this person in the courtroom  
13 today?

14 A I do.

15 Q Where is he sitting?

16 A Sitting right there.

17 Q Sitting at defense table beside--

18 A Defense table, yeah.

19 MR. ELLIS: Mr. Rhodes, thank you for being  
20 patient with me today. Please answer any questions  
21 that Mr. Toney as for you.

22 CROSS-EXAMINATION

23 BY MR. TONEY:

24 Q This lasted all of five minutes, you say, this  
25 incident.

## LEE RHODES-CROSS BY MR. TONEY

1           A     About five minutes, yes.

2           Q     And you've never seen Mr. Hyatt before this,  
3 correct?

4           A     That is correct.

5           Q     And you don't know him in any other capacity,  
6 correct?

7           A     Correct.

8           Q     The pictures, if you could --  
9                   Where are they?

10           MR. ELLIS: Up on the table.

11 BY MR. TONEY:

12           Q     Fifteen and 12. Are quite obscure, correct?  
13 Quite -- almost impossible to identify somebody from those  
14 pictures?

15           A     From those picture, yeah, it would be difficult.

16           Q     Okay. The gun in the picture you say was shiny,  
17 correct?

18           A     I believe the reflection is from the one piece  
19 of the gun. I don't know gun parts very well but it's  
20 right in the middle, the only shiny part on a gun.

21           Q     But it looks in this picture that it might be  
22 the end of the gun that's shiny, correct?

23           A     I believe the end of the gun is shiny as well.  
24 If you look at the gun in evidence.

25           Q     The gun in this case is what you say is a matted

## LEE RHODES-CROSS BY MR. TONEY

1 black?

2 A At the time, yes, I believe it was.

3 Q What does matted mean?

4 A It is like a flat black.

5 Q So, wouldn't necessarily reflect light, would  
6 it?

7 A Mostly would not.

8 Q Now, when this incident happened, it was scary,  
9 correct?

10 A Yes.

11 Q When you saw that gun, what were you looking at?

12 A I was looking at the gun mainly and at the  
13 person holding the gun.

14 Q But you were scared, correct?

15 A Yes.

16 Q And at that point, what were you thinking?

17 A Just how can I get out of this?

18 Q And you weren't focusing on clothing or anything  
19 like that at that point, correct?

20 A At that point, no.

21 Q Before that you had no reason to check out this  
22 individuals clothes, in particular, or anything like that;  
23 correct?

24 A Well, I did look at him and talked to him. And  
25 my memory serves me that way that I remember those things.

## LEE RHODES-CROSS BY MR. TONEY

1           Q     When you normally walk down the street, you  
2 don't pay attention when you meet with people, you don't  
3 necessarily look at their clothes, what's on their  
4 clothes? Whether it's Carolina or another football team,  
5 or if it's this or if it's that; do you?

6           A     I couldn't say. I would say sometimes I  
7 definitely do.

8           Q     Okay. Now, this transaction, or however you  
9 want to characterize it, lasted five minutes, would you  
10 say? Much of the time there was a gun pointed at you.  
11 Before that, why seem like you're looking at the Xbox,  
12 correct? For quite a bit?

13          A     For a time I was looking at the Xbox. I pulled  
14 the Xbox out to show it to him.

15          Q     Okay. And y'all were -- you and whoever this  
16 was, were discussing the Xbox?

17          A     Correct.

18          Q     Okay. And looking at it?

19          A     Correct.

20          Q     And you were showing him the features, correct?

21          A     Yes.

22          Q     All right. And when you were showed the photo  
23 lineup, how were you shown that lineup? Describe it for  
24 me, if you can.

25          A     I looked at each picture individually. One

## LEE RHODES-CROSS BY MR. TONEY

1 through six. I looked at each picture. Before  
2 determining who it was. And then I pointed to picture  
3 number three to Officer Hoover.

4 Q What identifying information did you give to the  
5 police, Officer Hoover, I think you said?

6 A After the incident happened?

7 Q Yeah, when he -- when you drove over to the  
8 driveway where the gentleman and the cable guy was at.

9 A Yeah.

10 Q Then the officer came out and you gave a  
11 statement. What did you tell the officer by way of  
12 identifying information?

13 A I believe I said it was an African-American  
14 male, age, I guess 25 to 30. I believe I said about  
15 6-foot. Athletic build. I think I said 180 to 190  
16 pounds, maybe 170 pounds. Maybe a little bit of facial  
17 hair on the chin.

18 Q Really that could describe 100's, if not  
19 thousands, of people in the local area, correct?

20 A Correct.

21 MR. TONEY: That's all the questions I have.

22 THE COURT: Redirect, sir?

23 MR. ELLIS: No, Your Honor. Thank you.

24 THE COURT: Thank you, sir, you may step down.

25 I appreciate you being here.

DAVID WEINER-DIRECT BY MR. TIMMONS

1           You may call your next witness, sir.

2           MR. TIMMONS: Thank you, Your Honor, The State  
3           calls Officer Weiner to the stand.

4                     DAVID WEINER, after being duly sworn,  
5           testified as follows:

6           THE CLERK: Please have a seat. Will you state  
7           your full name for the record?

8           THE WITNESS: David Weiner.

9                     DIRECT EXAMINATION

10       BY MR. TIMMONS:

11           Q     Where are you employed?

12           A     Greenville County Sheriff's Office.

13           Q     What do you do there?

14           A     I am the supervising sergeant over the armed  
15       robbery unit.

16           Q     How long have you worked there?

17           A     Fifteen years.

18           Q     Were you involved in the investigation of this  
19       case?

20           A     I was, yes, sir.

21           Q     How were you involved?

22           A     On the morning of the 17th of September 2014, I  
23       was contacted by a uniform patrol deputy regarding two  
24       recent armed robberies that occurred that morning that  
25       appeared connected. He described them as both victims

DAVID WEINER-DIRECT BY MR. TIMMONS

1 selling items on Craig's list. Both victims being robbed  
2 by a African-American man, same clothing description, same  
3 physical description. Obviously linked. So, we took this  
4 very seriously because I was pretty confident in 15 years  
5 that two things. Number one, it's going to happen again.  
6 And number two, the propensity for violence is going to  
7 greatly increase. Especially, if we get a victim that  
8 refuses or doesn't cooperate. So, I gathered up the  
9 robbery unit, three or four other investigators and we  
10 went out to try to work the case as best we could  
11 immediately.

12 Q Did you respond to one of the scenes?

13 A I did respond to the Gorilla Carwash but I  
14 believe the victim had already left at that point. We  
15 made the determination to try to locate the suspect  
16 through one of the victim's telephone's that was stolen.  
17 We did an emergency order in an attempt to locate that  
18 phone but we were unsuccessful, it had been powered off.

19 Q What leads did you get that led you to further  
20 evidence?

21 A The last phone number that had called the  
22 victims phone, received the records for that telephone.  
23 And found several numbers that that phone had called  
24 beside the victims. And I started calling those numbers  
25 myself. First one didn't answer. Didn't have a voice

DAVID WEINER-DIRECT BY MR. TIMMONS

1 mailbox set up. The second one answer, wasn't very  
2 cooperative. Was a male, just stated he just received the  
3 phone.

4 MR. TONEY: Objection, hearsay.

5 THE COURT: Okay. All right. I'll sustain the  
6 hearsay objection.

7 You may proceed.

8 BY MR. TIMMONS:

9 Q Did you eventually contact an individual named  
10 Ricky Abercrombie?

11 A I did, yes, sir.

12 Q As a result of that conversation did you proceed  
13 to his house?

14 A I did?

15 Q Where was that located?

16 A It was in Greenville City limits. I believe it  
17 was Pendleton Street. [REDACTED] Perry Road Apartment [REDACTED].

18 Q Is that nearby this incident location?

19 A Within just a couple of miles.

20 Q Okay. What happened when you got to his house?

21 A I met with Mr. Abercrombie and his mother. And  
22 asked them about this telephone number.

23 Q What information did -- give me one second. Did  
24 you find anything related to the crime at his house?

25 A I did.

DAVID WEINER-DIRECT BY MR. TIMMONS

1 Q What did you find?

2 A A Xbox, a PlayStation 3, several controllers,  
3 games, remote controls. Basically, a laundry list of what  
4 was stolen from two robberies.

5 MR. TIMMONS: Bear with me while I get this  
6 marked.

7 (WHEREUPON, State's Exhibit No. 18 was marked  
8 for identification only.)

9 BY MR. TIMMONS:

10 Q I'm handing you what's marked as State's Exhibit  
11 18; do you recognize that?

12 A Yes, sir.

13 Q Will you describe what's in this photo?

14 A The items recovered from Mr. Abercrombie's  
15 residence. Just a photograph of them laying on the floor  
16 in the armed robbery office.

17 Q Is that a fair and accurate representation of  
18 those items?

19 A Yes, sir.

20 MR. TIMMONS: State moves to enter State's  
21 Exhibit 18 into evidence.

22 THE COURT: Objection, sir?

23 MR. TONEY: No objection.

24 THE COURT: Okay, without objection the same is  
25 admitted.

DAVID WEINER-DIRECT BY MR. TIMMONS

1 (WHEREUPON, State's Exhibit No. 18 was admitted  
2 into evidence.)

3 BY MR. TIMMONS:

4 Q So, those are the items that you recovered from  
5 Mr. Abercrombie's house?

6 A Yes, sir.

7 Q As a result of being at his house and recovering  
8 these items, did you request -- or did you do anything  
9 regarding searching for an individual?

10 A I did.

11 Q And particularly a vehicle of that individual?

12 A Yes, sir.

13 Q What vehicle were you searching for?

14 A A black Jaguar. I believe it had a dented  
15 fender.

16 MR. TONEY: Objection.

17 THE COURT: What's the basis of your objection,  
18 sir?

19 MR. TONEY: Hearsay. It fails to lay a  
20 foundation as to why they were searching for it.

21 THE COURT: Okay. All right. I respectfully  
22 overrule the objection.

23 You may proceed.

24 MR. TONEY: Yes, sir.

25 MR. TIMMONS: One moment while we mark these for

DAVID WEINER-DIRECT BY MR. TIMMONS

1 entry into evidence.

2 (WHEREUPON, State's Exhibits Nos. 19-27 were  
3 marked for identification only.)

4 MR. TIMMONS: While she's doing that I'll  
5 continue--

6 THE COURT: Hold on, give her time to mark  
7 those.

8 BY MR. TIMMONS:

9 Q As a result of your time at Perry Avenue with  
10 Mr. Abercrombie, did you have a suspect for these crimes?

11 A Yes, sir.

12 Q Who was that suspect?

13 A Jaquese Hyatt.

14 Q And what identifying things did you have in the  
15 vehicle anything like that?

16 A He was known to possess a black Jaguar --

17 MR. TONEY: Objection, hearsay.

18 THE COURT: Okay, overruled.

19 You may continue, sir.

20 THE WITNESS: Which may have had a dent in the  
21 passenger -- or I'm sorry, a dented fender, front  
22 fender. And records indicate he resided potentially,  
23 I believe, was ■ McArthur Street.

24 BY MR. TIMMONS:

25 Q Okay. When you -- did you charge

## DAVID WEINER-DIRECT BY MR. TIMMONS

1 Mr. Abercrombie with anything?

2 A No, sir.

3 Q Why not?

4 A Mr. Abercrombie was overly cooperative. And in  
5 addition, the facts that he relayed to me, he appeared as  
6 though he, himself, was a victim of a crime instead of  
7 receiving these goods.

8 Q What did you do when you left the house?

9 A Attempted to locate Mr. Hyatt.

10 Q Did you have any success in that?

11 A Initially no, sir. Checked the residence, no  
12 luck. Gave it about 30 minutes and returned as the  
13 vehicle, the black Jaguar with the dented fender, was  
14 leaving.

15 Q So, you went back to, is it ■ McArthur Street?

16 A Correct.

17 Q And you saw a black Jaguar with a dented fender?

18 A Yes, sir.

19 Q What did you do next?

20 A There was a uniform patrol deputy and I believe  
21 two other investigators present. We conducted what we  
22 call a felony car stop. It's a armed robbery suspect,  
23 known to be armed with a firearm. So, we're going to  
24 protect ourselves. So, with are weapons drawn, we ordered  
25 the car to stop, placed the car in park, existed the

## DAVID WEINER-DIRECT BY MR. TIMMONS

1 vehicle, just like you see on television.

2 Q Who was in that vehicle?

3 A Mr. Hyatt was operating the vehicle and there  
4 were no other occupants.

5 Q What did you do next?

6 A Mr. Hyatt complied, put the car in park, put his  
7 hands in plain view but then he just froze, he did  
8 nothing. Wouldn't get out of the car. So, while some  
9 deputies were covering Mr. Hyatt, make sure he didn't  
10 reach into the seat, under the seat, waistband or  
11 something like that, I went and opened the car door,  
12 grabbed his left arm and pulled him out of the car. And  
13 just laid him on his stomach and handcuffed him.

14 Q While you're doing that, did anything -- did you  
15 find anything else on his person?

16 A He had numerous items on his person. But when I  
17 put him on the ground, a cell phone, I think it was blue,  
18 cell phone came out of his front right pant pocket.  
19 Standing him up, I picked it up and it looked at the cover  
20 and the writing on it was in Spanish.

21 Q At later time did you return that phone to one  
22 of the victims from one of the incidents?

23 A Yes, sir, it was identified as the phone  
24 belonging to Mr. Perez.

25 Q Was the vehicle searched incident to arrest?

DAVID WEINER-DIRECT BY MR. TIMMONS

1 A It was, yes, sir.

2 Q Was there a firearm found?

3 A Yes, sir.

4 Q Let me show you what's currently marked as  
5 State's Exhibit 10. Is this the firearm that was found in  
6 his vehicle?

7 A Yes, sir.

8 Q Could you please remove the box and show the  
9 jury the pistol that you found in his vehicle?

10 A The witness complies.

11 It's a Taurus PT730 380 caliber. It's a  
12 very small, compact weapon. Still very deadly. When we  
13 found it it did not have this cable on it. It was not  
14 like that. That's something we do when we secure it in  
15 evidence to ensure that if somebody were to open the box,  
16 they immediately know the weapon is safe.

17 Q Okay.

18 MR. TIMMONS: State moves to enter State's  
19 Exhibit 10 into evidence.

20 THE COURT: Objection, sir?

21 MR. TONEY: No objection.

22 THE COURT: All right, without objection the  
23 same is admitted into evidence.

24 (WHEREUPON, State's Exhibit No. 10 was admitted  
25 into evidence.)

DAVID WEINER-DIRECT BY MR. TIMMONS

1 BY MR. TIMMONS:

2 Q Where was that gun found?

3 A Floorboard, passenger side, I believe, inside a  
4 brief case.

5 Q I'm going to hand you a number of pictures  
6 marked State's Exhibit 19 through 27. Would you look at  
7 those items and tell the jury what they are?

8 A Nineteen is a picture of the vehicle that he had  
9 stopped that had Mr. Hyatt operating it. Twenty is just a  
10 different angle of the same vehicle. Likewise with 21.  
11 Twenty-two is an interior shot of the rear seat of the  
12 same vehicle. Twenty-three is the front passenger seat,  
13 looking into the car. Twenty-four, same angle, just  
14 closer in on the console. Twenty-five is the trunk  
15 compartment. Twenty-six is the firearm. And 27 is a  
16 picture that belongs to that firearm. It's the case that  
17 the firearm came in. And it was in the trunk of the  
18 vehicle.

19 Q Are these photos a fair and accurate  
20 representation of those items that you just described?

21 A Yes, sir.

22 Q Just to confirm, were both of these incident  
23 locations in Greenville County?

24 A They were, yes, sir.

25 MR. TIMMONS: State moves to enter exhibits --

DAVID WEINER-DIRECT BY MR. TIMMONS

1 State's Exhibit 19 through 27 into evidence.

2 THE COURT: Objection, sir?

3 MR. TONEY: No objection.

4 THE COURT: All right, without objection the  
5 same are admitted.

6 (WHEREUPON, State's Exhibits Nos. 19-27 were  
7 admitted into evidence.)

8 BY MR. TIMMONS:

9 Q Let's go over these one more time so the jury  
10 can see them as well. Is that the vehicle that you pulled  
11 The Defendant out of?

12 A Yes, sir.

13 Q Is Jaquese Hyatt, the person you pulled out of  
14 the vehicle, in this courtroom?

15 A Yes, sir, seated at the defense table wearing  
16 the tan blazer.

17 Q Thank you. So you were looking for a black  
18 Jaguar with a dented fender with Jaquese Hyatt in it and  
19 you found this car with Jaquese Hyatt in it?

20 A Correct.

21 Q Is this another photo of the vehicle?

22 A Yes, sir.

23 Q And another?

24 A Correct.

25 Q What is this photo of?

DAVID WEINER-DIRECT BY MR. TIMMONS

1 A Back seat, driver's side looking in.

2 Q This one?

3 A Front passenger compartment looking in.

4 Q Is that brief case where the gun was located?

5 A Yes, sir. Inside that zippered pouch there.

6 Q Is this a photo of inside the vehicle?

7 A Yes, sir, center console.

8 Q Is this the trunk of the same vehicle?

9 A Yes, sir.

10 Q Is that the box that the gun came in?

11 A Yes, sir. Matched by the serial number label on  
12 the side of it.

13 (WHEREUPON, State's Exhibit No. 28 was marked  
14 for identification only.)

15 BY MR. TIMMONS:

16 Q I'm handing you an item marked State's Exhibit  
17 28 for identification purposes, is that -- will you open  
18 that and tell me what that is?

19 A Yes, sir.

20 Q While you're doing that, was the pistol that you  
21 identified loaded when you found it?

22 A Yes, sir, it was loaded. I don't remember how  
23 many rounds were inside but it was loaded.

24 Q Was there a round in the chamber, do you recall?

25 A I do not rule that, sir.

DAVID WEINER-DIRECT BY MR. TIMMONS

1 Q Okay. What is that that you're holding?

2 A The pistol box found in the trunk of the  
3 Defendant's vehicle.

4 MR. TIMMONS: State moves to enter the pistol  
5 box found in the trunk of the vehicle, State's  
6 Exhibit 28 into evidence.

7 THE COURT: Any objection?

8 MR. TONEY: No objection.

9 THE COURT: All right, without objection the  
10 same is admitted.

11 (WHEREUPON, State's Exhibit No. 28 was admitted  
12 into evidence.)

13 BY MR. TIMMONS:

14 Q Just show the jury what that is.

15 A Just a storage container. When you buy a pistol  
16 new or used, I guess, some people save them. I save mine.  
17 The box the pistol comes in, that's all it is. Has that  
18 little instruction manual, a pad so it doesn't get scratch  
19 up. And it has a small key for a lock. Some of these  
20 pistols actually have built-in trigger locks and you have  
21 to put the key in to turn it to lock them.

22 Q And is what you're holding in your hand what is  
23 also in the picture right there?

24 A Same box.

25 Q Same box. The was found in the trunk of The

DAVID WEINER-DIRECT BY MR. TIMMONS

1 Defendant's car?

2 A Yes, sir.

3 MR. TIMMONS: One moment, please.

4 BY MR. TIMMONS:

5 Q So, what did you do after you put him in  
6 handcuffs?

7 A Seated him in the rear of the patrol vehicle  
8 that was nearby, had a cage put in it so we can transport  
9 prisoners. And then waited about five minutes so that  
10 everybody's adrenaline had stop flowing, things had  
11 settled down and went to speak with Mr. Hyatt.

12 Q So, it was about five minutes after the  
13 accident?

14 A Not after the robberies but after he was removed  
15 from his vehicle, yes, sir.

16 Q Okay. Was anyone with you when you poke to him?

17 A There were other investigators and officers  
18 there but it was just Mr. Hyatt and myself standing -- I  
19 was standing back at the back of the car, he was seated  
20 inside it.

21 Q Again, where were you? Back of the car. Is  
22 this nearby within view of the vehicle that you just  
23 pulled him out of?

24 A Yes, sir, maybe five feet, ten feet.

25 Q Okay. Was he in handcuffs.

## DAVID WEINER-DIRECT BY MR. TIMMONS

1           A     He was.

2           Q     When you spoke with him did you inform him of  
3 his Miranda rights?

4           A     I did, yes, sir.

5           Q     How did you verbally advise him?

6           A     Verbally advised him. I tell anybody that I  
7 speak to that's under arrest or potentially going to be  
8 under arrest, their Miranda Rights. You have the right to  
9 remain silent, anything you say can and will be used  
10 against you in a court of law. You have the right an  
11 attorney, if you cannot afford one the state will provide  
12 one to you free of charge. I ask him if he understand  
13 those rights? And he answered that he did.

14          Q     Did he ask you in questions about those rights?

15          A     No, sir.

16          Q     Did he ask you for an attorney?

17          A     No, sir.

18          Q     Despite being in custody and in handcuffs, did  
19 he appear to be reasonably comfortable?

20          A     Yes, sir.

21          Q     Did you use any force or threaten him during the  
22 encounter?

23          A     No, sir.

24          Q     What did he say to you?

25          A     I asked him if he had done these robberies. I

DAVID WEINER-DIRECT BY MR. TIMMONS

1 told him what he was under arrest for. He initially  
2 denied any involvement. I told him that he was lying.  
3 That the victims had given good descriptions, the clothing  
4 he was wearing was matching what was told to us. And then  
5 I'd also been to Mr. Abercrombie's house and recovered all  
6 the stolen items.

7 And he then changed his history a little  
8 bit and said, Well, I know what happened. An acquaintance  
9 named Robert Smith is the one who did the robberies and I  
10 got the items from him and gave them to Mr. Abercrombie.

11 I told him I didn't believe him. That none  
12 of that really made sense. He told me that he was in a  
13 tough spot, he was getting evicted that day, needed a  
14 place to live. He made the statement to me that nobody  
15 was going to get hurt. I told him that he couldn't  
16 guarantee that, that it's all likelihood that one of the  
17 victim's could have been armed and killed him or hurt him.  
18 He then made an admission to me that he had done the  
19 robberies. And that was basically the end of our  
20 conversation. He did say that it was still Robert Smith's  
21 idea and that Robert Smith was waiting back at his car but  
22 he admitted to me that he did the robberies.

23 Q Were you able to locate Robert Smith?

24 A Couldn't tell you where to start, sir. A pretty  
25 common name and I'm not quite sure that there is a Robert

## DAVID WEINER-DIRECT BY MR. TIMMONS

1 Smith. But he never gave me any identifying  
2 characteristics.

3 Q So, how did you know these two crime scenes were  
4 tide together, just briefly?

5 A Same ammo, single individual, African-American  
6 male, same physical description, same clothing description  
7 same weapon description. Robbing people listing gaming  
8 systems off Craig's list was our connecting the dots for  
9 us.

10 Q Was the geographic proximity between the  
11 incident locations also?

12 A Absolutely. Initially, we might have thought a  
13 vehicle wasn't involved, that the person was on foot.  
14 Because they were so close together.

15 Q Did law enforcement fingerprint the vehicle?

16 A I believe they did, yes, sir.

17 Q Were any prints other than the Defendant's found  
18 in the vehicle?

19 A No, sir.

20 Q The items that you just showed, the two game  
21 consoles, were they claimed by the victims?

22 A They were, yes, sir. Both were identified by  
23 the victims and each one retrieved their respective game  
24 system.

25 Q And the cell phone that was found in the pocket,

## DAVID WEINER-CROSS BY MR. TONEY

1 that fell out of the pocket of The Defendant, was that  
2 returned as well?

3 A Yes, sir, to Mr. Perez. I believe that day.

4 MR. TIMMONS: Thank you. Please answer any  
5 questions defense counsel may have.

6 CROSS-EXAMINATION

7 BY MR. TONEY:

8 Q A Xbox and PS3, there must be how many of those  
9 in Greenville County?

10 A There's no telling.

11 Q 40,000, 50,000?

12 A My son has one.

13 Q Yes, sir. And people have sons -- actually have  
14 several of them.

15 A Absolutely.

16 Q As I have. Okay. There could be 100,000 of  
17 those things in Greenville County, correct?

18 A Absolutely.

19 Q Did you check these items for fingerprints?

20 A I do not believe those were processed for latent  
21 prints.

22 Q So, it's not always possible to tell who was the  
23 original owner or something when there's many tens of  
24 thousands of them in this county is there?

25 A Well, in this case it was for us.

## DAVID WEINER-CROSS BY MR. TONEY

1 Q All right. Mr. Abercrombie, who's not here, had  
2 these items, not Jaquese, correct?

3 A He is here.

4 Q He's here?

5 A Yes, sir.

6 Q But he had the items, correct?

7 A Correct.

8 Q And you didn't arrest him.

9 A No, sir.

10 Q There is a large market in Greenville County for  
11 stolen or used item, correct?

12 A Stolen and used.

13 Q And or used?

14 A Absolutely.

15 Q Not only formally at the flea market but through  
16 Craig's list and through informal trading. And really,  
17 through many, many ways correct?

18 A Yes, sir.

19 Q Only line?

20 A Yes, sir.

21 Q Day trader, all kinds of things; correct?

22 A Yes, sir.

23 Q These things frequently go through many hands,  
24 correct?

25 A Yes, sir.

## DAVID WEINER-CROSS BY MR. TONEY

1           Q     The fact is the items -- as to firearms, the gun  
2     that's in the picture, the gun that was in the video, you  
3     cannot identify that gun from the video or the pictures,  
4     can you?

5           A     No, sir.

6           Q     You can't even identify what kind of gun it is  
7     other than it's a hand gun, correct?

8           A     No, sir.

9           Q     Not even close?

10          A     No, sir.

11          Q     All right. So, the fact that a gun was found in  
12     Mr. Hyatt's vehicle, as you say, does not necessarily tie  
13     him to this robbery?

14          A     In and of itself no, sir.

15          Q     Okay. Did you tell Mr. Hyatt that you were  
16     Steve Loftis?

17          A     No.

18          Q     Now, Mr. Hyatt, in the back of the police car,  
19     was that your police car by the way?

20          A     No, sir. One of the other patrol deputies.

21          Q     He told you that someone else did the robbery,  
22     correct?

23          A     Well, he told me that somebody else did these  
24     robberies, yes, sir.

25          Q     These robberies. Earlier today, you said you

## DAVID WEINER-CROSS BY MR. TONEY

1 cannot remember the exact words he used?

2 A Yes, sir.

3 Q So, when you say he made an admission that he  
4 performed or committed some kind of robbery, you cannot  
5 remember the words he used, correct?

6 A No, sir, I cannot.

7 Q An admission is merely your conclusory statement  
8 that that's what he said, correct?

9 A Correct.

10 Q But you don't remember what he said?

11 A No, not word for word I do not, sir.

12 MR. TONEY: That's all the questions I have for  
13 this witness.

14 THE COURT: Any redirect, sir?

15 MR. TIMMONS: No, Your Honor. Thank you.

16 THE COURT: Thank you, sir, you may step down.  
17 I appreciate you being here.

18 MR. ELLIS: Your Honor, may we approach briefly?

19 THE COURT: Sure.

20 Ms. Sims, is the chow here?

21 THE BAILIFF: Not yet.

22 THE COURT: Wow.

23 THE BAILIFF: I been checking on it.

24 THE COURT: Okay.

25

RICKY ABERCROMBIE-DIRECT BY MR. ELLIS

1 (WHEREUPON, a bench conference was held in the  
2 presence of the jury but out of the hearing of  
3 the jury.)

4 THE COURT: Ladies and gentlemen, it looks like  
5 it's here now but we got one short witness, we're  
6 going to go ahead and take that witness, it should be  
7 fairly short giving them time to get everything set  
8 up. Okay.

9 So, you may call your next witness.

10 MR. ELLIS: Thank you, Your Honor. The State  
11 calls Ricky Abercrombie to the stand.

12 THE CLERK: Place your left hand on the Bible,  
13 raise your right.

14 RICKY ABERCROMBIE, after being duly  
15 sworn, testified as follows:

16 THE CLERK: Thank you, have a seat. State your  
17 name for the record.

18 THE WITNESS: Ricky Davey Abercrombie.

19 DIRECT EXAMINATION

20 BY MR. ELLIS:

21 Q Mr. Abercrombie, where do you live?

22 A [REDACTED] Perry Avenue, West Greenville.

23 Q About how long have you lived there?

24 A Like two or three years.

25 Q Do you know the Defendant?

## RICKY ABERCROMBIE-DIRECT BY MR. ELLIS

1 A No.

2 Q You don't.

3 A (The witness shook his head.) I see him every  
4 once in a while but I don't know him know him like that.

5 Q Okay. Did you have run in with him on  
6 September 17th, 2014?

7 A Yes, sir.

8 Q Do you remember that day?

9 A Yes, sir.

10 Q Can you tell jury what happened that day?

11 A That day I had met him like -- see him at the  
12 grocery store like later on that day. Then I took him to  
13 my house, he was like, okay, I be right back. And then,  
14 as he came back, he brung like a PlayStation and controls  
15 and a bag of games. And after he took -- and a box. Had  
16 a box. And he took them up to my room and hooking them  
17 up. And he told me don't tell nobody that I got this. I  
18 like -- I was like okay, like. Then he left. Then.

19 Q Did you see him later? Did he bring another  
20 game system later that day?

21 A Huh-uh.

22 Q So, at that time -- the first time you saw him  
23 when he came to your house, did you say that's a Xbox or  
24 PlayStation?

25 A It was a PlayStation.

RICKY ABERCROMBIE-DIRECT BY MR. ELLIS

1 Q Okay. Did you give the police officers a  
2 statement that day?

3 A Yes, sir.

4 Q When they came to your house?

5 A Yes, sir.

6 Q And I'm going to show you that statement and I'm  
7 going to give you a chance to read over it and see if this  
8 refreshes your recollections about what he brought to you  
9 when, okay. So, you'll know, my question is going to be  
10 what he brought to you first and then if he brought  
11 anything else later on that day?

12 A (The witness reads to himself.)

13 Q So, does that refresh your recollection about  
14 what he brought to you first?

15 A Yes.

16 Q What did he bring to you first?

17 A He brung me the Xbox.

18 Q And did he come back with something else later  
19 that day?

20 A With some games.

21 Q Okay.

22 A PlayStation, two games, a bag of games. It was  
23 a Xbox box.

24 Q Okay. And do you -- do you remember anything  
25 about that car he was driving?

## RICKY ABERCROMBIE-CROSS BY MR. TONEY

1           A     Jaguar, black. Had a dent in the front left or  
2 right?

3           Q     Okay. And did you know that that PlayStation  
4 and Xbox were stolen?

5           A     No, huh-uh. I didn't know nothing about that.

6           Q     I'm going to show you this picture, very  
7 briefly, if you look around behind you, does that look  
8 like the PlayStation and Xbox he brought you?

9           A     Uh-huh, that's the bag of games. And that's the  
10 box.

11          Q     Would you have let him your house if you had  
12 known that stuff was stolen?

13          A     (The witness shook his head.)

14          Q     And at that point that day did the police come  
15 and ask you some questions.

16          A     (The witness nods.)

17          Q     And did you -- did you give the police all that  
18 stuff?

19          A     Yes, sir.

20          Q     Mr. Abercrombie, this is a really silly, I'm  
21 sorry I have to ask you, did you rob those two men?

22          A     No, sir.

23                MR. ELLIS: Mr. Abercrombie, thank you. Please  
24 answer any questions that he has for you.

25                       CROSS-EXAMINATION

## RICKY ABERCROMBIE-CROSS BY MR. TONEY

1 BY MR. TONEY:

2 Q Are you saying that you bought these items from  
3 him?

4 A No, I didn't buy them.

5 Q He just gave them to you?

6 A Uh-huh.

7 Q Do these Xboxes or PlayStations look anything  
8 different from any other similar Xboxes or PlayStation?

9 A Huh-uh.

10 Q You don't know where Mr. Hyatt got these from,  
11 do you?

12 A No, sir.

13 MR. TONEY: That's all the questions I have for  
14 this witness.

15 MR. ELLIS: Nothing further, Your Honor.

16 THE COURT: Thank you, Mr. Abercrombie, I  
17 appreciate you being here. You may step down.

18 MR. TIMMONS: Thank you.

19 THE COURT: All right, ladies and gentlemen,  
20 let's go ahead and take a break, we'll take at least  
21 an half hour. If y'all need more time than that,  
22 just let the bailiff know. And we'll bring you back  
23 in and resume testimony when you're finished eating,  
24 okay. Please don't discuss the case.

25

RICKY ABERCROMBIE-CROSS BY MR. TONEY

1 (WHEREUPON, the jury left open court at  
2 approximately 1:21 p.m.)

3 THE COURT: All right, ladies and gentlemen,  
4 we'll be in recess. I will tell you this, certainly,  
5 I would not hold it against a Defendant for electing  
6 to exercise his constitutional right.

7 So, Mr. Hyatt, I can't take that into  
8 consideration in any sentencing and I won't.  
9 However, you had the opportunity to look at the  
10 evidence that's been presented in this case. It is  
11 been characterized to me before trial that it was  
12 overwhelming evidence and I haven't seen it all. And  
13 I haven't heard the evidence that you intend to  
14 present. But it does seem that there is a  
15 significant amount of evidence which the jury could  
16 rely upon to find that The State has met its burden  
17 of proof.

18 I tell you this, you have an opportunity to  
19 enter a plea. And it doesn't matter to me whether  
20 you do or whether you don't. And I don't intend to  
21 twist your arm and make you do that. I want to  
22 afford you each and every constitutional right to  
23 include a full trial by a jury. But I don't know  
24 what the additional evidence is going to show. And I  
25 don't know what and how it will reflect on the

## RICKY ABERCROMBIE-CROSS BY MR. TONEY

1 sentencing, ultimately, that will be handed down by  
2 The Court, if that is appropriate. But I will tell  
3 you that if you are, first of all, waiting for  
4 someone to pull a rabbit out of a hat to save you in  
5 this trial, you may be disappointed. And to the  
6 extent that you are counting upon the mercy of the  
7 court in any sentencing, if you wish to enjoy any, I  
8 would suggest that you make a decision before we  
9 resume after lunch, okay.

10 MR. HYATT: May I say something?

11 THE COURT: Yes, sir. And remember, you don't  
12 have to say anything to me, Mr. Hyatt.

13 MR. HYATT: I understand that. But, you know, I  
14 have a child. This is all petty larceny. And I  
15 don't understand what's going on here.  
16 Mr. Abercrombie saying that he didn't know me at, I  
17 know his family over 13 years. I can tell that lot  
18 of this is set up. It just seems like somebody is  
19 trying to railroad me today. And I have a life. I  
20 been going to school for paralegal studies. I past  
21 my prerequisites, I know Angela Fraizer, she's one of  
22 my teacher, I pass her class law and ethnics. And  
23 this is just prosperous. My son is seven years old  
24 and he cries every time I'm on phone. I'm not sure  
25 if you're asking me to plea or you're not asking me

## RICKY ABERCROMBIE-CROSS BY MR. TONEY

1 to plea --

2 THE COURT: No, I'm not --

3 MR. HYATT: -- you're giving me a chance to plea  
4 but I don't know how much time you're willing to  
5 offer at all. And, you know, it's scary because I do  
6 want to get back to my son.

7 THE COURT: I understand.

8 MR. HYATT: That is my life and this is just. .  
9 .

10 THE COURT: Understand that I can't make deals  
11 and I can tell you, do you know what the maximum  
12 possible penalty is? But in any event, I'm not  
13 trying to twist your arm, Mr. Hyatt. You are a very  
14 intelligent person. And I hear what you're telling  
15 me but all that misses the point, okay. You're going  
16 to have to deal with this either way, okay. Either  
17 way. All right. So, in any event, you make up your  
18 own mind. And again, I'm not going holding it  
19 against you. I'm not trying to twist your arm. This  
20 is what I do. You know, and I'm perfectly willing  
21 and ready to go through the entire case and receive a  
22 jury verdict. But you need to talk to your attorney  
23 and determine whether, in fact, that's in your best  
24 interest, okay. All right, good luck to you, sir.

25 (WHEREUPON, a lunch break was taken.)

RICKY ABERCROMBIE-CROSS BY MR. TONEY

1 THE COURT: Yes, ma'am?

2 MS. HYATT: Your Honor, I apologize.

3 THE COURT: Yes, ma'am.

4 MS. HYATT: To the court. Can I have permission  
5 to speak to my son's attorney, please?

6 THE COURT: Yes, ma'am, I'll give you just a  
7 minute, okay.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: State ready for the jury?

10 MR. TIMMONS: Yes, sir, Your Honor.

11 THE COURT: Defense ready for the jury?

12 MR. TONEY: Yes, Your Honor.

13 THE COURT: Okay. Bring them in, please.

14 (WHEREUPON, the jury came into open court at  
15 approximately 2:22 p.m.)

16 THE COURT: You need talk to me?

17 MR. TONEY: Yes.

18 THE COURT: All right, come on up.

19 (WHEREUPON, a bench conference was held in the  
20 presence of the jury but out of the hearing of  
21 the jury.)

22 THE COURT: Ladies and gentlemen of the jury,  
23 just be patient for just a second. They're going to  
24 have a talk, okay.

25 (WHEREUPON, a short pause was taken.)

## RICKY ABERCROMBIE-CROSS BY MR. TONEY

1 THE COURT: Ladies and gentlemen, I'm going to  
2 ask you to return to your jury room. I'm sorry, I  
3 don't mean to jerk you around and bring you in and  
4 out but I have to discuss a matter of law.

5 (WHEREUPON, the jury left open court at  
6 approximately 2:26 p.m.)

7 THE COURT: All right, counsel, am I to  
8 understand that Mr. Hyatt wishes to enter a plea at  
9 this point, sir?

10 MR. TONEY: I do understand that.

11 THE COURT: All right, good enough.

12 Mr. Hyatt, you wish to enter a plea, sir?

13 MR. HYATT: Yes, sir.

14 THE COURT: All right, if y'all will approach.

15 THE CLERK: Your Honor, this is 2014-GS-23-11556  
16 Jaquese Kavon Hyatt, indicted for armed robbery and  
17 possession of a weapon during the commission of a  
18 violent crime. Pleading to the same and it is a  
19 true bill. 2014-GS-23-11579, indicted for armed  
20 robbery and possession of a weapon during the  
21 commission of a violent crime. Pleading to the same  
22 and it is a true bill.

23 Raise your right hand.

24 JAQUESE HYATT, after being duly sworn,  
25 testified as follows:

## JAQUESE HYATT-EXAMINATION BY THE COURT

1 THE COURT: All right, Mr. Toney, you have had  
2 the opportunity to discuss with Mr. Hyatt his  
3 constitutional rights and the ramifications of his  
4 plea?

5 MR. TONEY: Yes, Your Honor.

6 THE COURT: Is it your understanding he  
7 understands all this, wishes to waive his rights and  
8 plead guilty today?

9 MR. TONEY: I know he does because we've talked  
10 about it so many, many times.

11 THE COURT: All right, sir.

12 MR. TONEY: And he has pled guilty before. He  
13 has a little bit of a record, it's not too bad.

14 THE COURT: Okay.

15 MR. TONEY: But he understands this, sir.

16 THE COURT: Do agree with his decision, sir?

17 MR. TONEY: Very much so.

18 EXAMINATION

19 BY THE COURT:

20 Q Mr. Hyatt, I'm going to explain your rights to  
21 you again briefly. And then I'll ask you questions to  
22 make sure that you understand and appreciate them. And  
23 that you're freely and voluntarily giving up the same,  
24 okay? Then I'll give you the opportunity, at some point,  
25 to either ask questions and to make a statement. If you'd

## JAQUESE HYATT-EXAMINATION BY THE COURT

1 like to. Do you understand?

2 A Yes, sir.

3 Q Okay. You have a right to jury trial. And as  
4 you know we have already commenced and convened a jury  
5 trial. You can take this matter all the way to  
6 conclusion. That is, you could require The State to  
7 continue with its case and present evidence upon which the  
8 State -- or excuse me, the jury find that they have met  
9 their burden of proof of proving each and every element of  
10 each and every offense beyond a reasonable doubt.  
11 Understand that you don't have the burden of proving  
12 yourself innocent. You have a right to remain silent  
13 under the Constitution which means you wouldn't be  
14 required to say, do or prove anything, the State has the  
15 burden of proof.

16 However, do understand that you do have the  
17 right to waive your right to remain silent in the jury  
18 trial. You can take the stand and explain to the jury  
19 your side of the story, you can present evidence and  
20 witnesses in your defense. You can present legal  
21 defenses. You can make motions to protect your rights and  
22 interests. You can cross-examine any of the State's  
23 witnesses including those persons who are testifying  
24 against you and accusing you of these crimes. Now, do you  
25 understand all those rights, sir?

## JAQUESE HYATT-EXAMINATION BY THE COURT

1           A     Yes, sir.

2           Q     Okay. Do you want to waive those rights and  
3 plead guilty?

4           A     Yes, sir.

5           Q     You, sir, are pleading guilty to two counts of  
6 armed robbery.

7                     What's the maximum possible penalty for  
8 armed robbery?

9                     MR. TIMMONS: Ten to 30, Your Honor.

10          BY THE COURT:

11          Q     Okay, do you understand that you can receive  
12 between 10 and 30 years for that offense, sir?

13          A     Yes, sir.

14          Q     And you understand that on each they can be  
15 consecutive and in addition to one another. So  
16 collectively, I'm not saying I'm going to sentence you to  
17 this, but I'm saying collectively, I could, in my  
18 discretion, sentence you up to 60 years in prison. Do you  
19 understand that?

20          A     Yes, sir.

21          Q     You also understand that armed robbery is  
22 classified as both violent and as most serious. Because  
23 it's classified as violent it could effect the manner and  
24 method whereby you do a period of incarceration. It can  
25 effect the calculation of your max out date and how and

## JAQUESE HYATT-EXAMINATION BY THE COURT

1 where you're housed. Do you understand that, sir?

2 A Yes, sir.

3 Q Okay. Mr. Hyatt, you need to speak up a little  
4 bit. Only because the court reporter is taking down your  
5 answers and it's important to have a good record, okay?

6 A Okay.

7 Q I don't mean to make this any less comfortable  
8 for you than it already is but I do need an audible  
9 response, okay?

10 A No problem.

11 Q You also recognize that it's classified as a  
12 mosts serious offense. Which means that under the law it  
13 is a strike. Do you understand that, sir?

14 A Yes, sir.

15 Q And because it's a strike, if at a later date  
16 and time in your life, if you are convicted of a  
17 combination of serious offenses or a most serious offense,  
18 you could face a penalty of life without the possibility  
19 of parole. Do you understand that?

20 A Yes, sir.

21 Q Excuse me. Knowing that, how do you wish to  
22 plead to these two armed robbery offenses, sir?

23 A Guilty, sir.

24 Q And you're also pleading guilty to possession of  
25 a weapon during the commission of a violent crime. Do you

## JAQUESE HYATT-EXAMINATION BY THE COURT

1 understand for each of those you could receive up to five  
2 years in addition to and consecutive to the time on all  
3 the other charges; do you understand that, sir?

4 A Yes, sir.

5 Q How do you wish to plead to those charges?

6 A Guilty, sir.

7 Q Has anyone forced or threatened or made you  
8 plead guilty, sir?

9 A No, sir.

10 Q Are you pleading guilty of your own freewill,  
11 sir, because you are, in fact, guilty of the offense?

12 A Yes, sir.

13 Q Has anyone promised you anything in exchange for  
14 your plea?

15 A No, sir.

16 Q Are you under the influence of any drugs or  
17 alcohol today, sir?

18 A No, sir.

19 Q Do you suffer from any mental sickness that  
20 would effect your ability to understand and appreciate  
21 what we're doing here today?

22 A No, sir.

23 Q Okay. You had the opportunity to discuss this  
24 matter with Mr. Toney. And I recognize that you made a  
25 motion to have him dismissed as your attorney. And I

## JAQUESE HYATT-EXAMINATION BY THE COURT

1 refused that motion based on those -- those reasons that I  
2 enumerated in the record. But at this time have you had  
3 the opportunity to talk to Mr. Toney as much as you needed  
4 to?

5 A Yes, sir.

6 Q With respect to this plea, has he answered all  
7 your questions and done everything you asked him to do?

8 A Yes, sir.

9 Q Okay. All right. Are you satisfied with his  
10 services?

11 A Yes, sir.

12 Q Have you understood all the questions and  
13 explanations that I've offered to you today, sir?

14 A Yes, sir.

15 Q Do you have any questions at this point that you  
16 want to ask me or Mr. Toney about your rights or this  
17 proceeding, sir, before we proceed?

18 A I just ask, sir, that you give me the minimum.  
19 I talked to the Solicitor numerous times and it was a  
20 eight or nine year plea. I really can't do anything over  
21 that. I mean, like I said, I have to get back to my son.  
22 And I know this isn't your concern at all but I pray, I  
23 hope that you can see to it.

24 THE COURT: I understand, Mr. Hyatt. Do you  
25 understand I can't sentence you to anything less than

1       10 years under this particular offense? And  
2       understand, that I'm human too. I don't like to see  
3       parents separated from their children either. And  
4       nothing that happens is going to be personal in any  
5       way, shape or form between you and me. But I have to  
6       follow the law, you understand? And the law requires  
7       at least that minimum sentence, all right.

8               Okay. I have heard the facts which would  
9       support the plea in this case. And I do find that  
10      there is a substantial, factual basis based on the  
11      record that's established here before me.

12             So, can you tell me what his prior record is and  
13      tell me anything else that you feel is relevant to  
14      sentencing.

15             MR. TIMMONS: His prior record is 2004, ABHAN,  
16      it's not a strike, those common law. 2012, habitual  
17      traffic offender and failure to stop for blue lights.  
18      The only other thing I would add is that these  
19      offenses occurred in the middle of 18 months crime  
20      spree. And 23 warrants are being dismissed as a  
21      result of this plea. Those charges that were  
22      dismissed are driving under suspension, failure to  
23      stop for blue lights, possession of a controlled  
24      substance, simple possession of marijuana, and a  
25      number of other traffic related charges.

1           Other than that, he served 99 days in  
2           Greenville. And he's currently serving a sentence,  
3           that his attorney may know more about in SCDC, I  
4           believe it's five years. And the State would not be  
5           opposed to backdating whatever you sentence him to  
6           and running it concurrent. Other than that you've  
7           heard the facts. And I leave it in the Court's  
8           discretion.

9           THE COURT: Okay. Mr. Toney, when did he start  
10          serving pursuant to this warrant?

11          MR. TONEY: I'm not sure. I know he's probably  
12          got about 17 months left at SCDC.

13          THE COURT: Mr. Hyatt, I'll make sure you're  
14          comfortable with that sentence start date, okay?  
15          Because I don't have an issue with running it  
16          concurrent and backdating. Okay.

17          MR. HYATT: Appreciate it.

18          THE COURT: Sure, yeah.

19          MR. TONEY: I'd like to be heard when it's time.

20          THE COURT: I'm just not quite there yet.

21          MR. TONEY: Yes, sir.

22          THE COURT: All right, Mr. Toney, I'm ready for  
23          you now, sir.

24          MR. TONEY: Well, Your Honor, several years ago  
25          in Greenville County he was a witness to an

1       altercation between a man and woman and the man had a  
2       knife. And Mr. Hyatt went over there and stopped  
3       this fight. And in the process he got stabbed. And  
4       he did not know these people. He had nothing to do  
5       with them. He was not anywhere with them. It was on  
6       a public place. And he ended up in the hospital.  
7       And he had severe wounds to his chest.

8               And in a course of time he became a drug addict.  
9       He got addicted to pain pills. And Oxy and these  
10      sorts of things. And as a result, his life has  
11      fallen to pieces. He began using drugs illegally  
12      after they stopped writing him prescriptions. And he  
13      lost his job, he tried to work for a little while and  
14      couldn't keep it. He was too messed up. And he did  
15      not have a drug problem before this. His record  
16      doesn't reflect that.

17             And, you know, I understand that he may seem  
18      difficult. But I've always try to take a big view of  
19      these things and the fact is, he's been very good to  
20      talk to. And every time we talk he says the same  
21      thing to me that he said in court today. He talks  
22      about his son. His son needs him. I get the  
23      impression that these are not just words used to try  
24      to manipulate a Judge. He's constantly talking about  
25      his family. He wants to support them. And he loves

1 his child. His son talks to him on the phone. And  
2 he wants to be with him. And he says he doesn't want  
3 him making the same mistakes he did and he wants to  
4 protect him from this.

5 When he tells me about this, he's told me so  
6 often with his heart, I believe him. And I believe  
7 that he's made some serious mistakes. There's no  
8 question. But in my opinion these are mitigating;  
9 factors. His drug addiction. I understand that's  
10 not a defense. But the manner in which he came by it  
11 is a manner in which many people get smeared into it.  
12 And he has tried to better himself since he's been in  
13 SCDC. He's been reading. He's been reading the  
14 Bible. He's been talking to other inmates,  
15 constantly.

16 He has given little Bible studies. He's very  
17 adamant about this. I understand, you know, in  
18 trial, you know, we want people to come in before and  
19 figure out what they want to do. And it's very --  
20 it's hard on everybody, it takes a lot of time out of  
21 the system for them to sort of do things this way.  
22 But the fact is, he was just fighting to get home.  
23 He wanted to take care of his responsibilities. He's  
24 a very well spoken man. He is very intelligent.  
25 He's very bright. He's done a lot of reading.

1           Quite frankly, I think someone in the jail got  
2           to him with some penile codes and some statutes that  
3           neither he nor the person that talked to him  
4           understood and that complicated things. I mean, I  
5           think jailhouse lawyering is very dangerous. It sets  
6           people up for tremendous mistakes. You know, other  
7           inmates act like their skill is a way of may be  
8           getting favor or some cash in the system. But the  
9           fact is he's here taking responsibility. He's got  
10          his mom who has been very good to talk to. I  
11          understand that, you know, there's a little bit of  
12          annoyance but we have met on many occasions. And we  
13          have met recently several times. She loves him.  
14          Very much.

15               MS. HYATT: Yes, I do.

16               MR. TONEY: And she would like to address the  
17          Court if she could.

18               THE COURT: Just state your name one more time  
19          so we'll have it on the record clearly.

20               MS. HYATT: Yes, my name is Queenie Hyatt.

21               THE COURT: Yes, ma'am.

22               MS. HYATT: I'm Jaquese Hyatt's mom.

23               THE COURT: Yes, ma'am.

24               MS. HYATT: I apologize to the Court. Jaquese,  
25          he goes by -- we call him Kavon he's not a bad, young

1 man. He just got caught up with falling with the  
2 wrong crowd. He's very compassionate and carrying.  
3 I'm not being biased because I'm his mom. He come  
4 from a good, stable, Christian home. And I just, you  
5 know, wish you would have mercy on him. Like he  
6 said, he's got a seven year old son, a sweet seven  
7 year old son. And I apologize for the people that  
8 he's harmed. He supposed harm, I apologize for that.  
9 But I just wish you have mercy on him. Because he --  
10 he just has some issues because his father wasn't  
11 there in his life. He would never admit to it but I  
12 know. You know, but other than that, he's a good --  
13 he's good son. If you just have mercy on him.

14 THE COURT: Thank you for being here, Ms. Hyatt,  
15 I appreciate you addressing the court. I'm sorry  
16 that you find yourself in this position because I  
17 know it's hard on you.

18 MS. HYATT: Thank you, sir.

19 THE COURT: Yes, ma'am.

20 Okay, Mr. Toney.

21 MR. TONEY: Just when he talks to me, he's very  
22 creative. He's got different ideas for different  
23 products he wants to make. He's got plans he'd like  
24 to implement to support his family. And I think he  
25 is trying to be productive even while he's sitting,

1 thinking about what he's done. He's got plans to be  
2 a productive citizen. And I'd ask that you give him  
3 a chance to do what you can within the -- obviously,  
4 within the bounds of the law.

5 THE COURT: Okay.

6 Mr. Hyatt, anything you'd like to add, sir?

7 MR. HYATT: No, sir. You seem like a very  
8 courageous person that's willing to help. I just  
9 leave it in your hands.

10 THE COURT: All right. Mr. Hyatt, what's the  
11 sentence start date? Do you see it? February 25th,  
12 2015 sound right?

13 MR. HYATT: Yes, sir.

14 SENTENCING

15 THE COURT: February 25, is that right? 25,  
16 February 2015. All right. All right, Mr. Hyatt, I  
17 know you're not going to -- I don't expect you to  
18 like the sentence that I hand down but I will tell  
19 you that you made the right decision to enter a plea  
20 of guilty. The outcome may have been significantly  
21 different had you gone to court -- or, excuse me, to  
22 the end of the jury trial and there had been a  
23 conviction from the jury. I suspect that you would  
24 have been convicted because the evidence to me looked  
25 to be overwhelming. As we went along in the trial,

1 the more overwhelming that evidence became, the more  
2 troublesome that would have been for you with regard  
3 to sentencing. So, I think that you cut your losses  
4 not at the right time but you cut your losses such  
5 that you could -- such that you could enjoy the  
6 leniency and mercy of the Court. I recognize that  
7 you characterize this as a petit larceny. And a  
8 little more. But the facts just don't bear that out.  
9 I recognize that you want it to be that but it  
10 clearly was not. And when you hold someone at gun  
11 point and take their objects, that is one of the most  
12 egregious acts that you can commit. They're only a  
13 few other acts that are more significant than that.  
14 And it's not something that we, as a civil society,  
15 can take lightly. Again, Mr. Hyatt, I don't sentence  
16 you out of a sense of anger or to -- or to levy any  
17 personal vindication against you. But I do have to  
18 address your conduct in context with the law as the  
19 legislature determines it to be.

20 So, on the two armed robberies, Mr. Hyatt,  
21 sentence of the Court is you be committed to the  
22 Department of Corrections for 14 years, concurrent,  
23 credit time served since February 25th, 2015. On the  
24 possession of a weapon during the commission of a  
25 violent crime, each five years, concurrent, credit

1 for time served since February 25th, 2015.

2 Mr. Hyatt, I wish you luck, sir.

3 MR. TONEY: Thank you.

4 MR. HYATT: Can I ask --

5 THE COURT: You may, I don't know that it will  
6 be relevant but you may.

7 MS. HYATT: I know it might not be relevant at  
8 all but over 10 years they would send me to a level  
9 three and people are stabbing in there and they have  
10 sides down there. And under that I know that I can  
11 go back to where I was and I don't want to get in any  
12 type of inconveniences or any type of trouble. I  
13 don't want to hurt myself because that's what will  
14 end up happening.

15 THE COURT: I'm not -- I recognize that that's a  
16 concern for you, okay.

17 MR. HYATT: It's very scary.

18 THE COURT: If that had been a significant  
19 concern for you when you had a recommendation of  
20 eight years, you should have considered it. I'm  
21 sorry, that you were operating under the erroneous  
22 advice of people in the jail who are telling you  
23 things that apparently just weren't accurate, weren't  
24 true and were arming you with the arguments that you  
25 were trying to make when you came into the courtroom

1 with respect to the indictments. That's unfortunate.  
2 That is very unfortunate. But the fact of the matter  
3 is that we find ourselves here, we have find  
4 ourselves in this spot now. And I entered the  
5 sentence. Again, I don't want you to do a day in  
6 jail. Okay. I don't want you to.

7 MR. HYATT: You sure?

8 THE COURT: But the fact of the matter is that's  
9 the sentence and it's appropriate under the law and  
10 facts of this case, all right. Good luck to you.

11 All right ladies and gentlemen, I'm going to go  
12 dismiss the jury from the jury room.

13 MR. TIMMONS: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were concluded.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, APRIL P. HERRON, Official Court Reporter for  
the Thirteenth Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the trial of  
the captioned case, relative to appeal, in the Court of  
General Sessions for Greenville County, South Carolina, on  
the 15th day of October, 2015.

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

October 5, 2016

  
APRIL P. HERRON, Court Reporter

## FORM 5

STATE OF SOUTH CAROLINA

County of

GREENVILLE

IN THE COURT OF COMMON PLEAS

JACQUESE Hyatt

2021-CP-23-01199

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION REVIEW

FILED-CLERK OF COURT  
PAUL B. WICKENS  
GREENVILLE, SC  
2021 MAR 11 AM 10:51INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CJ 990 WISACKY  
Hwy Bishopville, SC 29010
2. Name and location of Court which imposed sentence GREENVILLE  
COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-GS-23-11556 ARMED ROBBERY
  - (b) 2014-GS-23-11579 POW

1 of 27

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) STEVE CASE 2016-CP-23-4850
- (b) U
- (c) U
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty U
- (b) after a plea of not guilty U
- (c) after a plea of nolo contendere U
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- U
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. U
- ii. U
- iii. U
- (b) the result in each such Court to which you appealed:
- i. U
- ii. U
- iii. U
- (c) the date of each such result:
- i. U
- ii. U
- iii. U
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. U
- ii. U
- iii. U
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) U
- (b) U

(c) SEE CASE 2016-CP-23-4850

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

(a) 5th, 6th, 14th, 13th, 15th Amendment violations,  
 (b) DUE PROCESS violations; SUBJECT MATTER JURISDICTION;  
 (c) FRAUD UPON THE COURT; PROSECUTORIAL MISCONDUCT

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

INEFFECTIVE ASSISTANCE OF COUNSEL  
 (a) THIS IS AN INDEPENDENT ACTION FOR  
 (b) FRAUD UPON THE COURT INDEPENDENT OF  
 (c) CASE 2016 CP-23-4850 I AM PRESENTLY

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

(a) any petition in a State Court under South Carolina Law? PRO SE IN THIS NEW CASE  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? SEE CASE 2016-CP-23-4850  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? U  
 (d) any other petitions, motions or applications in this or any other Court? U

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

(a) the specific nature thereof: Amendment with issues

i. IS FORTH COMING ONCE A NEW  
 ii. CASE NUMBER IS ASSIGNED TO  
 iii. THIS PLEADING  
 iv. U

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

i. U  
 ii. U  
 iii. U  
 iv. U

(c) the disposition thereof:

i. STATE CASE 2016-CP-23-4850

ii. U

iii. U

iv. U

(d) the date of each such disposition:

i. U

ii. U

iii. U

iv. U

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

i. U

ii. U

iii. U

iv. U

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?

U

U

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

(a) which grounds have been presented:

i. U

ii. U

iii. U

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

i. U

ii. U

iii. U

40827

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

(a) SEE CASE 2016-CP-23-4850  
 (b) u  
 (c) u

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

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

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. u  
u  
 ii. u  
u  
 iii. u  
u

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

i. u  
u  
 ii. u  
u  
 iii. u  
u

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I give the court and parties  
 judicial notice. This is a subsequent,  
 successive PCR independent of  
 CASE 2016-CP-23-4850 for which  
 I intend to argue past the  
 procedural hurdles. This is an  
 independent action for fraud  
 upon the court so I only claim I  
 am represented in this inde-  
 pendent action by Attorney  
 YARBOROUGH is without merit. I  
 am presently acting PRO SE by  
 my constitutional right of self  
 representation and autonomy.

I give the court and parties further judicial notice. I intend to immediately amend this subsequent PCR application to fully place forth the issues that are to be presented to this court once a case number is assigned and forwarded to me to address the claims listed in the grounds under (10) of this document.

Inasmuch, it is beyond dispute that the "sentencing sheets" are this state's equivalent to a commitment

ORDER. I give the COURT and  
 all parties judicial notice. This  
 subsequent PCR is not merely filed  
 to attack the indictments) and  
 other structural and DUE PROCESS  
 ERRORS that exist in this case.  
 This is a collateral attack upon  
 the sentencing sheets which ARE  
 legally designated as commitment  
 orders, as well as a collateral  
 attack upon the order issued  
 by the COURT under CASE 2016-CP-  
 23-4850 dated signed JANUARY 15,  
 2021 by Judge R. Lawton McIntosh,  
 to include any other order that

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may be issued in case 2016-CA-23-4850 for fraud upon the court and challenge to that court's jurisdiction to issue such orders, as well as to and for the criminal court's jurisdiction to sign the commitment order. This would also automatically establish challenge to the jurisdiction of any subsequent court that would hear appeal related to these matters, whether the appeal was direct or collateral in review, due to any final orders being issued from the criminal court or the PCR

court being jurisdictional Requisites  
to any subsequent Review. It  
would be an Abuse of discretion,  
obstruction of justice and an Act  
of Fraud upon the court for the  
PCR court and state to determine  
that the Applicant is procedurally  
barred when many of the issues  
involved in this case are indeed  
jurisdictional in nature where I  
am arguing against the precedent  
established by State v Gentry 2005  
and State v Langford 2012 pursuant  
to Rules of Appellate Procedure,  
Rule 217 involving legal issues

which cannot be waived or forfeited,  
 which can be raised at any stage,  
 at any time, even after a final  
 order or judgment has been  
 entered, Steel Co. v. Citizens for a  
Better Environment, 523 US 83, 118  
 Sct 1003 (US 1998); Jamm v Circumfer  
Inc Company, 2020 WL 60932 (SDNY  
 2020); Chase v. Endeavor Logistics LP,  
 2019 WL 5847879, \* 2 W.D. Tex.; United  
States v Valladares, 2019 WL 4888629  
 \* 1, W.D. Tex.; Arbaugh v Y & H Corp, 546  
 US 500, 126 Sct 1235 (US 2006); Shellenb  
E. Hecker plaintiff v The State of  
Washington, defendant, 2020 WL  
 134168 (Fed Ct 2020); Henderson Ex

Reel Henderson v Shingles, 131 S Ct  
 1197, 1198 + US; BURGESS v United  
States, 2019 WL 7293400 \*1 Md;  
Kosciusko v. PARHAM, 428 SC 481, 836  
SE2d. 362 (SC App 2019); First Citizens  
BANK AND TRUST COMPANY, Inc v Taylor,  
 431 SC 149, 847 SE2d 249 (SC App 2020).

The sentencing sheet(s) as  
commitment orders, establish the  
ORDER OR DECREE from the GENERAL  
SESSIONS COURT to commit the  
Applicant to the SC Dept. of Corrections  
pertaining to my conviction which  
is a JURISDICTIONAL REQUISITE to  
APPEAL on DIRECT REVIEW. The

ORDER issued by Judge McIntosh dated JANUARY 15, 2021 AND ANY OTHER SUBSEQUENT ORDER issued in CASE 2016-CP-23-4850 is jurisdictional requisite to ANY subsequent collateral appeal. All the AFOREMENTIONED ARE coming UNDER FIRE due to the UNCONSTITUTIONAL ACTION that shall be ASSERTED in the AMENDED PCR that is forthcoming also due to circumventing AND FAILURE to HEAR JURISDICTIONAL ISSUES, VIOLATING DUE PROCESS, which cannot be WAIVED OR FORFEITED by the Applicant WHERE the Hired AND

OR state appointed Attorney  
 conspired under color of state  
 law with the prosecutor violating  
 my constitutional right of autonomy  
 to prevent the issues from being  
 heard violating US Supreme Court  
 holdings under McCoy v Louisiana,  
 — 5/1/2018 WL 2186174 (US 2018).  
 Such unconstitutional action and  
 fraud upon the courts involved  
 where the courts were privy to  
 these injustices, renders the  
 commitment orders at the trial  
 level, the order issued by Judge  
 McIntosh dated JANUARY 15, 2021

And any other subsequent order issued at the prior PCR level void for unconstitutional action intended to be argued in the amendment to come. Any claim of statute of limitations bar or successive PCR would not prevent review under this presently submitted PCR due to such claims being procedural limitations for which a collateral attack for fraud upon the court is free of such procedural limitations which the aforementioned clearly are. Fraud vitiates everything that it enters and

A judgment procured by FRAUD  
 may be collaterally attached  
 for that FRAUD upon the court.  
 This applies to all acts, orders,  
 judgments or decrees of all  
 courts on record, which the  
 sentencing sheets, as commitment  
 orders or the order issued by  
 McIntosh dated JANUARY 15, 2021  
 also represent. SEE citings of  
 law that will be listed in the  
 Amended PCR. Also SEE MYLES V.  
DOMINOS PIZZA, LLC, 2017 WL 238436  
 (DC Miss. 2017); UNITED STATES V CONRAD,  
 675 Fed Appx 263, 265 CA4 (file 2017)

Loumiest v United States, 65 FSupp3d  
19 (2014); 000-Rm Inquest v. Net  
Element International, Inc., FSupp,  
2014 WL 12613282 (SD FLA 2014).

Inasmuch, this filing is filed  
under the independent action  
Rule for fraud upon the courts  
involved where the judges were  
privity to all that occurred. Due  
to attacking the "sentencing sheets",  
which are the legal designated  
"commitment orders" and only  
prior or final order under case  
2016-CP-23-4850 which also establish  
a jurisdictional challenge to any

subsequent appeal that can  
 potentially occur at the state  
 level. Therefore, the court of  
 common pleas, the SC Attorney  
 General or solicitors office,  
 cannot fairly or legally assert  
 that I am "time barred", or that  
 the PCR is barred for successive  
 filings where those orders in  
 question would be deemed Unconsti-  
 tutional and a violation of due Pro-  
 cess law designating that they be  
 deemed void which is this PCR's  
 aim. It is the applicant's claim  
 that it is an Act of Fraud upon

THE GENERAL SESSIONS COURT TO  
SIGN THE COMMITMENT ORDERS,  
 OR THE PCJ COURT TO SIGN THE  
 PRESENT ORDER DATED JANUARY 15,  
 2021 OR ANY FINAL ORDER IN CASE  
 2016 CP-23-4850 ABUSING THEIR  
 DISCRETION WHEN THESE JURISDICTIONAL  
 CHALLENGES EXISTED WHICH CANNOT BE  
 WAIVED OR FORFEITED WHERE THE  
 COURT AND PROSECUTOR KNEW GOOD AND  
 WELL, CONSPIRING UNDER COLOR OF STATE  
 LAW, THAT THESE DUE PROCESS AND  
 UNCONSTITUTIONAL STRUCTURAL ERRORS  
 ARGUED IN THIS DOCUMENT AND THE  
 INTERPRETED SUBSEQUENT AMENDED

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PCR EXISTED IN THIS CASE, SANDERS  
V. SAVANNAH HIGHWAY AUTOMOTIVE  
COMPANY, SE 2d -, 2020 WL 6154305  
 (SC App. 2020); NATIONSTAR MORTG, LLC  
V. MEISNER, SE 2d, 2016 WL 1700516  
 (SC App. 2016).

Therefore, the prior order  
 dated JANUARY 15, 2020 OR ANY  
 potential subsequent order issued  
 in case 2016-CP-23-4850, and the  
 signing of the commitment order(s)  
 in the GENERAL SESSIONS COURT ARE  
 UNCONSTITUTIONAL AND THE GENERAL  
 SESSIONS COURT, AS WELL AS THE COURT  
 of common Pleas jurisdiction is

void for signing them corruptly those proceedings in their entirety as well as the conviction attached to them being a nullity and is as if there were no commitment orders, or conviction attached thereto, or per proceeding or judicial determination made at all placing the state in forfeiture on any cause of conviction. It is well settled in law also under the independent action Rule that a collateral attack for fraud upon the court is free of all procedural limitations such as any

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claim of statute of limitations, successive filing or that another action is pending such as case 2016-CP-23-04850 due to the fraud upon the court and jurisdictional claims that is now argued and which will appear in the amended PCR applications forthcoming, where all the aforementioned are all forms of procedural limitations, IN RE: GENESYS DATA TECHNOLOGIES INC., 204 Fed 124 (4th Cir 2000); MONTGOMERY V LOUISIANA, 136 Sct 718, 123 LEd2d 599 (US 2016); UNITED STATES V.

Libous, 858 Fed 64 (2nd Cir 2017).  
 Also ~~SEE~~ ~~EXHIBITS~~ "commitment  
 order attack" and "case history".

Subject matter jurisdiction  
 is the power to declare law.  
 Therefore, it cannot be waived  
 or forfeited. Thus when it ceases  
 to exist. The only thing left  
 for the court to do is announce  
 it and dismiss the cause of  
 conviction which can be raised  
 any time even after the final  
 order is issued in the case left  
 for the court to do is announce  
 it and dismiss the cause of

conviction which can be raised  
 at any time even after the  
 final order is issued in the  
 case, especially in light of the  
 fact that we have fraud upon  
 the court attached to the  
 jurisdictional claims made,  
Sanders v Savannah Highway  
Automotive Company supra; Nationsstar  
Mortg, LLC v Meisler supra; Wells  
Fargo Bank N.A. v H.M.A. Roman Two  
N.C. LLC, 859 F.3d 295 (4th Cir 2017);  
Mosely v United States, 2018 WL  
1187778 (N.D. Cal. 2018); Sebelius v.  
Auburn Regional Medical Center,

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133 Sct 817, 184 LEd2d 627, 81 USW  
 4053 (US 2013); Sizward v Riddle,  
 FSupp2d, 2013 WL 707018 (DSC 2013);  
Grupo Dataflux v. Atlas Global LP,  
 541 US 567, 124 Sct 192, 158 LEd2d  
 866 (US 2004); 24 Senatorial Dist  
Republican Committee v Alcorn, 820  
 Fed 624 (4th Cir 2016). The amended  
 PCR with the legal issues in  
 question is forthcoming. By the  
 issues intended to be presented  
 equitable tolling attaches in this  
 case due to the state prosecutor's  
 involvement in the issues of  
 copyright.

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

~~SENTENCE AND CONVICTION VACATED~~  
~~ORDER ISSUED EXPLUNGING RECORD ALL DNA~~  
~~REMOVED FROM ANY DEROGATORY FILES~~

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

NO

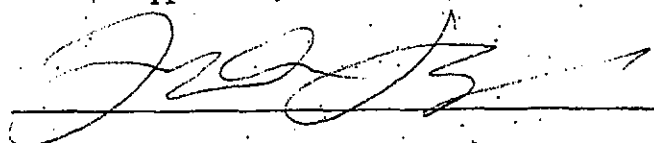
STATE OF SOUTH CAROLINA

County of

GREENVILLE

VERIFICATION

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



SWORN to and subscribed before me this 18  
 day of Feb, 2021.

Debra Eastridge (L.S.)  
 Notary Public

My Commission Expires: 3/3/2024

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

I, JACQUESE HYATT, 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.

[Signature]  
Applicant

SWORN or affirmed to and subscribed before me this  
18 day of Feb, 2021.

Debra Eastridge  
Notary Public

My Commission Expires: 3/3/2022

279827

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

Jaqueise Hyatt

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By:

Address:

Jaqueise Hyatt  
Lee CJ 990 Wilsack Hwy  
Bishopville, SC 29010

IN THE COURT OF COMMON PLEA

CIVIL ACTION COVERSHEET

2024P CP-23-11199

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached).

## NATURE OF ACTION (Check One Box Below)

- |                                                                |                                                     |                                                       |                                                        |
|----------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|
| <b>Contracts</b>                                               | <b>Torts - Professional Malpractice</b>             | <b>Torts - Personal Injury</b>                        | <b>Real Property</b>                                   |
| <input type="checkbox"/> Constructions (100)                   | <input type="checkbox"/> Dental Malpractice (200)   | <input type="checkbox"/> Conversion (310)             | <input type="checkbox"/> Claim & Delivery (400)        |
| <input type="checkbox"/> Debt Collection (110)                 | <input type="checkbox"/> Legal Malpractice (210)    | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Condemnation (410)            |
| <input type="checkbox"/> General (130)                         | <input type="checkbox"/> Medical Malpractice (220)  | <input type="checkbox"/> Premises Liability (330)     | <input type="checkbox"/> Foreclosure (420)             |
| <input type="checkbox"/> Breach of Contract (140)              | Previous Notice of Intent Case #                    | <input type="checkbox"/> Products Liability (340)     | <input type="checkbox"/> Mechanic's Lien (430)         |
| <input type="checkbox"/> Fraud/Bad Faith (150)                 | 20 -NI-                                             | <input type="checkbox"/> Personal Injury (350)        | <input type="checkbox"/> Partition (440)               |
| <input type="checkbox"/> Failure to Deliver/<br>Warranty (160) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Wrongful Death (360)         | <input type="checkbox"/> Possession (450)              |
| <input type="checkbox"/> Employment Discrim (170)              | <input type="checkbox"/> Other (299)                | <input type="checkbox"/> Assault/Battery (370)        | <input type="checkbox"/> Building Code Violation (460) |
| <input type="checkbox"/> Employment (180)                      |                                                     | <input type="checkbox"/> Slander/Libel (380)          | <input type="checkbox"/> Other (499)                   |
| <input type="checkbox"/> Other (199)                           |                                                     | <input type="checkbox"/> Other (399)                  |                                                        |

- |                                                            |                                                                                       |                                                                                                   |                                                         |
|------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| <b>Inmate Petitions</b>                                    | <b>Administrative Law/Relief</b>                                                      | <b>Judgments/Settlements</b>                                                                      | <b>Appeals</b>                                          |
| <input type="checkbox"/> PCR (500)                         | <input type="checkbox"/> Reinstate Drv. License (800)                                 | <input type="checkbox"/> Death Settlement (700)                                                   | <input type="checkbox"/> Arbitration (900)              |
| <input type="checkbox"/> Mandamus (520)                    | <input type="checkbox"/> Judicial Review (810)                                        | <input type="checkbox"/> Foreign Judgment (710)                                                   | <input type="checkbox"/> Magistrate-Civil (910)         |
| <input type="checkbox"/> Habeas Corpus (530)               | <input type="checkbox"/> Relief (820)                                                 | <input type="checkbox"/> Magistrate's Judgment (720)                                              | <input type="checkbox"/> Magistrate-Criminal (920)      |
| <input type="checkbox"/> Other (599)                       | <input type="checkbox"/> Permanent Injunction (830)                                   | <input type="checkbox"/> Minor Settlement (730)                                                   | <input type="checkbox"/> Municipal (930)                |
|                                                            | <input type="checkbox"/> Forfeiture-Petition (840)                                    | <input type="checkbox"/> Transcript Judgment (740)                                                | <input type="checkbox"/> Probate Court (940)            |
|                                                            | <input type="checkbox"/> Forfeiture-Consent Order (850)                               | <input type="checkbox"/> Lis Pendens (750)                                                        | <input type="checkbox"/> SCDOT (950)                    |
|                                                            | <input type="checkbox"/> Other (899)                                                  | <input type="checkbox"/> Transfer of Structured<br>Settlement Payment Rights<br>Application (760) | <input type="checkbox"/> Worker's Comp (960)            |
| <b>Special/Complex/Other</b>                               |                                                                                       | <input type="checkbox"/> Confession of Judgment (770)                                             | <input type="checkbox"/> Zoning Board (970)             |
| <input type="checkbox"/> Environmental (600)               | <input type="checkbox"/> Pharmaceuticals (630)                                        | <input type="checkbox"/> Petition for Workers<br>Compensation Settlement<br>Approval (780)        | <input type="checkbox"/> Public Service Comm. (990)     |
| <input type="checkbox"/> Automobile Arb. (610)             | <input type="checkbox"/> Unfair Trade Practices (640)                                 | <input type="checkbox"/> Other (799)                                                              | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Medical (620)                     | <input type="checkbox"/> Out-of State Depositions (650)                               |                                                                                                   | <input type="checkbox"/> Other (999)                    |
| <input type="checkbox"/> Other (699)                       | <input type="checkbox"/> Motion to Quash Subpoena in<br>an Out-of-County Action (660) |                                                                                                   |                                                         |
| <input type="checkbox"/> Sexual Predator (510)             | <input type="checkbox"/> Pre-Suit Discovery (670)                                     |                                                                                                   |                                                         |
| <input type="checkbox"/> Permanent Restraining Order (680) |                                                                                       |                                                                                                   |                                                         |

Submitting Party Signature:

Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Fr. Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (03/2016)

Case # 112977 # 565115  
C. E. 990 W. Sack, H. W. K.  
Greenville, S.C. 29010

2021-07-23-01199

Clock of Car +  
305 E. North Street # 202  
Greenville, S.C. 29601

|                                |   |                                        |
|--------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS           |
| COUNTY OF GREENVILLE           | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT    |
|                                | ) |                                        |
| Jaquese K. Hyatt, SCDC #363113 | ) | Case No. 2021-CP-23-1199               |
|                                | ) |                                        |
| Applicant,                     | ) | ENTERED COMPUTER                       |
|                                | ) |                                        |
| v.                             | ) | <b>RETURN AND MOTION TO DISMISS</b>    |
|                                | ) | (Appointment of Counsel NOT Requested) |
|                                | ) |                                        |
| State of South Carolina,       | ) |                                        |
|                                | ) |                                        |
| Respondent.                    | ) |                                        |
|                                | ) |                                        |
|                                | ) |                                        |

In response to the post-conviction relief (PCR) action commenced by Jaquese K. Hyatt (Applicant) on March 11, 2021, the State makes this return:<sup>1</sup>

### **I. FACTS & PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. On September 17, 2014, Applicant committed two armed robberies after contacting Luis Perez and Lee Rhodes on Craigslist about videogame consoles they each listed for sale. (Trial Tr. 31). Mr. Perez and Applicant made arrangements to meet in Welcome Park in Greenville County that morning to

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<sup>1</sup> The State's return was originally due on May 16, 2021. *See* Rule 12(a), SCRCP (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.” However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, the State respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

exchange the game system. (Trial Tr. 32). Applicant showed up, pulled a gun on Mr. Perez, robbed him, and fled. (Trial Tr. 32). Ninety minutes later, Applicant met Mr. Rhodes at a car wash purportedly to sell him an Xbox. (Trial Tr. 32). Applicant proceeded to pull a gun on Mr. Rhodes and rob him. (Trial Tr. 32). Applicant took the Xbox, Mr. Rhodes' wallet and phone, and fled. (Trial Tr. 32). The second robbery was captured on the car wash's video surveillance system. (Trial Tr. 32).

During its April 2015 term, the Greenville County Grand Jury indicted Applicant for two counts of armed robbery (2014-GS-23-11556, -11579) and two counts of possession of a weapon during the commission of a violent crime (2014-GS-23-11556, -11579).

#### **A. Guilty Plea**

On October 15, 2015, Applicant proceeded to a jury trial before the Honorable Robin B. Stilwell. Ivan J. Toney, Esquire (Counsel), represented Applicant. Assistant Solicitors William Timmons and Sloan Ellis prosecuted the case. Upon hearing testimony from several State's witnesses, however, Applicant elected to plead guilty as indicted to all charges without formal negotiations or recommendations from the State as to sentencing. Twenty-three additional warrants were dismissed in exchange for Applicant's plea. Judge Stilwell sentenced Applicant to concurrent terms of fourteen years for each armed robbery charge and five years for each weapons charge. Applicant did not appeal his guilty pleas or sentences.

#### **B. Initial Post-Conviction Relief Action and Pending Appeal: 2016-CP-23-4850**

On August 16, 2016, Applicant filed an application for post-conviction relief, raising the following grounds for relief (verbatim):<sup>2</sup>

1. Ineffective assistance of counsel
  - a. Failure to properly and adequately investigate, develop

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<sup>2</sup> Applicant's initial PCR counsel, Daniel J. Farnsworth, Esquire, filed the original application.

- and prepare case for trial;
- b. Failure to properly and adequately discern, develop and discuss the facts, witnesses, law and defenses with the client;
- c. By taking case when it was set for trial only several days later;
- d. Failure to properly, correctly and prudently advise the client of potential outcomes of the case;
- e. Failure to adequately, properly and correctly advise client of state's witnesses and evidence;
- f. Failure to file or argue critical pretrial or post-trial motions;
- g. Failure to investigate, contact or develop alibi witnesses.
- h. Due to the []various and numerous acts and/or omissions on the part of defense counsel in his representation of client. The client's guilty plea was coerced and as such was not knowingly, intelligently, and voluntarily entered due to defense attorney's deficient performance.
- i. Defense counsel's deficient performance prejudiced client to the extent there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different.

The State requested an evidentiary hearing through its return on November 4, 2016. On January 8, 2019, pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel,<sup>3</sup> amended his application to include the following allegations:

- I. Trial counsel was ineffective pursuant to *Strickland v. Washington* for failing to contemporaneously and properly object to the trial judge's improper comments on the Applicant's decision to plead guilty and the weight of the evidence as it related to Applicant's decision whether to plead guilty.
- II. Trial Counsel was ineffective for failing to adequately investigate the suppression issue and inconsistent witness statements.
- III. Alternatively, Trial Counsel was ineffective for failing to advise Applicant on his rights, the most probable outcome of

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<sup>3</sup> Applicant's second PCR counsel, William G. Yarborough, III, Esquire, filed the amended application.

a jury trial as opposed to pleading guilty, and on the probable outcome of various pre-trial motions. Applicant learned of from[sic] other inmates, “jailhouse lawyers” should he proceed to trial. The advice from these inmates, rather than advisement from his attorney, swayed Applicant to proceed to trial believing that the motions would be successful and would result in dismissal of the charges. The net result was the expiration of the plea offer with an eight (8) sentence recommendation. Had Trial Counsel adequately advised Applicant, Applicant would not have proceeded to trial and instead would have pleaded guilty pursuant to plea offer with an eight (8) year sentencing recommendation.

- IV. Under the facts and reasons alleged in Ground III, Trial Counsel was ineffective for failing to advise Applicant before trial that the eight (8) year plea offer would be revoked should he go proceed to trial, and that he would consequently face a minimum sentence often (10) years imprisonment for each armed robbery charge.
- V. Trial Counsel was ineffective for failing to review significant discovery with Applicant and advise him accordingly in the context of potential success at trial or in deciding whether to accept any plea offer.
- VI. Trial Counsel was ineffective for failing to communicate to Applicant an additional, previously extended plea offer and advise him accordingly.
- VII. Trial Counsel was ineffective for failing to adequately explain any parole implications of any sentence he may receive, leading Applicant to believe he would serve only 30-40% of any sentence he may receive.
- VIII. The Fourth Amendment Constitution prohibits unreasonable search and seizure. Trial Counsel was ineffective for not adequately filing suppression motions and arguing the Fourth Amendment for the benefit of the applicant.

On December 4, 2020, the PCR court convened an evidentiary hearing before the Honorable R. Lawton McIntosh via Cisco WebEx Meetings in accordance with the Chief Justice’s administrative memorandum, *Court Operations*, dated September 14, 2020. Applicant was present and represented by William G. Yarborough, III, Esquire. The undersigned represented the State.

Applicant and Counsel Toney both testified at the hearing. By order signed March 10, 2021, and filed March 16, 2021, Judge McIntosh denied the application on all grounds and dismissed the action with prejudice.

Applicant filed a timely notice of appeal. This matter is currently pending in the South Carolina Supreme Court under Appellate Case No. 2021-000296.

## **II. CURRENT APPLICATION**

In his **second and current** application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):<sup>4</sup>

1. "5<sup>th</sup>, 6<sup>th</sup> 14<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> Amendment violations"
2. "Due Process violations"
3. "Subject matter jurisdiction"
4. "Fraud upon the court"
  - a. "This is an independent action for fraud upon the court independent of case 2016-CP-23-4850. I am presently pro se in this new case."
  - b. "This is a collateral attack upon the sentencing sheets which are legally designated as commitment orders, as well as a collateral attack upon the order issued by the court under case 2016-CP-23-4850 dated signed January 15, 2021 by the Judge R. Lawton McIntosh to include any other order that may be issued in case 2016-CP-23-4850 for fraud upon the court and challenge to that court's jurisdiction to issue such orders, as well as for the criminal courts[sic] jurisdiction to sign the commitment order."
  - c. "It would be an abuse of discretion, obstruction of justice, and an act of fraud upon the court for the PCR court and state to determine that the applicant is procedurally barred when many of the issues involved in this case are indeed jurisdictional in nature where I am arguing against the precedent established by State v. Gentry 2005 and State v. Langford 2012 pursuant to Rules of Appellate Procedure, Rule 217 involving

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<sup>4</sup> Unless quoted, Applicant's allegations have been summarized for brevity and clarity.

legal issues which cannot be waived or forfeited, which can be raised at any stage, at any time, even after a final order or judgment has been entered.”

5. “Prosecutorial[sic] misconduct”
6. “Ineffective assistance of counsel”

Applicant requests relief as follows:

“Vacate/set aside sentence, new trial”

Attached to this return and incorporated by reference are the Greenville County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; Applicant’s prior post-conviction relief records challenging these convictions and the pending appeal therefrom; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

### **III. MOTION TO DISMISS**

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Because this application is procedurally barred, the State requests this Court issue a conditional order of dismissal indicating the Court’s intent to dismiss the application and its reasons for so doing.<sup>5</sup> *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780

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<sup>5</sup> A proposed conditional order of dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court’s consideration.

(2004) (“A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings”), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court*, (S.C. Sup. Ct. Order filed Oct. 6, 2008); Rule 71.1(d), SCRPC (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). In making its return in support of the motion for summary judgment, the State would respectfully show this court:

#### **A. Statute of Limitations**

This action should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act<sup>6</sup> (Act). Specifically, the Act requires as follows:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

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<sup>6</sup> S.C. Code Ann. § 17-27-10 to -160

S.C. Code Ann. § 17-27-45(A)–(C).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See *Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”); *Sutton*, 361 S.C. at 648, 606 S.E.2d at 781 (declining “to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application”).

Applicant pleaded guilty on October 15, 2015. This application was filed on March 11, 2021—almost *five years* after the requisite filing period expired. Accordingly, this action should be summarily dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. See *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant’s misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

### B. Successive and *Res Judicata*

This action should further be summarily dismissed because it is successive to Applicant's previous PCR application and barred by the doctrine of *res judicata*. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992).

Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Section 17-27-90 is clear—successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications or actions challenging these convictions. *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (“[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.”).

Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the applicant *could have* raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant's current allegations of ineffective assistance of plea counsel were raised and ruled upon in his previous post-conviction relief application. Because the remaining allegations *could have* been raised in Applicant's previous state proceedings, this action is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Cas. Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also Foxworth*, 275 S.C. 615, 274 S.E.2d 415.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch*, 246 S.C. 258, 143 S.E.2d 455. Applicant had a full opportunity to litigate all of his claims in his previous PCR action. He has failed to show that a successive application is appropriate or why he could not have raised these claims in his prior collateral actions; thus, these allegations are successive and barred under section 17-27-90. *See Aice*, 305 S.C. at 452, 409 S.E.2d at 395 (explaining that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were" (citing *Gamble v. State*, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989))). Further, the finality of the previous court's rulings should be respected, and this Court should summarily dismiss these allegations as barred by the principles of *res judicata*.

### **C. Subject Matter Jurisdiction and Fraud upon the Court**

Applicant appears to allege the circuit court did not have jurisdiction to sentence him due to fraud upon the court. Specifically Applicant contends

The hired and or state appointed attorney conspired under color of state law with the prosecutor violating my constitutional right of

autonomy to prevent the issues from being heard violating US Supreme Court holdings[sic] under McCoy v. Louisiana, 2018 WL 2186174 (U.S. 2018). Such unconstitutional action and fraud upon the courts involved where the courts were privy to these injustices renders the commitment orders at the trial level, the order issued by Judge McIntosh dated January 15, 2021 and any other subsequent order issued at the prior PCR level void for unconstitutional action intended to be argued in the amendment to come.<sup>7</sup> Any claim of statute of limitations bar or successive PCR would not prevent review under this presently submitted PCR claims being procedural limitations for which a collateral attack for fraud upon the court is free of such procedural limitations which the aforementioned clearly are. Fraud vitiates everything that it enters and a judgment procured by fraud may be collaterally attacked for that fraud upon the court.

As an initial matter, the Supreme Court in *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), addressed structural errors warranting reversal on *direct appeal*, and has not been held to apply retroactively in post-conviction or habeas petitions. *See Tyler v Cain*, 533 U.S. 656, 666 (2001) (rejecting the contention that the recognition of a structural error requires a finding of retroactivity). Nor has *McCoy* been held to apply to noncapital cases. *See McCoy*, 584 U.S. at \_\_\_, 138 S. Ct. at 1514 (“[I]t is hard to see how the right could come into play in any case other than a capital case in which the jury must decide both guilt and punishment.”) (J. Alito, dissenting).

As to Applicant’s claim the circuit court lacked jurisdiction to sentence him, “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); *see also* S.C. Const. art. V, § 7. To the extent Applicant challenges Judge McIntosh’s order dismissing his first PCR action, an appeal of that order is currently pending.

Additionally, Applicant has wholly fails to present evidence or supporting facts regarding the alleged fraud he refers to. *See Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d

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<sup>7</sup> As of July 8, 2021, Applicant has not filed an amended application.

605, 608 (2003) (explaining that fraud upon the court “is a narrow and invidious species of fraud that ‘subvert[s] the integrity of the [c]ourt itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.’” (quoting *Perry v. Heirs at L. of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504 (Ct. App. 2003)). Thus, Applicant’s allegations of fraud and lack of subject matter jurisdiction are baseless and offer him no grounds for relief.

#### **D. Frustration of Finality of Convictions**

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in *Aice* explained that:

Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant’s imprisonment without review would amount to a gross miscarriage of justice. . . [Here], Aice seeks to have more than one procedural “bite” at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that “the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect.” *Teague v. Lane*, 489 U.S. 288, 309 (1989). “Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of ‘becoming a constructive citizen.’ ” *United States v. Fugit*, 703

F.3d 248, 252 (4th Cir. 2012) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in *Mackey v. United States*, Justice Harlan wrote:

Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in judgments in part and dissenting in part). Seven years after *Mackey*, the South Carolina Supreme Court quoted Justice Harlan's Opinion with approval in *Anderson v. Leeke*, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978).

Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

#### IV. ALL OTHER CLAIMS

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

[Conclusion and signature on following page]

## V. CONCLUSION

WHEREFORE, having made its return, the State moves to summarily dismiss the application because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrine of *res judicata*; and for failure to make a *prima facie* showing the trial court lacked subject matter jurisdiction.

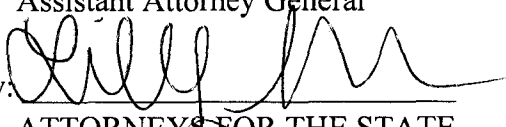
Respectfully submitted,

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By: 

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July 8, 2021



|                          |   |                       |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA  | ) | COURT OF COMMON PLEAS |
|                          | ) | 2021-CP-23-01199      |
| COUNTY OF GREENVILLE     | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
|                          | ) |                       |
| JAQUESE HYATT,           | ) |                       |
| Applicant,               | ) |                       |
|                          | ) |                       |
| vs.                      | ) | TRANSCRIPT OF RECORD  |
|                          | ) |                       |
| STATE OF SOUTH CAROLINA, | ) |                       |
| Respondent.              | ) |                       |
| _____                    | ) |                       |

October 8, 2024  
Greenville, South Carolina

B E F O R E:

THE HONORABLE PATRICK CLEBURNE FANT, III, JUDGE

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

SUSANNAH CONYERS ROSS, ESQ.  
Attorney for the Applicant

TOMMY EVANS, JR., ESQ.  
Attorney for the Respondent

CHERYL A. SMITH  
Circuit Court Reporter

INDEX

(AW) - Denotes Applicant's Witness  
(RW) - Denotes Respondent's Witness

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EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|-----------|--------------------|-----------|------------|
|-----------|--------------------|-----------|------------|

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 12:04 PM.)

MR. EVANS: Thank you, Your Honor. I'm Tommy Evans, assistant attorney general with the Attorney General's Office representing the State of South Carolina. This is the case of Jaquese Hyatt vs. The State of South Carolina, Case Number 2021-CP-23-1199.

Right now, Your Honor, we would like to proceed with a motion to dismiss the postconviction relief filing that was made by Mr. Hyatt on I think it was 2021 he made this filing. The reason why the motion to dismiss, our argument is threefold. First of all, Your Honor, of course, as the Court will know that under the Postconviction Relief Act, the person has one year after the end of his case or after the remittitur was sent by the appellate court to the clerk of court of the county that the action began.

Mr. Hyatt was -- pled guilty to two counts of armed robbery and other assorted offenses where he received a 14-year sentence on October 15, 2015. At that time, this case ended so he had one year after that to file an application for postconviction relief, Your Honor. He didn't file this until six years later, well beyond the statute of limitations.

THE COURT: He was in the middle of trial, right,

1 and then it went to a plea?

2 MR. EVANS: Yes, sir.

3 THE COURT: Is that right? Okay. I just wanted to  
4 make sure I was ---

5 MR. EVANS: That's right. Yes, sir. He decided to  
6 plead guilty.

7 And so six years later he filed this application for  
8 postconviction relief, Your Honor, well beyond the  
9 statute of limitations. Therefore, under that law, we  
10 would ask the case -- the Court to dismiss this  
11 postconviction relief.

12 My second argument is this is a successive  
13 postconviction relief filing, Your Honor. Of course,  
14 under the Postconviction Relief Act, also, you don't have  
15 an obligation or ability to file multiple postconviction  
16 relief applications, Your Honor. The statute actually  
17 says that any arguments you have regarding postconviction  
18 relief actions you want to take must be placed in the  
19 original filing or any amended filings afterwards, Your  
20 Honor.

21 He filed a postconviction relief action in 2016. He  
22 had a hearing in 2020 ---

23 THE COURT: Judge McIntosh?

24 MR. EVANS: Judge McIntosh actually dismissed his  
25 actual postconviction relief at that time. He filed an

1 appeal for that postconviction relief, but that appeal,  
2 he waived that appeal and it ended up being dismissed on  
3 February 10, 2021. He actually filed a motion to  
4 withdraw. We have a copy of that motion if the Court  
5 would like to see that, Your Honor.

6 THE COURT: Okay. What was the date on that, sir?

7 MR. EVANS: February 10, 2021.

8 THE COURT: February 10, 2001.

9 MR. EVANS: 2021. 2021 he filed. It got actually  
10 dismissed.

11 THE COURT: '21.

12 MR. EVANS: Yes, sir.

13 THE COURT: And that's when it was withdrawn from  
14 the appellate court?

15 MR. EVANS: Yes, sir, Your Honor.

16 THE COURT: Okay. Counsel, continue. Thank you.  
17 It helps me to ask questions as we go along.

18 MR. EVANS: Of course, Your Honor. You can ask any  
19 question you like. You're the decision-maker.

20 Of course, South Carolina Supreme Court case Aice v.  
21 State, the Supreme Court basically stated that a person  
22 does not have the ability to file multiple postconviction  
23 relief actions. In Aice, the Supreme Court, basically,  
24 the reason why they made that decision, because they  
25 think that there's supposed to be some finality in the

1 cases, that if there's no limitation on the amount of  
2 postconviction relief action a person can file, there  
3 would be multiple postconviction relief actions being  
4 placed on the burden of the Court, Your Honor. That's  
5 why you only have the ability to file one and no other.  
6 He found that. He had his obligation, his ability to  
7 present his case to a Circuit Court judge, and that case  
8 was actually dismissed, Your Honor.

9 Our third argument would be, under the  
10 Postconviction Relief Act, the Court has the ability to  
11 dismiss the case if a person raised an issue where relief  
12 cannot be granted. The actual argument that he is  
13 raising before this court is a fraud upon the courts,  
14 Your Honor. I really don't know, understand what he  
15 means by that. He had -- he was indicted by the  
16 Greenville County grand jury. He had the -- he was  
17 represented by competent counsel. He had the ability to  
18 have his case called before a jury and tried, and he  
19 decided to plead guilty at that time, Your Honor.

20 There was nothing unlawful that was done pertaining  
21 to this case. All his constitutional rights were given  
22 to him. During his plea, he actually waived the rights  
23 which must be done to actually plea. He understood his  
24 penalty that he was facing. He understood that he had  
25 the right to a jury trial and the right to be heard in

1       that case, Your Honor. And like I said before, he was  
2       represented by competent counsel.

3               So we would ask this court also to dismiss this  
4       case, because the reason why, he's bringing up something  
5       that relief cannot be granted in this case, Your Honor.  
6       He has received all the parameters and all the abilities  
7       given to a defendant in the case, Your Honor, and  
8       therefore, we don't see any other thing that should be or  
9       allowed to be brought up before this court with a  
10      postconviction relief, and therefore, we would ask this  
11      court to dismiss this case, Your Honor.

12             Thank you.

13             THE COURT: Mrs. Ross?

14             MS. ROSS: Thank you, Your Honor. May it please the  
15      Court.

16             There was a conditional order of dismissal that was  
17      submitted to Judge Perry Gravely, I believe, around  
18      July 21st or July 20, 2021. And on it he just wrote  
19      "hearing required." Mr. Hyatt is asking for his day in  
20      court.

21             I've reviewed his materials, and I think he can  
22      present them more effectively than I can. But I would  
23      just show you that it did say "hearing required," so we  
24      just ask he be allowed to testify today. You know, I  
25      don't know if this would qualify as the hearing without

1 him being given the opportunity to speak.

2 DEFENDANT HYATT: Yeah. I do have a rebuttal.

3 MS. ROSS: So the AG would have submitted that to  
4 Judge Gravely. And he declined to sign it, and then I  
5 was appointed counsel.

6 THE COURT: And basically, a judge just said that a  
7 hearing needs to take place.

8 MR. EVANS: And that's what we're doing, Your Honor.

9 THE COURT: I just want to -- so will y'all be  
10 presenting any evidence? I mean, that's your argument?  
11 Are y'all going to call any witnesses? Are you  
12 calling ---

13 MR. EVANS: We don't have -- we don't intend to call  
14 any witness unless you want a full-fledged hearing on his  
15 PCR. His attorney is present.

16 THE COURT: No. I just wanted to be sure.

17 Do you wish to make arguments before you get into  
18 your presentation?

19 MS. ROSS: Judge, I was just going to call him to  
20 the stand to make his arguments, if I could.

21 THE COURT: Okay. That's perfectly fine.

22 Thank you, sir.

23 MS. ROSS: All right. We call Mr. Jaquese Hyatt.

24 THE COURT: And I'm assuming no objection from the  
25 State.

1 MR. EVANS: No objection, Your Honor.

2 THE COURT: And that this will satisfy Judge  
3 Gravely's July 20 -- 21st request for a hearing, correct?

4 MS. ROSS: I believe so, Your Honor.

5 THE CLERK: Mr. Hyatt, please place your left hand  
6 on the Bible and raise your right hand.

7 WHEREUPON,

8 JAQUESE HYATT

9 After having been duly sworn, testified as follows:

10 THE CLERK: Thank you. You may be seated. Please  
11 state your full name for the record.

12 THE WITNESS: Jaquese Kavon Hyatt.

13 DIRECT EXAMINATION

14 BY MS. ROSS:

15 Q So, Mr. Hyatt, you understand they've moved to  
16 dismiss this PCR as being successive and filed outside of  
17 the statute of limitations.

18 A Correct.

19 Q Can you give your basis on why you believe we should  
20 be able to proceed with the hearing?

21 A Well, from day one I believe that I do want to  
22 continue with my PCR hearing.

23 Can you hear me?

24 THE COURT: Yeah. I want to make sure the  
25 microphone is just a little bit closer. You're okay.

1 Thank you, sir.

2 THE WITNESS: No problem.

3 Yeah. I just want to make sure that I do continue  
4 with my PCR hearing.

5 The reason that I took a guilty plea was because we  
6 had witnesses that gave inconsistent statements. The  
7 statements that they gave on my Rule 5 were inconsistent  
8 with what they were saying in court. So that's what  
9 scared me and made me -- backed me into a corner which  
10 made me predominantly have that plea or take a plea.

11 The initial plea was going to be ten years. And  
12 since I seen the witnesses and the victims were giving  
13 false statements, it kind of backed me in a corner. And  
14 so when I took the plea, they went up to 15 years.

15 Basically, with this past PCR hearing, I was unable  
16 to give out any issues or my constitutional rights that  
17 were violated. The judge wouldn't let me call out any  
18 issues, and he barred me from saying anything.

19 Basically, what we're dealing with is egregious acts  
20 of fraud upon the Court, criminal conspiracy and  
21 obstruction of justice involving the South Carolina  
22 Attorney General's Office as usual, also involving the  
23 judge over this case where they have compromised my hired  
24 attorney, violating my due process rights of autonomy,  
25 creating the structural error that voids the Common Pleas

1 Court's jurisdiction for the unconstitutional action  
2 where the appellant, meaning me, and his family, my  
3 family, clearly informed this compromise by the South  
4 Carolina attorney general, the attorney, that the  
5 appellant did not want the appeal filed until he placed a  
6 59(e) motion before the Court of Common Pleas in this  
7 case.

8 What occurred was that the appellant, me, discovered  
9 his hired attorney was compromised, once again, by the  
10 State which was further indicated by the hired attorney  
11 allowing the attorney general to hold his PCR case  
12 pending for over five years and basically violating my  
13 rights.

14 And I didn't get a fair trial whatsoever from my  
15 initial trial and PCR trial. And that's why I filed for  
16 a continuance and second PCR in 2021. And it just seems  
17 like, you know, I keep getting railroaded and they're  
18 doing whatever it takes to try to sweep things under the  
19 rug. But, you know, I have no further statements  
20 afterward. And, you know, I've heard a lot about you and  
21 I hope that you can understand what I'm going through  
22 here.

23 And just to mention, I have two years left and my  
24 son is grown since I've been here. I've gotten old being  
25 in jail. And I was initially given six years, and the

1 attorney or the solicitor that gave me the 15 years, he  
2 was running for the State and he was running for office  
3 in Washington DC. He goes by the name of William  
4 Timmons. And this was all personal.

5 That's all I have to say.

6 BY MS. ROSS:

7 Q All right. Just to clarify, you hired Bill  
8 Yarborough to do your first PCR.

9 A That's correct.

10 Q And then he did not file a 59(e).

11 A Did not. After I asked several times. And my  
12 mother is here in court right now, and she can contest  
13 that she asked him as well. And he refused to.

14 MR. EVANS: Your Honor, I would object to -- I would  
15 object to the mention of the 59(e). That's not a part of  
16 his application.

17 MS. ROSS: Judge, it goes to his being denied his  
18 right.

19 THE WITNESS: It is.

20 BY MS. ROSS:

21 Q And so is that why you put in to withdraw your  
22 appeal?

23 THE COURT: I'll overrule.

24 BY MS. ROSS:

25 Q Okay. So you did not get an appeal from your first

1 PCR, did you?

2 A No, I did not.

3 Q Did you want to have an appeal from your first PCR?

4 A That's correct. I do.

5 MS. ROSS: Okay. I have no further questions.

6 THE COURT: Mr. Evans?

7 MR. EVANS: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. EVANS:

10 Q Mr. Hyatt, you were represented by Mr. Toney in your  
11 trial?

12 A That's correct.

13 Q Okay. Did you ever tell him you wanted to plead  
14 guilty to the charges?

15 A No, I did not.

16 Q Okay. So you never got any offers for these  
17 charges.

18 A I did. I did get an offer.

19 Q And you rejected it.

20 A I rejected it initially at the beginning.

21 Q Okay. And what was the offer that was given you?

22 A At first it was six years, and then it was eight  
23 years, and the day of trial it was ten years.

24 Q Okay. So Mr. Toney got you an offer for less time  
25 than you actually got; isn't that correct?

1       A     When the case had began. Ten minutes after the case  
2       has started, after the trial has started, it went up to  
3       five years. And I don't know how that worked out, but it  
4       was supposed to be ten years.

5       Q     But you decided to go with a jury trial?

6       A     Yes, I did. I did decide to go to trial.

7       Q     Mr. Toney didn't instruct you to go to a jury trial.  
8       That was your decision, correct?

9       A     That was my decision, correct.

10      Q     You had an offer of six years and you rejected it,  
11      correct?

12      A     That's correct. At first.

13      Q     An offer of ten years, you rejected that.

14      A     That's correct.

15      Q     And you ended up getting 14 years after the trial  
16      started.

17      A     After trial started.

18      Q     And you decided to go and plead guilty, didn't you?

19      A     That's correct.

20      Q     Okay.

21      A     But can I give a rebuttal on that? Had the victims  
22      and the witnesses told the truth, I would have went  
23      through with the trial. But nobody called out on them.  
24      And Ivan Toney did not object to any of the lies that  
25      were said on the stand.

1 Q But nobody forced you to plead guilty; isn't that  
2 correct?

3 A Well -- well, he has a due process to do his job.

4 Q Yes or no?

5 A That's just common sense.

6 Q Yes or no, nobody forced you to plead guilty; isn't  
7 that correct?

8 A No. No, they didn't.

9 Q Thank you.

10 A They didn't.

11 Q Now, you remember going before Judge Verdin you went  
12 before to plead guilty?

13 A Uh-huh.

14 Q And she asked you ---

15 THE COURT: Sir, you've got to say "yes" or "no."

16 THE WITNESS: Oh, yes, yes.

17 THE COURT: Okay. Thank you.

18 BY MR. EVANS:

19 Q And she asked -- she recited your rights to you,  
20 isn't that correct, that you had a right to a jury trial?

21 A That's correct.

22 Q And you had the right to confront witnesses; isn't  
23 that correct?

24 A Yes.

25 Q And you had a right to bring up defenses if you want

1 to; isn't that correct?

2 A That's correct.

3 Q And you waived those rights when you pled guilty;  
4 isn't that correct?

5 A I wanted to bring the witnesses, but he refused to  
6 call my witnesses and my alibis that I -- basically, this  
7 is ineffective assistance of counsel, and it proves that  
8 he was ineffective and he refused to object to a person  
9 that's giving contradicting statements on stand.

10 Q Did you tell Judge Verdin this when you pled guilty?

11 A I told him that ahead of time.

12 Q When you pled guilty, did you tell Judge Verdin that  
13 he's not calling my witnesses to testify? You didn't,  
14 did you?

15 A It's not on file.

16 Q It's not in the transcript?

17 A It's not on the transcript. And some of the judge's  
18 statements aren't on the transcript as well that -- that  
19 led me to plead to it.

20 Q Okay. So you're saying the court reporter didn't  
21 get all the words down?

22 A That's correct.

23 Q Okay. All right. But when she went over your  
24 rights and she asked you, "Do you understand?" you said,  
25 "Yes, sir."

1 A I did.

2 Q Okay.

3 A This is out of fear.

4 Q And also, she asked you, "Do you want to waive those  
5 rights to plead guilty?" and you said, "Yes, sir."

6 A I did.

7 Q Okay. Now, what proof do you have ---

8 A Well ---

9 Q --- that -- no. Let me finish my question.

10 A Oh, certainly.

11 Q What proof do you have that Mr. Toney was working on  
12 behalf of the prosecution against you?

13 A That's easy. I got my Rule 59(e) -- well, excuse  
14 me, my Rule 5 in my motion of discovery. And it shows  
15 that the witnesses -- one of the witnesses stated on that  
16 Rule 5 that I had nothing to do with the crime. And he  
17 got on the stand and said that I did and pointed me out.  
18 Now, I showed Ivan Toney this, and he refused to object.  
19 Ineffective assistance.

20 Q Okay.

21 A That's common. All of you are smart. I'm sure  
22 you're college educated.

23 Q Right. But that person testified you were involved  
24 in the crime; isn't that correct?

25 A Huh?

1 Q That person testified ---

2 A He testified that I wasn't involved in my  
3 Rule 59(e). He was questioned ---

4 Q No. At your trial ---

5 A Yeah.

6 Q That wasn't ---

7 A Yeah. On trial. He did. He did.

8 (WHEREUPON, the reporter requested one person talk at a  
9 time.)

10 BY MR. EVANS:

11 Q And you pled guilty that you were involved in the  
12 crime, didn't you?

13 A That's correct.

14 Q Okay. And nobody forced you to plead guilty; isn't  
15 that correct?

16 A No, no.

17 Q You decided to on your own.

18 A No. I did. I did.

19 Q Okay. Now, as for your withdrawal, your motion to  
20 withdraw your notice of appeal, that's your motion to  
21 withdraw, isn't that correct, signed by your attorney,  
22 Mr. Yarborough?

23 A (Reviews document) No. I told him to -- no. I told  
24 him I wanted to appeal.

25 Q Okay. Now you're saying Mr. Yarborough filed a

1 notice of -- withdraw your appeal on his own. That's  
2 what you're saying.

3 A That's correct.

4 Q Okay. Did you have any knowledge your appeal was  
5 withdrawn?

6 A No.

7 Q Okay.

8 A This was my first time seeing that.

9 Q And you were appealing a previous PCR application;  
10 isn't that correct?

11 A Uh-huh.

12 Q This is your second one; isn't that true?

13 A Yeah. I was going for my second PCR. That's  
14 correct.

15 Q Okay. And you do realize you're not allowed two  
16 PCRs under law?

17 A All right. Now you're trying to give me the jargon  
18 that you know is wrong.

19 Q No.

20 A Come on. Let's just be honest here. Let's be  
21 frank. I can. Let's not do that.

22 Q What -- okay. Let me ask you, what law do you know  
23 of that says you can file two PCRs?

24 A Come on. Betterman vs. Montana, 136 SCT 1609, 194.  
25 It's -- hold on. I have another one, case law for you.

1 McCoy vs. Louisiana, 2018. I have another one.

2 Basically, I just wanted to continue with the case  
3 for ineffective assistance of -- and I just gave you the  
4 case law here. I wanted to continue with ineffective  
5 assistance of counsel because it's clearly that my  
6 counsel was ineffective.

7 Q Okay. That's your opinion.

8 A No. It's not an opinion ---

9 Q However -- however ---

10 A --- if he refused to object ---

11 Q Okay.

12 A --- from a known lie.

13 Q Okay.

14 A And I have the paperwork.

15 Q Okay. However, you had that opportunity in 2016,  
16 didn't you?

17 A In 2015 I tried to have the opportunity to talk to  
18 him about it, but he refused to do his job.

19 Q I'm talking about your previous PCR application that  
20 you said your lawyer is ineffective. You had that  
21 opportunity to make that argument in 2016.

22 A Oh, yeah. I put that issue as one of those issues.  
23 I did put that down as one of the issues.

24 Q Okay. And that was dismissed, wasn't it?

25 A Well, I went to the Court on 2020. I wasn't able to

1 even lay out the issues because the judge which knew  
2 William Yarborough went to school together. And he  
3 wouldn't let me lay out the issues at all, nor would he  
4 let me call out my constitutional violations which were  
5 my Fifth Amendment violation and prosecutorial  
6 misconduct.

7 Q Okay. But you had the opportunity. You had a  
8 hearing in 2020.

9 A I had a hearing, but I didn't have the opportunity  
10 to tell him the issues.

11 Q Okay. But you had the opportunity. You went before  
12 the judge, you presented your case and it just got  
13 dismissed; isn't that correct?

14 A You're asking me the same question I just answered  
15 you.

16 Q But you ---

17 A I had the opportunity to go to the hearing, but I  
18 didn't have the opportunity to give him my issues because  
19 he barred it.

20 Q Okay. So it sounds like, Mr. Hyatt, it's everybody  
21 else's fault but yours; isn't that correct?

22 A No. I'm not saying it's not my fault. Okay. It's  
23 my fault that I'm here, I guess, because I should be  
24 somewhere else. But what I'm saying is it was -- it was  
25 their fault for not letting me lay out the issues and

1 tell them my violations on my constitutional violations.  
2 That's just -- that's common sense. I know you're trying  
3 to debate right now and keep the argument going, but ---

4 Q No. I'm asking you questions.

5 A Let's be honest here and let's be truthful.

6 Q I'm asking you questions.

7 A All right.

8 Q And you're sitting in that chair right now. You're  
9 an inmate in SCDC because you pled guilty.

10 A That's correct. I pled guilty because I was backed  
11 into the wall. My back was backed against the wall.

12 Now, I just want to give you an analogy, okay? And  
13 it's just very simple. Now, if somebody tells you that  
14 you had nothing to do with, let's say, taking their car,  
15 and then you go to jail and you go to court for it and  
16 they change -- they state and say, well, that guy did  
17 take my car, and you have it on paperwork right in front  
18 of your attorney, and you're saying, hey, this guy just  
19 said I didn't take his car, why is he allowing this to  
20 happen on the stand? And your attorney refused to object  
21 or give a rebuttal? That's ineffective. What's the  
22 definition of ineffective?

23 Q You're sounding like you're rehashing things that  
24 you've already presented before the Court in 2016 or  
25 2020; isn't that correct?

1       A       2016 and 2020.

2               Now, we can go in circles all day, but as you see  
3       and you know, this is wrong.

4               MR. EVANS:   Okay.   Well, nothing further.

5               THE COURT:   Thank you.

6               Mrs. Ross?

7               MS. ROSS:    I have no redirect.

8               THE COURT:   Okay.   All right.   Mr. Hyatt, you can  
9       step down.

10              THE WITNESS:  Thank you.

11              MR. EVANS:   Your Honor, may ---

12              THE COURT:   Can you clarify something, I think,  
13       about the 59(e)?   I know I heard y'all talking.   Was that  
14       against Judge McIntosh?

15              MS. ROSS:    A motion to alter or amend a civil  
16       motion, so after an order.

17              THE COURT:   Was that on the PCR from Judge McIntosh?

18              MS. ROSS:    Yes.

19              THE COURT:   I just wanted to know when we were  
20       talking about the 59(e) occurring.   Okay.

21              MS. ROSS:    Yes.   That was that.   And so quite  
22       often ---

23              THE COURT:   I mean, I know -- I know after a plea  
24       you've got ten days the right to appeal, and that's not  
25       normally -- I just -- the 59(e) is civil so I was

1 assuming that that was part of the PCR ---

2 MS. ROSS: It is.

3 THE COURT: --- with Judge McIntosh. I just wanted  
4 to be sure.

5 MR. EVANS: Yes, sir. Your Honor, I want to  
6 reiterate he basically on the stand stated that his  
7 counsel was ineffective. He had the opportunity to make  
8 that argument, and he made it in front of Judge McIntosh  
9 and it was dismissed. I don't think -- this court does  
10 not have the ability to change the decision from a  
11 previous Circuit Court judge. That can only be done by  
12 the Court of Appeals or the Supreme Court, a situation he  
13 decided to waive. Now, there was absolutely no evidence  
14 that he had no knowledge of this. There's absolutely no  
15 evidence that Mr. Yarborough will file a waiver for an  
16 appeal without his knowledge.

17 And so we would reiterate our motion to dismiss for  
18 two reasons. One, this actual PCR application was made  
19 six years after this case became final, which under South  
20 Carolina law is unlawful. You cannot do that.

21 Second of all, this is a successive application.  
22 And he can name all the Supreme Court cases he wants to  
23 name; however, South Carolina law Section 17-27-90(a)  
24 basically does not give you the ability to have  
25 successive PCR applications. Any argument that you have

1       that you want to raise in a PCR must be done in an  
2       initial application, which sounds like he did do.  
3       Everything he mentioned on the stand was in his PCR  
4       application. It was heard by a Circuit Court judge and  
5       decided by a Circuit Court judge. He does not have the  
6       authority or the ability to raise subsequent allegations  
7       in another PCR that he has already raised previously.  
8       For these reasons, Your Honor, we would ask this court to  
9       dismiss this case, Your Honor.

10       THE COURT: Okay. Thank you.

11       Anything else?

12       MS. ROSS: No, Your Honor.

13       THE COURT: Okay.

14       MS. ROSS: Wait one moment.

15       Mr. Hyatt's telling me that at his prior PCR  
16       hearing, he was not allowed to make an allegation that  
17       his PCR counsel was ineffective. So he's telling me  
18       that.

19       THE COURT: Okay. Anything else that you need to  
20       convey to your counsel to be heard?

21       MS. ROSS: Nothing further.

22       THE COURT: Okay. Thank you. I'll take this under  
23       advisement.

24       (WHEREUPON, proceedings concluded at 12:29 PM.)  
25

## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF SOUTH CAROLINA )4 COUNTY OF GREENVILLE )  
5  
67 I, CHERYL A. SMITH, Official Court Reporter for the  
8 Thirteenth Judicial Circuit of the State of South  
9 Carolina, do hereby certify that the foregoing is a true,  
10 accurate and complete Transcript of Record of the  
11 proceedings had and evidence introduced in the trial of  
12 the captioned case, relative to appeal, in the Court of  
13 Common Pleas for Greenville County, South Carolina, on  
14 the 8th day of October, 2024.15 I do further certify that I am neither of kin,  
16 counsel, nor interest to any party hereto.  
1718 July 14, 2025  
19  
2021 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter  
24  
25

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jaquese K. Hyatt, SCDC #363113

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE THIRTEENTH JUDICIAL CIRCUIT  
)

Case No. 2021-CP-23-1199

**ORDER OF DISMISSAL**  
(Granting State's Motion to Dismiss)

25 FEB 24 AM 11:01  
JAY GRESHAM CDC GVL SC

This matter comes before the Court by way of an application for post-conviction relief filed March 11, 2021. On July 13, 2021, the State filed a return and motion to dismiss the application on the grounds that the application was untimely filed, improperly successive, and barred by *res judicata*. Additionally, the State submitted that Applicant's allegations regarding fraud and lack of subject matter jurisdiction are without merit. The State conjunctively submitted a conditional order for the Court's consideration. On July 20, 2021, the Court instructed that a hearing be convened on the matter.

A hearing on the State's Motion to Dismiss was convened on October 8, 2024, at the Greenville County Courthouse before the Honorable Patrick C. Fant, III. Applicant was present with his appointed counsel, Susannah C. Ross, Esq., and Assistant Attorney General Tommy Evans of the South Carolina Attorney General's Office represented the State. This Court received testimony from Applicant and heard arguments from both parties. At the conclusion of the hearing, this Court took the matter under advisement.

After consideration of the issues raised in the application and the arguments of counsel, this Court advised the parties by email on October 28, 2024, that it would grant the State's Motion to Dismiss. At that same time, the court also requested that counsel for the State prepare

a proposed order.<sup>1</sup> This Court now **GRANTS** the State's motion to dismiss the application for the specific reasons set out in this order.

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. On September 17, 2014, Applicant committed two armed robberies after contacting Luis Perez and Lee Rhodes on Craigslist about videogame consoles they each listed for sale. (Trial Tr. 31). Mr. Perez and Applicant made arrangements to meet in Welcome Park in Greenville County that morning to exchange the gaming system. (Trial Tr. 32). Applicant showed up, pulled a gun on Mr. Perez, robbed him, and fled. (Trial Tr. 32). Ninety minutes later, Applicant met Mr. Rhodes at a car wash purportedly to sell him an Xbox. (Trial Tr. 32). Applicant proceeded to pull a gun on Mr. Rhodes and rob him. (Trial Tr. 32). Applicant took the Xbox, Mr. Rhodes' wallet and phone, and fled. (Trial Tr. 32). The second robbery was captured on the car wash's video surveillance system. (Trial Tr. 32).

During its April 2015 term, a Greenville County Grand Jury indicted Applicant for two counts of armed robbery (2014-GS-23-11556, -11579) and two counts of possession of a weapon during the commission of a violent crime (2014-GS-23-11556, -11579).

On October 15, 2015, Applicant proceeded to a jury trial before the Honorable Robin B. Stilwell. Ivan J. Toney, Esq., represented Applicant and Assistant Solicitors William Timmons and Sloan Ellis prosecuted the case. Upon hearing testimony from several of the State's witnesses, Applicant elected to plead guilty as indicted to all charges without formal negotiations

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<sup>1</sup> The proposed order was provided to counsel for Applicant prior to this Court's acceptance. Applicant's counsel was also allowed sufficient time to review the proposed order while this Court made its own detailed review. *See Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a "proposed order should be transmitted to opposing counsel" for review and that counsel "should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.").

or recommendations from the State as to sentencing. Twenty-three additional warrants were dismissed in exchange for Applicant's plea. Judge Stilwell sentenced Applicant to concurrent terms of fourteen years for each armed robbery charge and five years for each weapons charge.

Applicant did not appeal his guilty pleas or sentences.

*First PCR Action (2016-CP-23-4850)*

On August 16, 2016, Applicant filed an application for post-conviction relief, raising the following grounds for relief (verbatim):<sup>2</sup>

1. Ineffective assistance of counsel
  - a. Failure to properly and adequately investigate, develop and prepare case for trial;
  - b. Failure to properly and adequately discern, develop and discuss the facts, witnesses, law and defenses with the client;
  - c. By taking case when it was set for trial only several days later;
  - d. Failure to properly, correctly and prudently advise the client of potential outcomes of the case;
  - e. Failure to adequately, properly and correctly advise client of state's witnesses and evidence;
  - f. Failure to file or argue critical pretrial or post-trial motions;
  - g. Failure to investigate, contact or develop alibi witnesses.
  - h. Due to the []various and numerous acts and/or omissions on the part of defense counsel in his representation of client. The client's guilty plea was coerced and as such was not knowingly, intelligently, and voluntarily entered due to defense attorney's deficient performance.
  - i. Defense counsel's deficient performance prejudiced client to the extent there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different.

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<sup>2</sup> Applicant's initial PCR counsel, Daniel J. Farnsworth, Esq., filed the original application.

The State requested an evidentiary hearing through its return on November 4, 2016. On January 8, 2019, pursuant to Rule 71.1, SCRCRCP, Applicant, through PCR counsel,<sup>3</sup> amended his application to include the following allegations:

- I. Trial counsel was ineffective pursuant to *Strickland v. Washington* for failing to contemporaneously and properly object to the trial judge's improper comments on the Applicant's decision to plead guilty and the weight of the evidence as it related to Applicant's decision whether to plead guilty.
- II. Trial Counsel was ineffective for failing to adequately investigate the suppression issue and inconsistent witness statements.
- III. Alternatively, Trial Counsel was ineffective for failing to advise Applicant on his rights, the most probable outcome of a jury trial as opposed to pleading guilty, and on the probable outcome of various pre-trial motions. Applicant learned of from[sic] other inmates, "jailhouse lawyers" should he proceed to trial. The advice from these inmates, rather than advisement from his attorney, swayed Applicant to proceed to trial believing that the motions would be successful and would result in dismissal of the charges. The net result was the expiration of the plea offer with an eight (8) sentence recommendation. Had Trial Counsel adequately advised Applicant, Applicant would not have proceeded to trial and instead would have pleaded guilty pursuant to plea offer with an eight (8) year sentencing recommendation.
- IV. Under the facts and reasons alleged in Ground III, Trial Counsel was ineffective for failing to advise Applicant before trial that the eight (8) year plea offer would be revoked should he go proceed to trial, and that he would consequently face a minimum sentence often (10) years imprisonment for each armed robbery charge.
- V. Trial Counsel was ineffective for failing to review significant discovery with Applicant and advise him accordingly in the context of potential success at trial or in deciding whether to accept any plea offer.

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<sup>3</sup> Applicant's second PCR counsel, William G. Yarborough, III, Esq., filed the amended application.

- VI. Trial Counsel was ineffective for failing to communicate to Applicant an additional, previously extended plea offer and advise him accordingly.
- VII. Trial Counsel was ineffective for failing to adequately explain any parole implications of any sentence he may receive, leading Applicant to believe he would serve only 30-40% of any sentence he may receive.
- VIII. The Fourth Amendment Constitution prohibits unreasonable search and seizure. Trial Counsel was ineffective for not adequately filing suppression motions and arguing the Fourth Amendment for the benefit of the applicant.

On December 4, 2020, the PCR Court convened an evidentiary hearing before the Honorable R. Lawton McIntosh via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020. Applicant was present and represented by William G. Yarborough, III, Esq. Assistant Attorney General Lillian L. Meadows of the South Carolina Attorney General's Office represented the State. Applicant and Counsel Toney both testified at the hearing. By order signed March 10, 2021, and filed March 16, 2021, Judge McIntosh denied the application on all grounds and dismissed the action with prejudice.

Applicant, through Counsel Yarborough, filed a notice of appeal.

### CURRENT PCR ACTION

In his **second and current** application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim): <sup>4</sup>

- 1. "5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> Amendment violations"
- 2. "Due Process violations"
- 3. "Subject matter jurisdiction"
- 4. "Fraud upon the court"

---

<sup>4</sup> Unless quoted, Applicant's allegations have been summarized for brevity and clarity.

- a. “This is an independent action for fraud upon the court independent of case 2016-CP-23-4850. I am presently pro se in this new case.”
  - b. “This is a collateral attack upon the sentencing sheets which are legally designated as commitment orders, as well as a collateral attack upon the order issued by the court under case 2016-CP-23-4850 dated signed January 15, 2021 by the Judge R. Lawton McIntosh to include any other order that may be issued in case 2016-CP-23-4850 for fraud upon the court and challenge to that court’s jurisdiction to issue such orders, as well as for the criminal courts[sic] jurisdiction to sign the commitment order.”
  - c. “It would be an abuse of discretion, obstruction of justice, and an act of fraud upon the court for the PCR court and state to determine that the applicant is procedurally barred when many of the issues involved in this case are indeed jurisdictional in nature where I am arguing against the precedent established by State v. Gentry 2005 and State v. Langford 2012 pursuant to Rules of Appellate Procedure, Rule 217 involving legal issues which cannot be waived or forfeited, which can be raised at any stage, at any time, even after a final order or judgment has been entered.”
- 5. “Prosecutorial[sic] misconduct”
  - 6. “Ineffective assistance of counsel”

Applicant requests relief as follows:

“Vacate/set aside sentence, new trial.”

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider Applicant’s testimony presented at the PCR hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**ARGUMENTS PRESENTED**

The State contends that the application does not comply with the filing procedures of the Uniform Post-Conviction Procedure Act (Act). The application has been filed five years out of time to be considered timely without an applicable exception, and further, is improperly successive. Applicant has previously filed a PCR action (2016-CP-23-4850). An evidentiary hearing was held on the merits of the allegations, the application was denied, and an appeal was filed and subsequently withdrawn. The State references our Supreme Court's holding in *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991) finding that an applicant is not entitled to a second PCR application as long as it was possible to raise his allegations in his first PCR action. S.C. Code Ann. § 17-27-90 forbids a successive PCR application unless an applicant can point to a "sufficient reason" why the new grounds for relief he asserts were not raised or were not raised properly. However, the State argues that Applicant has failed to provide a sufficient reason, and simply appears to be dissatisfied with the PCR Court's denial of his application in his first action. As to Applicant's allegation of fraud upon the court, the State submits that Applicant's argument is meritless as he has not identified any meritorious grounds to warrant relief.

In accordance with guidance from counsel, Applicant presented his argument to the Court and was then subject to examination by the State. Applicant contends that he did not receive a fair evidentiary hearing in regard to his first PCR action (2016-CP-23-4850). Applicant claims that witnesses gave false statements at the beginning of his trial, and that his PCR attorney did not raise the issue in his PCR action. He claimed the PCR judge barred him from saying anything during his evidentiary hearing and violated his due process rights in post-conviction relief. Applicant states he wanted his PCR attorney to file a Rule 59(e) motion, but he did not.

Upon examination by the State, Applicant stated that he never wanted to plead guilty and that he had rejected the first plea offer by the State. He confirmed that he was not forced to plead guilty. Applicant stated the motion to withdraw his PCR appeal was filed without his consent and that he wanted to continue with his claims. He confirms that he had the opportunity to go to the hearing on the issues he raised in his first application and again raises in his second application, but he did not think he had his issues heard.

*The Application is Untimely and Successive*

The State argues that Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act<sup>5</sup> (Act). This Court agrees. Specifically, the Act requires as follows:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

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<sup>5</sup> S.C. Code Ann. § 17-27-10 to -160.

S.C. Code Ann. § 17-27-45(A)–(C).

Applicant pleaded guilty and was sentenced on October 15, 2015. No direct appeal was filed. This application was filed on March 11, 2021—almost *five years* after the requisite filing period expired, which would be October 16, 2016, one year after his conviction. *See* S.C. Code Ann. § 17-27-45(A).

Accordingly, this action must be dismissed as untimely, particularly in light of the fact that Applicant has failed to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant’s misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

This Court further finds this action must be dismissed because it is successive to Applicant’s previous PCR action (2016-CP-23-4850). Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or

was inadequately raised in the original, supplemental, or amended application.

Section 17-27-90 is clear—successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications or actions challenging these convictions. *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (“[Applicant] has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.”). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the applicant *could have* raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant’s current allegations of ineffective assistance of plea counsel were raised and ruled upon in his previous post-conviction relief application. Because the remaining allegations *could have* been raised in Applicant’s previous state proceedings, this action is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Cas. Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also Foxworth*, 275 S.C. 615, 274 S.E.2d 415.

Further, Applicant has not presented a sufficient reason as to why these allegations should be re-litigated. *See Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“[That prior PCR counsel was ineffective is not per se a ‘sufficient reason’ allowing for a successive PCR application under § 17-27-90.”). The procedural “bite of the apple” includes an “applicant’s right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal.” *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755-756 (1999); *see also Aice*, 305 S.C. at 448, 409 S.E.2d at 392. Applicant is entitled to a successive application when he has been “denied complete of access to the appellate process.” *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Such is not the case here.

A notice of appeal was filed on Applicant’s behalf by former PCR Counsel Yarborough on March 22, 2021, (Appellate Case No. 2021-000296).<sup>6</sup> On April 28, 2021, Applicant explicitly requested that Counsel Yarborough be removed as counsel of record. Counsel was relieved on July 15, 2021. Applicant then filed an affidavit of facts on August 26, 2021. On August 30, 2021, our Supreme Court notified Applicant by letter that the petition and appendix should be filed on or before September 29, 2021, and that failure to timely file can result in dismissal of his PCR action. Applicant failed to abide by our Supreme’s Court instruction and did not file the petition and appendix in compliance with the rules. By order dated October 6, 2021, our Supreme Court dismissed the matter for failure to file the petition for writ of certiorari and appendix as required by Rule 243(d) SCACR. It cannot be said that Applicant did not have the full and fair opportunity to raise, litigate, and appeal the claims in his first PCR action. He now argues in his second PCR action that he was denied assistance from PCR Counsel Yarborough in litigating

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<sup>6</sup> A notice of appeal was filed, through PCR counsel Yarborough, on January 29, 2021. PCR Counsel inadvertently referenced the Order of Dismissal of the PCR action that was not final and moved to withdraw the notice of appeal without prejudice on February 9, 2021. Our Supreme Court dismissed the notice of appeal without prejudice.

and appealing his claims, however, these allegations do not warrant Applicant a successive application considering it was his own failure that resulted in dismissal of his appeal.

#### **ALLEGATIONS OF FRAUD**

Applicant alleges that his attorney conspired with the State to prevent his PCR claims from being heard. (PCR App. 13-20). Applicant has wholly failed to present evidence or supporting facts regarding the alleged fraud he refers to. *See Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (explaining that fraud upon the court “is a narrow and invidious species of fraud that ‘subvert[s] the integrity of the [c]ourt itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.’” (quoting *Perry v. Heirs at L. of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504 (Ct. App. 2003))). His testimony at the PCR hearing merely reflects dissatisfaction with his attorney and the denial of his PCR application and presents no evidence warranting any concern for fraudulent behavior on behalf of the State or the PCR Court. Thus, Applicant’s allegations of fraud are baseless and offer him no grounds for relief.

**CONCLUSION**

WHEREFORE, this Court grants the State's Motion to summarily dismiss the application with prejudice because it was filed after the statute of limitations had expired; it is successive to Applicant's prior PCR actions; it is barred by the doctrine of *res judicata*; and for failure to make a *prima facie* showing of the existence of fraud on behalf of the State or the PCR Court.

**IT IS THEREFORE ORDERED.**

Applicant's application for post-conviction relief is denied and dismissed with prejudice.

AND IT IS SO ORDERED this 24<sup>th</sup> day of Feb, 2024.



THE HONORABLE PATRICK C. FANT, III  
Presiding Judge

Greenville, South Carolina.

**WITNESSES**

D A Hoover

Greenville County Sheriffs Office

9/17/2014

**ARREST WARRANT NUMBER**

2014A2330208628 and 2014A2330208629

**ACTION OF GRAND JURY**

**TRUE BILL**

*Wayne L. Richardson*

FOREMAN GRAND JURY

Foreperson of Grand Jury

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-  
RAW

011556

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

JAQUESE KAVON HYATT

Indictment for

0139/0549

ARMED ROBBERY AND POSSESSION OF A  
WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

**FILED**

**DEC 23 2014**

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )

INDICTMENT FOR  
 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING  
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

APR 21 2015

the Grand Jurors of Greenville

County present upon their oath:

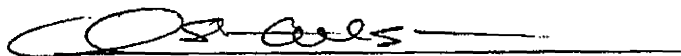
**COUNT I – ARMED ROBBERY**

That JAQUESE KAVON HYATT did in Greenville County, on or about the 17th day of September, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Xbox gaming system, ID, US currency and cell phone from the person or presence of LEE MICHAEL RHODES. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

That JAQUESE KAVON HYATT did in Greenville County on or about the 17th day of September, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

  
 SOLICITOR BAR # 101006

**WITNESSES**

D A Hoover

Greenville County Sheriffs Office

9/17/2014

**ARREST WARRANT NUMBER**

2014A2330208630 and 2014A2330208631

**ACTION OF GRAND JURY**

**TRUE BILL**

*Wayne Sheppard*

FOREMAN GRAND JURY

Foreperson of Grand Jury

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23- 011579  
RAW

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

2015  
TERM 2014

THE STATE

vs.

JAQUESE KAVON HYATT

Indictment for

0139/0549

ARMED ROBBERY AND POSSESSION OF A  
WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

**FILED**

DEC 23 2014

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
ARMED ROBBERY AND POSSESSION OF A WEAPON DURING  
THE COMMISSION OF A VIOLENT CRIME

APR 21 2015

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

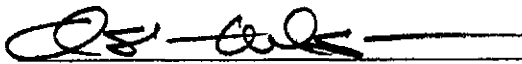
**COUNT I -- ARMED ROBBERY**

That JAQUESE KAVON HYATT did in Greenville County, on or about the 17th day of September, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Playstation gaming system, video games and cell phone from the person or presence of LUIS PEREZ. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT II -- POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

That JAQUESE KAVON HYATT did in Greenville County on or about the 17th day of September, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

BAR # 101006

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL PICKENS PICKENS COUNTY  
Court of Common Pleas

**RECEIVED**

**Jan 29 2021**

S.C. SUPREME COURT

The Honorable Leticia Verdin, Thirteenth Circuit Court Judge

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Case No. 2016-CP-23-04850

---

Jaquese Hyatt, #00363113.....Petitioner

v.

The State of South Carolina,.....Respondent.

---

NOTICE OF APPEAL

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Petitioner, Jacquese Hyatt, by and through undersigned counsel, William G. Yarborough III, hereby appeals the Order of Dismissal issued by Honorable Leticia Verdin in the above-captioned case. The Order of Dismissal was filed on January 20, 2021 and sent to Counsel on January 28, 2021. A copy of the Order of Dismissal is attached to this notice.

Respectfully Submitted,

/s/ William G. Yarborough III, #10271  
308 West Stone Avenue  
Greenville SC 29609  
(864) 331-1612 Fax (864) 370-0022

Greenville, SC  
January 29, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

) IN THE COURT OF GENERAL SESSIONS  
) THIRTEENTH JUDICIAL CIRCUIT

Jaquese Hyatt

) Case Number: 2016-CP-23-04850  
)

Applicant

v.

) **Order Denying PCR Application**  
)

State of South Carolina  
\_\_\_\_\_

2017 JAN 20 PM 2:34  
FILED-CLERK OF COURT  
PAUL R. WICKES  
GREENVILLE, SC

Applicant asserts the following grounds for relief in his petition:

1. Ineffective assistance of counsel;

- a. Failure to properly and adequately investigate, develop and prepare case for trial.
- b. Failure to properly and adequately discern, develop and discuss the facts, witnesses, law and defenses with client.
- c. By taking case when it was set for trial only several days later
- d. Failure to properly, correctly and prudently advise the client of potential outcomes of the case
- e. Failure to adequately, properly and correctly advise client of state's witnesses and evidence
- f. Failure to file or argue critical pre-trial or post-trial motions
- g. Failure to investigate, contact or develop alibi witnesses
- h. Due to the various and numerous acts and/or omissions on the part of the defense counsel in his representation of client. The client's guilty plea was coerced and as such was not knowingly, intelligently and voluntarily entered due to defense attorney's deficient performance.
- i. Defendant's counsel's deficient performance prejudiced client to the extent there is a reasonable probability that but for council's unprofessional errors, the result of the proceedings would have been different..
- j. The clients reserved the right to amend the supporting facts of item 11 of the application upon receipt and review of trial transcript.

2. Involuntary guilty plea

By Amendments Petitioner also asserts the following additional grounds for relief:

- I. Trial Counsel was ineffective pursuant to *Strickland v. Washington* for failing to contemporaneously and properly object to the trial judge's improper comments on the Applicant's decision to plead guilty and the weight of the evidence as it related to Applicant's decision whether to plead guilty.

- II. Trial Counsel was ineffective for failing to adequately investigate the suppression issue and inconsistent witness statements.
- III. Alternatively, Trial Counsel was ineffective for failing to advise Applicant on his rights, the most probable outcome of a jury trial as opposed to pleading guilty, and on the probable outcome of various pre-trial motions Applicant learned of from other inmates, "jailhouse lawyers" should he proceed to trial. The advice from these inmates, rather than advisement from his attorney, swayed Applicant to proceed to trial believing that the motions would be successful and would result in dismissal of the charges. The net result was the expiration of the plea offer with an eight (8) year sentence recommendation. Had Trial Counsel adequately advised Applicant, Applicant would not have proceeded to trial and instead would have plead guilty pursuant to plea offer with an eight (8) year sentencing recommendation.
- IV. Under the facts and reasons alleged in Ground III, Trial counsel was ineffective for failing to advise Applicant before trial that the eight (8) year plea offer would be revoked should he go to trial, and that he would consequently face a minimum sentence of ten (10) year imprisonment for each armed robbery charge.
- V. Trial Counsel was ineffective for failing to review significant discovery with Applicant and advise him accordingly in the context of potential success at trial or in deciding whether to accept any plea offer.
- VI. Trial Counsel was ineffective for failing to communicate to Applicant an additional, previously extended plea offer and advise him accordingly.
- VII. Trial Counsel was ineffective for failing to adequately explain any parole implications of any sentence he may receive, leading Applicant to believe he would serve only 30-40% of any sentence he may receive.

Applicant and Ivan Toney, Esq. were the only witnesses called to testify. Correspondence between Mr. Toney and applicant were admitted into evidence.

As to grounds 1 (a-c) and 1(g) above, Applicant has failed to produce testimony or evidence of what a proper investigation or a delay in the trial would have produced. Accordingly, Applicant has not meet his burden of proof on these issues.

As to grounds 1 (d-e), Mr. Toney's correspondence made part of the records refutes these assertions. Accordingly, they are denied.

As to grounds 1 (h-j) and 2, the transcript refutes the contention. Accordingly, these grounds are denied.

As to Amended ground (I), to the extent trial counsel should have objected, the failure was

harmless and did not prejudice Applicant.

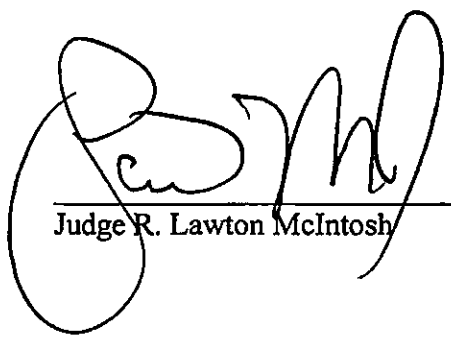
As to Amended ground (II), Applicant presented no evidence in support of this contention. Accordingly, this ground is denied.

As to Amended grounds (III) and (IV), this allegation is refuted by Mr. Toney's credible testimony as well as his correspondence to Applicant. Accordingly, amended grounds (III) and (IV) are denied.

As to Amended grounds (V, VI and VII) these contentions are refuted by Mr. Toney's testimony, the transcript and Mr. Toney's correspondence to Applicant. Accordingly, these grounds are denied.

Attorney General to prepare a formal order.

AND IT IS SO ORDERED.



Judge R. Lawton McIntosh

Anderson, South Carolina

Dated: 1-15-21

Copy mailed to

Attorney General

*B. Yarborough*

on

1

20

2021

# The Supreme Court of South Carolina

Jacquese Hyatt, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-000094

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## ORDER

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Petitioner has served and filed a notice of appeal from an "Order Denying PCR Application" filed on January 20, 2021. This order indicates: "Attorney General to prepare a formal order." Petitioner now moves to withdraw the notice of appeal without prejudice on the basis that the order issued by the post-conviction relief judge is not a formal, final order.

Under Rule 243(a) of the South Carolina Appellate Court Rules (SCACR) and S.C. Code Ann. §17-27-100, only a final decision or judgment in a post-conviction relief case is subject to appellate review. *See Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) (defining final decision or judgment). Since the order being appealed states another act is to be done—the preparation of a formal order by the Attorney General—it is not the final decision or judgment in this matter, and the notice of appeal is hereby dismissed without prejudice to petitioner's ability to timely serve and file a notice of appeal once a final decision or judgment is issued. The remittitur will be sent as provided by Rule 221(b), SCACR.

  
 C.J.  
 FOR THE COURT

Columbia, South Carolina  
 February 10, 2021

cc:

William G. Yarborough, III, Esquire

Lillian Loch Meadows, Esquire

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**RECEIVED**

**Mar 22 2021**

S.C. SUPREME COURT

Appeal from Greenville County Court of Common Pleas  
The Honorable R. Lawton McIntosh, Circuit Court Judge

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Case No. 2016-CP-23-4850

---

State of South Carolina,.....Respondent,

v.

Jaquese Kavon Hyatt, # 363113,.....Petitioner.

---

**NOTICE OF APPEAL**

---

The Petitioner, Jaquese Kavon Hyatt, hereby appeals the Order of Dismissal issued by the Honorable R. Lawton McIntosh. The Order of Dismissal was filed with the Greenville County Clerk of Court on March 16, 2021. Undersigned Counsel received notice of its filing today, March 22, 2021 by email. A copy of the Order is attached to this Notice.

Respectfully submitted,

William G. Yarborough, III  
Lauren Carole Hobbis

By: /s/ Lauren C. Hobbis, #103190

William G. Yarborough III, Attorney at Law, LLC  
308 West Stone Avenue  
Greenville, South Carolina 29609  
(864) 331-1612

ATTORNEYS FOR PETITIONER



ALAN WILSON  
ATTORNEY GENERAL

March 22, 2021

William G. Yarborough, III, Esquire  
309 W. Stone Ave.  
Greenville, South Carolina 29609

***Re: Jaquese Hyatt, #363113 v. State of South Carolina***  
***2016-CP-23-4850***

Dear Mr. Yarborough:

Enclosed please find a copy of the signed and filed **Order of Dismissal** issued by the Honorable R. Lawton McIntosh in the above-captioned post-conviction relief case.

Sincerely,

s/LillianMeadows

LILLIAN L. MEADOWS  
Assistant Attorney General

LLM/hb  
Enclosures

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jaquese K. Hyatt, SCDC #363113,  
Applicant,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-23-4850

**ORDER OF DISMISSAL**

ENTERED COMPUTER

FILED-CLERK OF COURT  
PAUL B. WICKERHART  
GREENVILLE, S.C.  
2021 MAR 16 PM 2:19

## **I. INTRODUCTION**

The matter before this Court is an action for post-conviction relief (PCR) commenced by Jaquese K. Hyatt (Applicant) on August 16, 2016. The State requested an evidentiary hearing through its return on November 4, 2016. A hearing into the matter convened before the undersigned on December 4, 2020, via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020.<sup>1</sup> Applicant was present and represented by William G. Yarborough, III, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his defense counsel, Ivan J. Toney, Esquire.

In addition to the pleadings in this action, this Court had before it a copy of the Greenville County Clerk of Court records regarding the subject convictions, Applicant's records from the

<sup>1</sup> See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.").

South Carolina Department of Corrections, the trial transcript and the records of the current PCR action.<sup>2</sup>

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 and involuntary guilty plea are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

## **II. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections. During its April 2015 term, the Greenville County Grand Jury indicted Applicant for two counts of armed robbery (2014-GS-23-11556, -11579) and two counts of possession of a weapon during the commission of a violent crime (2014-GS-23-11556, -11579).

On October 15, 2015, Applicant proceeded to a jury trial before the Honorable Robin B. Stilwell. Ivan J. Toney, Esquire (Counsel), represented Applicant. Assistant Solicitors William Timmons and Sloan Ellis prosecuted the case. Upon hearing testimony from several State's witnesses, however, Applicant elected to plead guilty as indicted to all charges without formal negotiations or recommendations from the State as to sentencing. Twenty-three additional warrants were dismissed in exchange for Applicant's plea. Judge Stilwell sentenced Applicant to concurrent terms of fourteen years for each armed robbery charge and five years for each weapons charge. Applicant did not appeal his guilty pleas or sentences.

Applicant filed a timely post-conviction relief application on August 16, 2016. An evidentiary hearing was initially scheduled for February 22, 2019, at the Greenville County

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<sup>2</sup> In addition to the pleadings, the PCR records include the transcript from Applicant's initial PCR proceeding before Judge Kinlaw and the transcript from Applicant's evidentiary hearing before the undersigned.

Courthouse before the Honorable Alex Kinlaw Jr. Applicant was not present but Counsel Yarborough appeared on his behalf. Assistant Attorney General Kelly Oppenheimer appeared for the State.

At the start of the hearing, the State moved to dismiss for failure to prosecute based on Applicant's refusal to appear for the hearing. The State presented the Court with an email from SCDC stating Applicant refused to be transported for the hearing. Judge Kinlaw then issued an order dismissing the action with prejudice for failure to prosecute.

Counsel Yarborough subsequently filed a motion to alter or amend the order of dismissal pursuant to Rules 52(b), 59, and 60, of the South Carolina Rules of Civil Procedure. The State filed a return. On August 22, 2019, Judge Kinlaw issued an order granting Applicant's motion to alter or amend, allowing him to proceed with his PCR action on the merits.

### **III. STATEMENT OF FACTS**

On September 17, 2014, Applicant committed two armed robberies after contacting Luis Perez and Lee Rhodes on Craigslist about videogame consoles they each listed for sale. (Trial Tr. 31). Mr. Perez and Applicant made arrangements to meet in Welcome Park in Greenville County that morning to exchange the game system. (Trial Tr. 32). Applicant showed up, pulled a gun on Mr. Perez, robbed him, and fled. (Trial Tr. 32). Ninety minutes later, Applicant met Mr. Rhodes at a car wash purportedly to sell him an Xbox. (Trial Tr. 32). Applicant proceeded to pull a gun on Mr. Rhodes and rob him. (Trial Tr. 32). Applicant took the Xbox, Mr. Rhodes' wallet and phone, and fled. (Trial Tr. 32). The second robbery was captured on the car wash's video surveillance system. (Trial Tr. 32).

#### **IV. ISSUES BEFORE THIS COURT**

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
  - a. Failure to properly and adequately investigate, develop and prepare case for trial;
  - b. Failure to properly and adequately discern, develop and discuss the facts, witnesses, law and defenses with the client;
  - c. By taking case when it was set for trial only several days later;
  - d. Failure to properly, correctly and prudently advise the client of potential outcomes of the case;
  - e. Failure to adequately, properly and correctly advise client of state's witnesses and evidence;
  - f. Failure to file or argue critical pretrial or post-trial motions;
  - g. Failure to investigate, contact or develop alibi witnesses.
  - h. Due to the []various and numerous acts and/or omissions on the part of defense counsel in his representation of client. The client's guilty plea was coerced and as such was not knowingly, intelligently, and voluntarily entered due to defense attorney's deficient performance.
  - i. Defense counsel's deficient performance prejudiced client to the extent there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different.

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the following allegations:

- I. Trial counsel was ineffective pursuant to *Strickland v. Washington* for failing to contemporaneously and properly object to the trial judge's improper comments on the Applicant's decision to plead guilty and the weight of the

evidence as it related to Applicant's decision whether to plead guilty.

- II. Trial Counsel was ineffective for failing to adequately investigate the suppression issue and inconsistent witness statements.
- III. Alternatively, Trial Counsel was ineffective for failing to advise Applicant on his rights, the most probable outcome of a jury trial as opposed to pleading guilty, and on the probable outcome of various pre-trial motions. Applicant learned of from[sic] other inmates, "jailhouse lawyers" should he proceed to trial. The advice from these inmates, rather than advisement from his attorney, swayed Applicant to proceed to trial believing that the motions would be successful and would result in dismissal of the charges. The net result was the expiration of the plea offer with an eight (8) sentence recommendation. Had Trial Counsel adequately advised Applicant, Applicant would not have proceeded to trial and instead would have pleaded guilty pursuant to plea offer with an eight (8) year sentencing recommendation.
- IV. Under the facts and reasons alleged in Ground III, Trial Counsel was ineffective for failing to advise Applicant before trial that the eight (8) year plea offer would be revoked should he go proceed to trial, and that he would consequently face a minimum sentence often (10) years imprisonment for each armed robbery charge.
- V. Trial Counsel was ineffective for failing to review significant discovery with Applicant and advise him accordingly in the context of potential success at trial or in deciding whether to accept any plea offer.
- VI. Trial Counsel was ineffective for failing to communicate to Applicant an additional, previously extended plea offer and advise him accordingly.
- VII. Trial Counsel was ineffective for failing to adequately explain any parole implications of any sentence he may receive, leading Applicant to believe he would serve only 30-40% of any sentence he may receive.
- VIII. The Fourth Amendment Constitution prohibits unreasonable search and seizure. Trial Counsel was ineffective for not

adequately filing suppression motions and arguing the Fourth Amendment for the benefit of the applicant.<sup>3</sup>

## V. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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<sup>3</sup> This sole allegation was raised in the second amended application filed November 23, 2020. For purposes of this order, this Court incorporates it with the allegations raised in the initial amended application.

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty

pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. The applicant must further convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not*

whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

## **VI. 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 amended 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.

### **A. Failure to Investigate, Prepare for Trial, and File Pretrial Motions<sup>4</sup>**

Applicant first contends Counsel was ineffective for failing to investigate and prepare for trial. Applicant argues Counsel was ineffective for agreeing to represent Applicant only a few weeks to before his set trial date. Applicant further contends Counsel was ineffective for failing to investigate alibi witnesses and make certain pre-trial suppression arguments. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating how a more thorough investigation, further preparation, or delay of the trial would have affected the outcome of the case. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the events leading up to Applicant's trial.

#### **1. PCR Testimony**

At the outset of the PCR hearing, Applicant testified Counsel "lied in open court by stating that he was prepared" the morning of his trial. (PCR Tr. 10). The trial transcript indicates Applicant

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<sup>4</sup> Claims 1(a), 1(b), 1(c), 1(e), 1(f) and 1(g); amended claims II and VIII.

asked Judge Stilwell to postpone the trial because he believed Counsel was not prepared. (PCR Tr. 15; Trial Tr. 38–39). Judge Stilwell asked Counsel at that time if he was prepared for trial. (Trial Tr. 38). Counsel responded that he was. (Trial Tr. 38). Judge Stilwell therefore refused Applicant's request. (PCR Tr. 15–16; Trial Tr. 39). Applicant denied taking advice from jailhouse lawyers, but stated he asked the judge to postpone his trial because he knew Counsel was not prepared. (PCR Tr. 31).

Applicant testified his mother hired Counsel to represent him a few weeks before his trial date. (PCR Tr. 12, 20). He stated that Counsel only met with him twice; once when he was first hired and once with the solicitor. (PCR Tr. 18–19, 21). Applicant testified he was surprised when he was brought to court for his trial and that Counsel failed to communicate with him. (PCR Tr. 21, 27). Applicant stated Counsel did not review the discovery with him and stated that he did not believe Counsel prepared him for trial. (PCR Tr. 18, 20, 27). Applicant further testified that, had he known counsel was not going to investigate his case or be adequately prepared for trial, he would have sought other counsel or taken the eight-year plea offer (PCR Tr. 21, 25–26). Applicant felt like he was ultimately "backed into a corner" and felt forced to plead guilty because Counsel was unprepared. (PCR Tr. 25).

Applicant stated he did not believe Counsel spent enough time investigating his case or speaking with potential witnesses. (PCR Tr. 12). Specifically, he wanted Counsel to contact his alibi witnesses, challenge Mr. Perez's statement to law enforcement, and challenge the search of his home. (PCR Tr. 13–14, 18). Applicant did not identify the names of any alibi witnesses, but stated he was at a girl's house prior to the incident. (PCR Tr. 19) Applicant testified he believed his statement to law enforcement was coerced and should have been suppressed because his

*Miranda*<sup>5</sup> rights were violated. (PCR Tr. 16–17, 24). He allegedly asked to speak with an attorney and law enforcement continued to interrogate him. (PCR Tr. 23–24). Applicant further testified he wanted Counsel to file a motion to suppress the evidence seized pursuant to the search warrant because law enforcement did not have a valid warrant to search his property. (PCR Tr. 19). He also stated there was no warrant for certain phone records law enforcement obtained. (PCR Tr. 23).

On cross-examination, Applicant was questioned about the portion of the plea proceeding where Applicant told Judge Stilwell he had time to discuss the matter with Counsel, and that Counsel had answered all his questions. (PCR Tr. 33; Trial Tr. 142). Applicant was specifically asked why he did not tell Judge Stilwell at the time that he felt forced to plead guilty or that he believed Counsel was unprepared. (PCR Tr. 34–35). Applicant testified he answered “yes” and agreed with all of Judge Stilwell’s questions because Counsel told him that if he did not do so, Judge Stilwell would not accept the plea. (PCR Tr. 33–35).

Applicant’s mother, Queenie Hyatt, also testified. Ms. Hyatt recalled hiring Counsel to represent her son approximately three to four weeks before the trial date. (PCR Tr. 40). She stated she was under the impression Counsel would take more time working on the case, and that she did not believe he was prepared for trial. (PCR Tr. 40–41). She testified Counsel did not tell her the evidence against her son was overwhelming, but that Counsel explained “it was barely a little bit better than a misdemeanor.” (PCR Tr. 42). Mrs. Hyatt further testified she tried to contact Counsel several times before the trial, but that she could not get ahold of him. (PCR Tr. 42–43).

Counsel testified he has been practicing criminal law for over two decades. (PCR Tr. 44). Counsel recalled that Applicant’s charges were the result of an eighteen-month crime spree, and

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<sup>5</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

that Applicant was facing an additional twenty-three charges. (PCR Tr. 45). Counsel thoroughly summarized the facts of the case, and stated Applicant was facing sixty to seventy years on these charges alone. (PCR Tr. 44–45). He explained that Applicant was caught on tape robbing the second victim, who was confident Applicant was the man who robbed him. (PCR Tr. 45). Counsel further recalled Applicant having an extensive criminal record, including a CSC with a minor charge that was pled down to ABHAN. (PCR Tr. 45).

Counsel agreed that he was hired by Ms. Hyatt around three or four weeks prior to Applicant's trial. (PCR Tr. 48). Counsel testified Applicant knew of the risks associated with hiring a new attorney so close to trial, but that he was adamant about wanting a new lawyer. (PCR Tr. 49). When asked if he believed it was a good idea to take a case with only four or five weeks to prepare, Counsel stated he wished he had more time but that he had dealt with this type of situation before. (PCR Tr. 52). Counsel testified he met with Applicant alone at least four or five times. (PCR Tr. 57).

Counsel testified he received Applicant's discovery from his previous attorney. (PCR Tr. 57). Counsel also filed his own discovery motion, but did not receive anything he did not already have. (PCR Tr. 57). He stated that Applicant received copies of all the discovery at least a year before Counsel took over his representation. (PCR Tr. 47, 58). Counsel could not recall exactly how many times he reviewed discovery with Applicant, but recalled sitting down with him several times and reviewing each piece of evidence in discovery. (PCR Tr. 45, 50). Counsel testified he was confident that Applicant was aware of all the evidence against him. (PCR Tr. 47).

Counsel was asked about some of the concerns Applicant brought up to Judge Stilwell during pre-trial motions. (PCR Tr. 53). Specifically, Applicant mentioned a *Brady*<sup>6</sup> issue and an

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<sup>6</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

issue with the indictment. (PCR Tr. 53; Trial Tr. 37, 42). Counsel stated Applicant never brought those issues to his attention. (PCR Tr. 53). Counsel further testified he was not aware of any alibi witnesses, and that Applicant never gave him any names of people to contact. (PCR Tr. 58–59, 61). He stated Applicant was mainly focused on how much time he would receive. (PCR Tr. 53). Counsel further testified Applicant never told him on the day of trial that he did not believe Counsel was prepared or that he did not want Counsel to represent him. (PCR Tr. 55).

## 2. Discussion

This Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). Counsel’s credible testimony indicates he met with Applicant prior to trial, reviewed the discovery with him, and discussed his case with him at length. Although Applicant testified Counsel met with him only twice, he failed to present “any evidence of how additional preparation or communication would have resulted in a different outcome.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel’s lack of preparation prejudiced him); *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Applicant's allegations regarding Counsel's failure to file certain suppression motions are further refuted by the record. Counsel clearly challenged the police's identification procedure and the victim's identification of Applicant in a pre-trial *Biggers* hearing.<sup>7</sup> (Trial Tr. 43–56). The Court found the identification evidence and procedure admissible. (Trial Tr. 55–56). The trial record also demonstrates Counsel attempted to challenge the admissibility of Applicant's confession to law enforcement in a pre-trial *Denno* hearing.<sup>8</sup> (Trial Tr. 56–71). The Court found Applicant's statements were not coerced but were in fact voluntary and admissible. (Trial Tr. 70–71). Counsel further testified that, in his professional opinion, he saw no basis to challenge the items seized from Applicant's property pursuant to the valid search warrant. (PCR Tr. 58–59).

This Court finds Applicant failed to establish Counsel was ineffective for failing to investigate and contact purported alibi witnesses. Applicant could not even name the alibi witness or witnesses he believes Counsel should have contacted. Our Supreme Court has held that a PCR applicant must "produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence" to prevail on this type of claim. *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (citing *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); see also *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different)). Applicant did not present any such testimony or evidence at the PCR hearing.

The Court finds Applicant failed to present evidence of any viable defense, investigative tactic, or alternate strategy Counsel should have explored which would have helped Applicant's

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<sup>7</sup> *Neil v. Biggers*, 409 U.S. 188 (1972).

<sup>8</sup> *Jackson v. Denno*, 378 U.S. 368 (1964)

case or affected his decision to plead guilty. Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and prepare Applicant for trial are **DENIED**.

**B. Failure to Advise Applicant of Potential Outcomes and Ineffective Advice Regarding Plea Offers<sup>9</sup>**

Applicant next contends Counsel was ineffective for failing to adequately advise him in the context of potential success at trial and deciding whether to accept any plea offer. Specifically, Applicant alleges Counsel failed to adequately appraise him of the strength of the State's evidence and the probable outcome of pre-trial motions that would effect the likelihood of success at trial. Applicant further alleges Counsel failed to communicate all plea offers to Applicant and failed to provide sufficient information regarding the terms of said plea offers. This Court disagrees, and finds Counsel's correspondence with Applicant, which was made part of the record, coupled with Counsel's credible testimony refute these allegations.

**1. PCR Testimony**

At the PCR hearing Applicant testified that, when he was initially hired, Counsel told Applicant they would be going to court only for receiving stolen goods. (PCR Tr. 10, 31). He recalled Counsel sending him several letters. (PCR Tr. 10–11). First, he claimed Counsel sent him a letter about serving two or three years. (PCR Tr. 11). He then testified he received a letter from counsel that he was going to work something out with the solicitor where he would receive a maximum of five years. (PCR Tr. 11). Applicant further testified Counsel sent him letters about a nine-year offer but claimed Counsel redacted some of these statements. (PCR Tr. 29). Finally, he stated he received a letter from Counsel about an eight year plea offer for attempted armed robbery. (PCR Tr. 11, 31). Applicant testified that Counsel had been representing him for a little over three weeks at the time he received the eight-year offer. (PCR Tr. 11).

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<sup>9</sup> Claim 1(d); amended claims III, IV, V, VI, and VII.

Applicant admitted he initially turned down the eight-year offer, but stated he only turned it down because he believed Counsel would be prepared for trial. (PCR Tr. 29). Applicant recalled Counsel mentioning the eight-year plea offer a second time he went to visit him in jail. (PCR Tr. 29). Applicant nonetheless stated that, as a result of counsel's deficiencies, he received a fourteen-year sentence rather than an eight-year sentence. (PCR Tr. 22, 25–27). However, Applicant later testified Counsel did not tell him about the eight-year plea offer (PCR Tr. 27).

Applicant recalled Counsel telling him on the morning of trial that the solicitor was still willing to make a ten-year offer. (PCR Tr. 14, 29). Applicant denied listening to jailhouse lawyers regarding the potential outcome of his suppression motions and potential likelihood of success at trial. (PCR Tr. 31). Rather, he stated he asked the judge to postpone his trial because he knew Counsel was not prepared. (PCR Tr. 31).

Counsel recalled extensive plea negotiations and stated he met with Assistant Solicitor Timmons numerous times. (PCR Tr. 45–46). Assistant Solicitor Timmons even mentioned during pre-trial motions that he met with Counsel approximately twenty-five times during the month prior to the trial trying to work out a plea deal. (Trial Tr. 41). Counsel recalled Assistant Solicitor Timmons meeting with him and Applicant at least four times at the jail. (PCR Tr. 57). All of the negotiations and plea offers were documented in letters which were entered as Court's Exhibit #1. (PCR Tr. 46). Most of these letters were hand-delivered to Applicant at the jail. (PCR Tr. 50–51).

Counsel specifically referred to a letter dated October 2, 2015, where he told Applicant that Assistant Solicitor Timmons would not back off his recommendation of nine years to a plea of attempted armed robbery and possession of a weapon. (PCR Tr. 46). Counsel alternatively advised Applicant that he could ask Assistant Solicitor Timmons if he would agree to a straight up plea to attempted armed robbery without recommendation. (PCR Tr. 46). The letter indicates Applicant

told Counsel “no,” and asked him to go back to the solicitor and ask that he change the charge to strong-arm robbery. (PCR Tr. 46). Applicant believed the solicitor was focusing on the color of his skin. (PCR Tr. 46–47). Counsel testified he had many similar letters. (PCR Tr. 47). He stated Applicant was directing plea negotiations against Counsel’s explicit advice. (PCR Tr. 47).

Counsel stated Applicant rejected all plea offers before trial, but then kept trying to negotiate during the trial. (PCR Tr. 61–62). He recalled the trial stopping and starting several times as a result. (PCR Tr. 62). However, Counsel testified Applicant never really contemplated going to trial. (PCR Tr. 62). He recalled Applicant discussing trial a couple times, but that his main focus was getting the best plea offer. (PCR Tr. 62).

Counsel testified he always believed it was always in Applicant’s best interest to plead guilty, even in the middle of trial. (PCR Tr. 64). During one of their meetings, Counsel recalled Applicant mentioning that the pictures from the car wash’s surveillance footage were not clear. (PCR Tr. 45, 50). Applicant did not think they could identify him from the surveillance footage. (PCR Tr. 59). Counsel disagreed, and told Applicant he believed they were clear enough to identify him. (PCR Tr. 45–46). However, Applicant believed he was only identified as the perpetrator based on his race. (PCR Tr. 59).

## 2. Discussion

This Court again finds applicable the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of the proceedings. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596; *Strickland*, 466 U.S. at 689. Counsel’s credible testimony and his correspondence with Applicant demonstrate he advised Applicant of all of the options available to him and of the State’s strong evidence against him. *See* Court’s Exhibit #1. Applicant, on the other hand, presented inconsistent testimony

regarding his understanding of the plea offers and what Counsel told him. Accordingly, Applicant's claims pertaining to Counsel's allegedly inadequate advice regarding likely outcomes and plea offers are **DENIED**.

### C. Involuntary Guilty Plea<sup>10</sup>

Applicant further alleges his plea was involuntary as a result of Counsel's ineffective assistance. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

#### 1. Plea Testimony

At the outset of the plea hearing, Judge Stilwell explained to Applicant the constitutional rights he waived by pleading guilty; including his right to remain silent, challenge the State's evidence, and present a defense. (Trial Tr. 138). Applicant was further advised that, if he elected to continue with his trial, the burden of proof would be upon the State to prove every element of every charge against him. (Trial Tr. 138). Applicant informed the court he was knowingly, voluntarily, and freely waiving his constitutional rights by pleading guilty. (Trial Tr. 139).

Judge Stilwell then thoroughly questioned Applicant regarding his understanding of the minimum and maximum possible sentence he could receive for each offense. (Trial Tr. 139). Applicant indicated he understood the charges against him and the exposure he faced on each indictment (Trial Tr. 139). Judge Stilwell next informed Applicant that armed robbery is classified as a violent offense which could affect the calculation of his max-out date and where he is housed within SCDC. (Trial Tr. 139–40). Applicant was further informed that armed robbery is classified as a most serious offense, which could be used for enhancement purposes were Applicant to

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<sup>10</sup> Claims 1(h) and 1(i).

commit subsequent crimes. (Trial Tr. 140). Applicant affirmed he understood and wished to proceed forward. (Trial Tr. 140).

Applicant then admitted he was guilty and committed the conduct giving rise to the indictments. (Trial Tr. 140–41). Applicant advised the court he had not been threatened, coerced, or promised anything in exchange for his guilty plea. (Trial Tr. 141). Applicant further indicated he was satisfied with the services provided to him by Counsel, that he had sufficient time to speak with Counsel about the charges against him, and that Counsel answered all of Applicant's questions. (Trial Tr. 141–142).

## 2. PCR Testimony

At the PCR hearing, Applicant was asked about the portion of the plea proceeding where Applicant told Judge Stilwell he had time to discuss the matter with Counsel, and that Counsel had answered all his questions. (PCR Tr. 33, Trial Tr. 142). As aforementioned, Applicant was asked specifically why he did not tell Judge Stilwell at the time that he believed Counsel was unprepared. (PCR Tr. 34–35). Applicant testified Counsel told him to answer "yes" and agree with all of Judge Stilwell's questions or he would not accept the plea. (PCR Tr. 33–35).

Applicant further agreed that he told the plea court he was not coerced and was pleading guilty of his own free will. (PCR Tr. 35; Trial Tr. 141). He also recalled Judge Stilwell informing him of the minimum and maximum sentence he could receive. (PCR Tr. 35; Trial Tr. 139). Applicant was then directed to the portion of the transcript where he asked Judge Stilwell to give him an eight-year sentence in accordance with the original plea offer. (PCR Tr. 36; Trial Tr. 132). He recalled Judge Stilwell telling him he understood, but that the mandatory minimum was ten years. (PCR Tr. 36–37; Trial Tr. 142–43). In response, Applicant testified that he was told initially

he was going to be charged with strong-arm robbery, which would allow for the eight-year sentence. (PCR Tr. 37).

Prior to entering into the guilty plea, Counsel testified he discussed with Applicant all the consequences of pleading guilty to these offenses. (PCR Tr. 62–63). He recalled telling Applicant that he could receive between ten and thirty years on each armed robbery charge and that it was classified as a violent and most serious offense. (PCR Tr. 63). Counsel further recalled going over all of Applicant’s constitutional rights with him. (PCR Tr. 63–64). Counsel testified he never told Applicant he would only serve 30-40% of his sentence. (PCR Tr. 63). Counsel confirmed that it was ultimately Applicant’s decision to plead guilty. (PCR Tr. 64–65).

### 3. Discussion

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37 (1970); cf. *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (“It is well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” (citing *Brady*, 397 U.S. 742)). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill*, 474 U.S. 52).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea

bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

This Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Moreover, any possible deficiency or error by counsel was cured by the information conveyed at the plea hearing.

Because a guilty plea is a "solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). This Court finds Applicant failed to "present[] [any] valid reasons why he should be allowed to depart from the truth of [the] statements" made during the plea proceeding. *Dalton*, 376 S.C. at 137–38, 654

S.E.at 874; *see Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985).

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967; *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

#### **D. Failure to Object<sup>11</sup>**

Finally, Applicant alleges Counsel was ineffective for failing to object to Judge Stilwell's purported improper comments on Applicant's decision to plead guilty and the weight of the evidence.

At the hearing, PCR counsel directed the Court to pages 131–141 of the trial transcript. (PCR Tr. 65–66). This portion of the transcript consists of an exchange between Applicant and Judge Stilwell regarding Applicant's decision whether to plead guilty or continue with the trial. The exchange was made outside the presence of the jury. Judge Stilwell merely stated that Applicant had the opportunity to observe the evidence that had been presented up to that point. (Trial Tr. 132). The only comment Judge Stilwell made regarding the weight of the evidence was

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<sup>11</sup> Amended claim I

that, “it does seem that there is significant amount of evidence which the jury could rely upon to find that the State has met its burden of proof.” (Trial Tr. 132). Judge Stilwell asked Applicant to make a final decision during the lunch break before they resumed with the trial. (Trial Tr. 133).

PCR counsel pointed out Applicant’s statement, “I don’t understand what’s going on here.” (PCR Tr. 65; Trial Tr. 133). This statement was made in the context of Applicant’s opinion that his actions giving rise to these charges constituted mere petit larceny rather than armed robbery. (Trial Tr. 133). Applicant further told Judge Stilwell during this exchange that he was afraid to plead guilty because he did not know how much time he would receive. (Trial Tr. 133–34). Judge Stilwell responded that he understood, but that he could not make any deals with Applicant regarding sentencing. (Trial Tr. 134).

This Court does not find anything objectionable in this exchange nor does it suggest Applicant’s plea was involuntary. This Court finds Applicant failed to show demonstrate a “reasonable probability that result of proceeding would have been different” had counsel objected to any of Judge Stilwell’s statement. *Strickland*, 466 U.S. at 694. Accordingly, Applicant’s allegation pertaining to Counsel’s failure to object is **DENIED**.

## VII. CONCLUSION

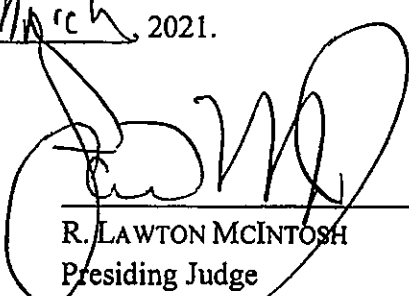
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel’s representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty and further failed to present any justification as to why the statements he made during the guilty plea hearing should not be considered conclusive. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

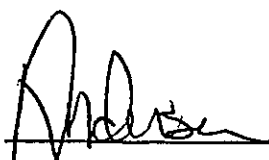
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant 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 be remanded to the custody of the State.

AND IT IS SO ORDERED this 10<sup>th</sup> day of March, 2021.

  
 R. LAWTON MCINTOSH  
 Presiding Judge  
 Thirteenth Judicial Circuit

 South Carolina

Copy mailed to  
 Attorney General / B. V. [illegible]  
 on 3 / 16 / 2021

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jaquese K. Hyatt, SCDC #363113,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-23-4850

**Certificate of Service**

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Order of Dismissal** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

**William G. Yarborough, III, Esquire**  
**wgyarborough@gmail.com**

DATED this 22<sup>nd</sup> day of March, 2021.

s/LillianMeadows  
LILLIAN L. MEADOWS  
Assistant Attorney General

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737  
LillyMeadows@scag.gov

## The Supreme Court of South Carolina

Jaquese Kavon Hyatt, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-000296

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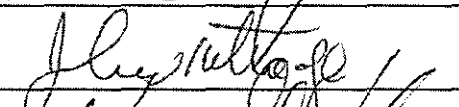
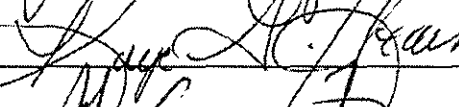
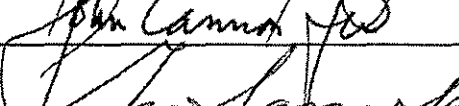
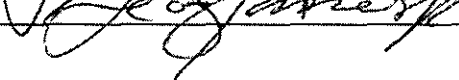
### ORDER

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Petitioner has filed a *pro se* document entitled "Affidavit of Facts Giving Judicial Notice; Filing of a Termination Letter; Motion to Act Pro Se; Motion for an Extension of Time to Submit any Required Pleading and Motion Therefor [sic]" in which he asks the Court to establish that William G. Yarborough III is not his attorney. In response, Yarborough has filed a petition to withdraw as counsel.

Petitioner may proceed *pro se* in this matter only after knowingly and intelligently waiving the right to counsel. *See Faretta v. California*, 422 U.S. 806 (1975); *State v. Brewer*, 328 S.C. 117, 492 S.E.2d 97 (1997). We take this opportunity to warn Petitioner that this Court requires *pro se* parties to fully comply with all applicable rules. Petitioner is certain to be unlearned in other aspects of the law as well. Representation by an attorney trained in the law would be highly beneficial, and we strongly encourage Petitioner to request representation by the Division of Appellate Defense.

After considering this information, Petitioner shall, within twenty (20) days of the date of this order, notify this Court whether he wishes to proceed *pro se* or request to be represented by Yarborough or the Division of Appellate Defense. If Petitioner notifies this Court that he wishes to proceed *pro se* despite the dangers and disadvantages of doing so, this Court will then determine if it will allow him to do so. *Cf. State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005) (holding there is no right to proceed *pro se* on appeal). If Petitioner fails to notify this Court of his choice within twenty (20) days, the Court will consider Yarborough's petition to withdraw.

|                                                                                    |      |
|------------------------------------------------------------------------------------|------|
|  | C.J. |
|  | J.   |
|  | J.   |
|  | J.   |
|  | J.   |

Columbia, South Carolina

June 17, 2021

cc:

William G. Yarborough, III, Esquire

Lauren Carole Hobbis, Esquire

Lillian Loch Meadows, Esquire

Jaquese Hyatt, 00363113

# The Supreme Court of South Carolina

Jaquese Kavon Hyatt, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-000296

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## ORDER

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Petitioner filed a *pro se* document entitled "Affidavit of Facts Giving Judicial Notice; Filing of a Termination Letter; Motion to Act Pro Se; Motion for an Extension of Time to Submit any Required Pleading and Motion Therefor [sic]" in which he asks the Court to establish that William G. Yarborough III is not his attorney. In response, Yarborough filed a petition to withdraw as counsel.

By order dated June 17, 2021, in which we warned Petitioner of the dangers of self-representation, we advised Petitioner to notify this Court within twenty (20) days whether he wishes to proceed *pro se*, be represented by Yarborough, or seek representation by the Division of Appellate Defense. Petitioner has failed to notify this Court of his decision, which we construe as an indication of his desire to proceed *pro se*.

Accordingly, we grant Petitioner's request to proceed *pro se* and grant Yarborough's petition to withdraw as counsel.

 C.J.  
FOR THE COURT

Columbia, South Carolina

July 15, 2021

cc:

William G. Yarborough, III, Esquire

Lauren Carole Hobbis, Esquire

Lillian Loch Meadows, Esquire

Jaquese Hyatt, 00363113

THE STATE OF SOUTH CAROLINA  
IN THE SOUTH CAROLINA SUPREME COURT

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**RECEIVED**

**Aug 26 2021**

APPELLATE CASE NO. 2021-000296

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-4850; 2021-CP-23-1199

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JAQUESE KAVON HYATT, #363113

APPLICANT/PETITIONER

Vs.

THE STATE OF SOUTH CAROLINA,

RESPONDENT

---

AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE; MOTION AND  
OR PETITION TO INVOKE THE S.C. SUPREME COURT'S  
ORIGINAL JURISDICTION; NOTICE SEEKING LEAVE TO APPEAL  
TO ASSERT THE CLAIM OF NON PARTY RES JUDICATA AND OR  
COLLATERAL ESTOPPEL DUE TO OTHER RELATED CASES SEEKING  
REVIEW UNDER TORRENCE v. S.C. DEPT. OF CORRECTIONS;  
MOTION TO CHALLENGE THE GREENVILLE COMMON PLEAS COURT'S  
JURISDICTION DUE TO THE CONTINUED ACTS OF FRAUD UPON

THE COURT INVOLVING THESE MATTERS AND MOTION TO MOTION THEREFOR.

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IN RE: CASE(S) 2016-CP-23-4850; 2021-CP-23-1199;  
2020-CP-23-05097; 2020-0001615; 2021-000309; 2021-000508;  
2020-000974; 2021-000592 AND THE OTHER RELATED INMATES CASES.

TO: THE S.C. SUPREME COURT,  
THE CHIEF ADMINISTRATIVE JUDGE OF GREENVILLE COUNTY,  
THE GREENVILLE COUNTY COURT OF COMMON PLEAS,  
THE S.C. ATTORNEY GENERAL ET. AL.,

HERE THE COURT AND PARTIES WILL FIND:

(1) EXHIBIT, "CASE NO. 2020-001615". THIS IS A COPY OF THE AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE;\*\*\*\* (28) PAGES DATED MAY 16, 2021 FILED IN THE RON SANTA MCCRAY CASE AND ALL OTHER CASES CAPTIONED ABOVE.

(2) EXHIBIT, "DEFAULT AND VOIDING OF JURISDICTION". THIS IS A COPY OF THE AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE;\*\*\*\* (22) PAGES DATED MARCH 10, 2021 THAT WAS FILED BY BENJAMIN ERIC CASE AND OTHER INMATE APPELLANTS INVOLVED WITHIN THESE CASES CAPTIONED ABOVE.

ALL CLAIMS, ISSUES AND DEFENSES ARGUED BY THE APPLICANT/PETITIONER(S) WITHIN THESE DOCUMENTS ARE NOW ARGUED BY ME, THE PETITIONER IN THIS CASE, BEFORE THE S.C. SUPREME COURT FOR THE PURPOSE OF PETITIONING TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION WHICH THE APPLICANT/PETITIONER OFFICIALLY

SEEKS TO DO FOR THE PURPOSE OF ESTABLISHING NON PARTY COLLATERAL ESTOPPEL AND OR RES JUDICATA WHICH IS JURISDICTIONAL IN NATURE AND CAN BE RAISED AT ANY TIME, AT ANY STAGE, EVEN AFTER A FINAL ORDER HAS BEEN ISSUED IN THE CASE, AND CANNOT BE WAIVED AND OR FORFEITED BY THE APPLICANT/PETITIONER; AND FINALLY FOR THE PURPOSE OF MOTIONING AND OR PETITIONING FOR DECLARATORY JUDGMENT TO ADDRESS THE CONTROVERSY BEING ARGUED BY THE RELEVANT INMATES WITHIN THE VARIOUS COUNTIES BEFORE THE S.C. SUPREME COURT. THE APPLICANT/PETITIONER, LIKE THE OTHER INMATES INVOLVED, OFFICIALLY OBJECT TO ANY CLAIM CRAWFORD CANNOT ACT AS AN ATTORNEY FOR INMATES. THIS IS NOT WHAT IS OCCURRING HERE JUST IN CASE SOMEONE OR THE RESPONDENT TRY TO ASSERT THIS CLAIM. WHILE HE WORKED AS A LAW LIBRARY CLERK AT LEE C.I.. WE CAME INTO THE LAW LIBRARY INDEPENDENTLY, SEPARATELY, PERSONALLY WORKING ON OUR CASES INDEPENDENTLY AND AS LAW LIBRARY CLERK APPOINTED BY S.C.D.C. HE MERELY DIRECTED EACH OF US TO POTENTIAL ISSUES AND OR NEW CASE LAW THAT MAY HAVE A DIRECT IMPACT ON MY AND THE OTHER INMATES CASES. I AND THE OTHER INMATES **"PERSONALLY"**, **"INDEPENDENTLY"** DID THE RESEARCH AND FOLLOW UP TO PRODUCE THESE ISSUES AND THEN **"PERSONALLY"** BY OUR CONSTITUTIONAL DUE PROCESS RIGHT OF AUTONOMY **"PERSONALLY"** PLACED THEM IN MY AND EACH OTHER OF OUR CASES, NOT HIM. I **"PERSONALLY"** FILED THESE PLEADINGS ON MY OWN ACCORD. THUS, TO HINDER ME HAVING THESE ISSUES HEARD IN MY CASE IN ANY WAY WOULD PRODUCE A STRUCTURAL CONSTITUTIONAL ERROR NOT SUBJECT TO THE HARMLESS ERROR DOCTRINE AND WOULD VOID THE COURT'S JURISDICTION FOR SUCH UNCONSTITUTIONAL ACTION, WHICH IS TO BE ADJUDICATED UNDER THE DUE PROCESS/CONSTITUTIONAL PRONG TO SUBJECT MATTER JURISDICTION, WHERE I AM MASTER TO DECIDE WHAT LAW I WILL RELY UPON. SEE McCOY v. LOUISIANA, 138 S.Ct. 1500, 200 L.Ed.2d. 821 (U.S.2018).

INSOMUCH, THE APPLICANT/PETITIONER MOTIONS AND OR PETITIONS FOR DECLARATORY JUDGMENT TO REMEDY THE CONTROVERSY AND SEEKING TO ASSERT HIS RIGHTS BEFORE THE S.C. SUPREME COURT AND ALL PARTIES OF NON PARTY COLLATERAL ESTOPPEL AND OR RES JUDICATA AS IT PERTAINS TO ISSUE PRECLUSION BY THE LITIGATION PRESENTED,

AS THE OTHER INMATES FROM THE VARIOUS COUNTIES FROM AROUND THE STATE ARE DOING. THE STATE AND OR RESPONDENT ALREADY DEFAULTED ON THESE EXACT SAME LEGAL ISSUES WITH MAYBE THE EXCEPTION OF THE CHAIN OF CUSTODY ISSUE WHICH MUST BE HEARD IN THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION, AND SEVERANCE ISSUE IN THE PARKER CASE, WITHIN THE PCR CASES OF THE OTHER INMATES INVOLVED THAT ARE PRESENTLY BEFORE THE S.C. SUPREME COURT. THE S.C. ATTORNEY GENERAL AND OR RESPONDENT ALREADY DEFAULTED ON THESE LEGAL ISSUES IN THE BENJAMIN ERIC CASE PCR IN THE GREENVILLE COMMON PLEAS COURT AND COUNTY, AND IN OTHER RELATED CASES ON THESE EXACT SAME ISSUES. IT IS AN ACT OF FRAUD UPON THE COURT, PROSECUTIONAL MISCONDUCT, CRIMINAL CONSPIRACY AND OBSTRUCTION OF JUSTICE TO TRY TO COME BEFORE THIS COURT TO RELITIGATE IDENTICAL LEGAL ISSUES THAT HE HAS ALREADY DEFAULTED ON IN ALL THESE OTHER INMATES CASES INVOLVED, THAT ARE THE SOURCE OF THE CONTROVERSY, WHICH ARE JURISDICTIONAL IN NATURE AND CANNOT BE WAIVED AND OR FORFEITED. THE COURTS MUST ADHERE TO THE RELATED DOCTRINES OF RES JUDICATA AND OR COLLATERAL ESTOPPEL. THE APPLICANT/PETITIONER PETITIONS BEFORE THE S.C. SUPREME COURT TO INVOKE ITS ORIGINAL JURISDICTION ALONG WITH THE OTHER INMATES FROM THE VARIOUS COUNTIES DUE TO THE RECENT ATTEMPT AT FRAUD AND OBSTRUCTION OF JUSTICE THAT HAS OCCURRED IN THE ORLANDO PARKER CASE. IF THE STATE ACTORS WOULD CONDUCT THEMSELVES THE WAY THEY DID IN THE ORLANDO PARKER CASE? BY SUCH ACTION THE APPLICANT'S CASE WOULD MORE THAN LIKELY BE SUBJECT TO SIMILAR INJUSTICE SINCE THIS IS THE CONSISTENT PATTERN THE STATE PROSECUTOR(S) OPERATED IN RELATED TO ALL THESE CASES INVOLVED, ALLEN v. CURRY, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d. 308(U.S.1980); YOUNG v. FERGUSON, 2019 WL 3387741 (N.D.N.C.2019); GEORGIA-PACIFIC CONSUMER PRODUCTS L.P. v. VON DREHLE CORP., 781 F3d. 710(4th.Cir.2015); CAROLINA RENEWAL INC. v. SOUTH CAROLINA DEPT. OF TRANSP., 385 S.C. 550, 684 S.E.2d. 779 (S.C.App.2009). THE RESPONDENT FAILED TO PRESENTLY RESPOND IN THIS CASE AND HE FAILED TO RESPOND ALTOGETHER IN THE OTHER RELATED CASES BEFORE THE S.C. SUPREME COURT WHERE HE IS SEEKING TO RELITIGATE OR CIRCUMVENT HIS FAILURE TO RESPOND TO THOSE CASES HE ALREADY

DEFAULTED ON, ATTEMPTING TO RELITIGATE UNDER THE PARKER PCR CASE. THE APPLICANT/APPELLANT CANNOT LET SUCH AN INJUSTICE OCCUR WITHIN HIS PCR CASE. THUS, THE APPLICANT/PETITIONER SEEKS TO MOVE BEFORE THE S.C. SUPREME COURT TO INVOKE HIS RIGHT TO ASSERT NON PARTY COLLATERAL ESTOPPEL AND OR RES JUDICATA BASED UPON THE RESPONDENT'S PREVIOUS DEFAULTS IN THESE RELATED CASES ON THE SAME IDENTICAL LEGAL ISSUES, KUNST v. LOREE, 404 S.C. 649, 746 S.E.2d. 360 (S.C.App.2013).

IT WAS THE COURT AND RESPONDENT'S FIDUCIARY DUTY TO SPEAK IN THE RELATED CASES ON ALL THE LEGAL ISSUES INVOLVED INSTEAD OF CONCEALING MATERIAL FACTS, CONSPIRING UNDER COLOR OF STATE LAW, VIOLATING THEIR OATHS OF OFFICE TO UPHOLD BOTH THE STATE AND FEDERAL CONSTITUTIONS. ANY LEGAL ISSUE PRESENTLY FILED UNDER THE APPLICANT'S PCR CASE OR ANY OTHER RELATED CASE THAT HAS NOT BEEN DEFAULTED ON IN THE OTHER RELATED CASES INVOLVE LEGAL MATTERS THAT MUST BE RESOLVED IN THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION, SO THEY NOT DEFAULTING ON ANY PARTICULAR ISSUE IN THE RELATED CASES IS OF NO CONSEQUENCE SINCE THE S.C. SUPREME COURT IN ITS ORIGINAL JURISDICTION CAN HEAR ALL MERITS ON ALL ISSUES INVOLVED IN THESE CASES AS A WHOLE. ONCE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION IS INVOKED RELATED TO THESE CLASS OF CASES, HAVING ESSENTIALLY THE SAME IDENTICAL LEGAL ISSUES BEFORE IT? THE GREENVILLE COMMON PLEAS COURT WOULD THEN BE DIVESTED OF JURISDICTION PRODUCING AN AUTOMATIC CHALLENGE TO THE GREENVILLE COMMON PLEAS COURT'S JURISDICTION POWER, WHERE THE ISSUES BEFORE THE GREENVILLE COMMON PLEAS COURT ARE THE SAME CLASS AS THOSE BEFORE THE S.C. SUPREME COURT INVOKING ITS ORIGINAL JURISDICTION. THIS IS CHALLENGE, SABB v. SOUTH CAROLINA STATE UNIVERSITY, 350 S.C. 416, 567 S.E.2d. 231 (S.C.App.2002); STATE v. BARNES, 431 S.C. 66, 846 S.E.2d. 389 (S.C.App.2020); STATE v. SLOCUMB, 426 S.C. 297, 827 S.E.2d. 148 (S.C.App.2019); BUNKUM v. MANOR PROPERTIES, 321 S.C. 95, 467 S.E.2d. 758(S.C.App.1996); COON v. COON, 356 S.C. 342, 588 S.E.2d. 624 (S.C.App.2003). THE APPLICANT/PETITIONER OBJECTS AND THE PETITIONER SEEKS TO OFFICIALLY INVOKE THE S.C. SUPREME COURT'S

ORIGINAL JURISDICTION TO HAVE CASE(S) 2016-CP-23-4850 AND 2021-CP-23-1199 HEARD WITH THE REST OF THE RELATED CASES PRESENTED BEFORE THE S.C. SUPREME COURT WHO POSSESS THESE SAME IDENTICAL LEGAL ISSUES OF THE SAME CLASS ALSO ASSERTING THE APPLICANT'S RIGHTS OF NON PARTY RES JUDICATA AND OR COLLATERAL ESTOPPEL, MILTON v. RICHLAND COUNTY, S.E.2d., 2015 WL 4642832 (S.C.App.2015).

FRAUD VITIATES EVERYTHING THAT IT ENTERS WHICH INCLUDE THE FRAUD OF THE STATE ACTORS DELAYING THESE LEGAL ISSUES FROM OBTAINING FAIR AND JUST REVIEW FOR OVER (15) YEARS SINCE THE GENTRY AND OR LANGFORD CASES WERE ADJUDICATED, AND HOLDING THE APPLICANT'S PCR PROCEEDINGS IN THE GREENVILLE COMMON PLEAS COURT FOR OVER (5) YEARS UNDER CASE 2016-CP-23-4850. ANY JUDGMENT PROCURED BY FRAUD IS "VOID" AND CAN BE COLLATERALLY ATTACKED FOR THAT FRAUD UPON THE COURT WHICH IS FREE OF PROCEDURAL LIMITATIONS, EVAN v. GUNTER, 294 S.C. 525, 366 S.E.2d. 44 (S.C.App.1988). STATUTE OF LIMITATIONS REQUIRING THE ACTION TO BE FILED WITHIN ONE YEAR OF THE CONVICTION OR SUCCESSIVE CLAIMS, ALL BEING PROCEDURAL BAR OR LIMITATIONS, DO NOT LIMIT COURT'S INHERENT AUTHORITY TO SET ASIDE JUDGMENT OR PREVENT HEARING OF CLAIMS OF EXTRINSIC FRAUD, ROBINSON v. ESTATE OF HARRIS, 388 S.C. 616, 698 S.E.2d. 214 (S.C.App.2010).

IT IS NOT REQUIRED THAT THE APPLICANT/PETITIONER CITE RULE 60(b) LIKE IT IS SOME MAGICAL INCANTATION IF THE FRAUD IS EXPLAINED AND ARTICULATED AND THE LEGAL CASES CITED ALREADY ASSERT THE RIGHTS UNDER THE APPLICABLE RULE. "EXTRINSIC FRAUD" FOR PURPOSES OF DETERMINING WHETHER A PARTY'S FRAUD WARRANTS GRANTING RELIEF FROM JUDGMENT, EVEN AS THAT WHICH WAS DONE RELATED TO THE STATE v. GENTRY CASE WHERE THE SUPREME COURT INCORRECTLY ADJUDICATED THE JURISDICTIONAL CLAIM RELATED TO THE INDICTMENTS UNDER THE INCORRECT JURISDICTIONAL PRONG TO CIRCUMVENT GRANTING THE APPROPRIATE RELIEF, OR THE GREENVILLS COMMON PLEAS COURT HOLDING, DELAYING CASE 2016-CP-23-4850,

COMPROMISING THE APPLICANT'S HIRED ATTORNEY PREVENTING HIM FROM FILING A RULE 59(e) MOTION, IS FRAUD THAT INDUCES A PERSON NOT TO PRESENT THE ISSUES SOUGHT OR CASE BEING REVIEWED IN ITS TOTALITY AS WAS DONE HERE, OR DEPRIVES A PERSON OF OPPORTUNITY TO BE HEARD AS THE STATE ACTORS DID BY THIS UNCONSTITUTIONAL ACTION. THE JURISDICTIONAL CLAIMS MADE CANNOT BE WAIVED OR FORFEITED. THE APPLICANT/PETITIONER OBJECTS, RABY CONST. L.L.P., v. ORR., 358 S.C. 10, 594 S.E.2d. 478 (S.C.App.2004); HENDRICKS v. RAGSDALE, S.E.2d., 2005 WL 7084031 (S.C.App.2005); BILEY v. ROBINSON, S.E. Rptr., 2009 WL 2524416 (S.C.App.2019).

THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION IS ALREADY INVOKED TO HEAR ALL OF THESE MATTERS AND ALL MERITS RELATED THERETO. THE APPELLANT MOTIONS AND OR PETITIONS TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION ALONG WITH THE OTHER INMATES WHO ARE PRESENTLY BEFORE THE COURT FROM THE VARIOUS COUNTIES AROUND THE STATE. THESE MATTERS ARE SOUGHT REVIEW UNDER THE DUE PROCESS/CONSTITUTIONAL PRONG TO SUBJECT MATTER JURISDICTION, WHICH CANNOT BE WAIVED OR FORFEITED, WHICH CAN BE RAISED AT ANY STAGE, AT ANY TIME, EVEN AFTER A FINAL ORDER HAS BEEN ISSUED IN THE CASE, EVEN FOR THE FIRST TIME ON APPEAL, KOSCIUSKO v. PARHAM, 428 S.C. 481, 836 S.E.2d. 362 (S.C.App.2019); FIRST CITIZEN BANK AND TRUST COMPANY, INC. v. TAYLOR, 431 S.C. 149, 847 S.E.2d. 249 (S.C.App.2020); ASTERBADI v. LEITESS, 176 Fed. Appx' 426 CA4 (Va.2006); PYNE v. UNITED STATES, F.Scapp.3d., 2016 WL 1377402 (D.C.Md.2016); UNITED STATES v. CONRAD, 675 Fed. Appx' 263, 265 CA4 (N.C.2017); STEEL CO. v. CITIZENS FOR A BETTER ENVIRONMENT, 523 U.S. 83, 118 S.Ct. 1003(U.S.1998); CHASE v. ANDEAVOR LOGISTICS, L.P., 2019 WL 5847879, \* 2 W.D.Tex.; HENDERSON EX REL HENDERSON v. SHINSEL, 131 S.Ct. 1197, 1198+ U.S.; WALLS v. BOEING COMPANY, 2019 WL 4931365 \* 2 D.S.C..

INDEED, IT IS PERSPICUOUS THAT THESE IDENTICAL LEGAL ISSUES ARE ALREADY BEFORE THE S.C. SUPREME COURT PURSUANT TO THE

McCRAy, CASE, McKINNON, WILSON, BROWN, PARKER, MITCHELL AND POTENTIALLY OTHER INMATES AROUND THE STATE CASES WHO SEEK TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION. THEREFORE, IN FUNDAMENTAL FAIRNESS TO THE APPELLANT/APPLICANT/PETITIONER IN THIS CASE, NOW THAT HE HAS DISCOVERED THAT THESE MATTERS EXIST BEFORE THE S.C. SUPREME COURT AT THIS TIME. TO DENY THE APPLICANT THIS SUBSTANTIAL DUE PROCESS RIGHT TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION WITH THE OTHER INMATES WHERE THE APPLICANT IS ARGUING AGAINST THE PRECEDENT ESTABLISHED BY THE GENTRY AND LANGFORD CASES PURSUANT TO APPELLATE COURT RULES, RULE 217. SUCH ACTION WOULD VIOLATE THE APPELLANT'S RIGHTS UNDER THE EQUAL PROTECTION OF THE LAWS CLAUSE AND WOULD BE UNCONSTITUTIONAL, BODMAN v. STATE, 403 S.C. 60, 742 S.E.2d. 363(S.C.2013); MARSHALL v. CITY OF ROCK HILL, S.E.2d., 2015 WL 3384258(S.C.App.2015); U.S. v. BURTON, 11 Fed. Appx' 328, 2011 WL 640248 CA4 (2011); IANNELLI v. U.S., 420 U.S. 770, 95 S.Ct. 1284, 43 L.Ed.2d. 616; HOLLOWAY v. PERRY, 2016 WL 4074149. THE APPELLANT, LIKE THE OTHERS BEFORE THE SUPREME COURT ASSERTS THE RIGHT OF NON PARTY COLLATERAL ESTOPPEL AND OR RES JUDICATA ON THE ISSUE OF THE TWO PRONGS TO SUBJECT MATTER JURISDICTION AND THE S.C. ATTORNEY GENERAL CONTINUALLY DEFAULTING ON THESE SAME IDENTICAL ISSUES WITHIN ALL COUNTIES INVOLVED. THIS HAS ALREADY BEEN ESTABLISHED EVEN BY CASES COMING OUT OF THE STATE OF SOUTH CAROLINA.

IF YOU TAKE A FATALLY DEFECTIVE INDICTMENT AND BRING IT BEFORE A CRIMINAL COURT FOR THE PURPOSE OF FRAUDULENTLY PROCURING A CONVICTION CONSTRUCTIVELY AMENDING THE INDICTMENT ALL OVER THE PLACE, DEPRIVING THE APPLICANT OF FAIR AND PROPER NOTICE OF WHAT EXACTLY HE IS CALLED UPON TO MEET AND DEFEND, TAKING AWAY THE PRESUMPTION OF INNOCENCE ESSENTIALLY PREDETERMINING IN ADVANCE THE OUTCOME OF THE PROCEEDINGS? THOSE PROCEEDINGS BECOME UNCONSTITUTIONAL AND VOID WHICH IS TO BE ADJUDICATE UNDER THE DUE PROCESS/CONSTITUTIONAL PRONG TO SUBJECT MATTER JURISDICTION. AN ACT OF THE COURT THAT STAND IN BLATANT DEFIANCE TO THE UNITED STATES CONSTITUTION CANNOT BECOME LAW OR STAND AS LAW. SEE CASES

CITED WITHIN THE FILINGS.

AS THE OTHER INMATE APPELLANTS SAID, LADIES AND GENTLEMEN OF THE S.C. SUPREME COURT. WHEN THE INMATES WITHIN THIS STATE SEEN HOW JUDGE BEATTY WITH ALL VALOR AND JUDICIAL INTEGRITY STOOD UP AND SPOKE OUT AGAINST PROSECUTIONAL MISCONDUCT DONE ON THE PART OF THE VARIOUS SOLICITORS' OFFICES AROUND THIS STATE. THE INMATES HEAPED APPLAUSE UPON THE NAME OF JUDGE BEATTY. SOMETIME AFTER THAT, THE INMATES THEN DISCOVERED THAT THIS RIGHTEOUS JUDGE WOULD SOON LEAD THE S.C. SUPREME COURT. THE INMATES STATEWIDE SHOUTED ACCOLADES UPON JUDGE BEATTY'S NAME BECAUSE THEY KNEW JUDGE PLEICONES WOULD NO LONGER BE ALONE IN THE QUEST FOR "JUSTICE AND FAIRNESS". THIS WAS NOT BECAUSE THESE TWO MENTIONED JUDGES WERE "SOFT ON CRIME", QUITE THE CONTRARY. IT WAS BECAUSE THESE TWO JUDGES ARE KNOWN BY ALL TO BE "JUST AND FAIR" AND RULE IN THE FEAR OF THE ONE TRUE GOD. BY NO MEANS ARE THESE STATEMENTS MEANT TO DISPARAGE OR QUESTION THE INTEGRITY OF THE REMAINING HONORABLE JUDGES OF THE SUPREME COURT, QUITE THE CONTRARY. THE PREMISE FOCUSED ON HERE, IS THAT WHEN "THE HEAD", "THE LEADER" IS FULL OF "LIGHT, WISDOM AND UNDERSTANDING",...THE "BODY" BECOMES FULL OF "LIGHT, WISDOM AND UNDERSTANDING". IT IS A SIMPLE AND WELL ACCEPTED CONCEPT. THE PRISONS IN THE STATE OF SOUTH CAROLINA ARE HURTING AND UNDER STAFFED. THE PUBLIC HAS BEEN SCREAMING BEFORE OUR STATE LEGISLATURE FOR SOME TIME NOW DEMANDING PRISON REFORM TO NO AVAIL, DUE TO THE SYSTEM DISPROPORTIONATELY TARGETING AFRICAN AMERICANS, OTHER MINORITIES AND POOR WHITES OF THIS STATE TO THEIR DETRIMENT WHICH UNJUST ACTION BY THE LEGISLATURE IS PRODUCED BY NEFARIOUS DESIGN BECAUSE THEY FIGURED IF FREED. THE MAJORITY OF THE INMATES WOULD VOTE FOR THE DEMOCRATIC PARTY. THIS DEFIES "JUSTICE AND FAIRNESS" AND VIOLATES THE EQUAL PROTECTION OF THE LAWS CLAUSE ALSO PRODUCING DISENFRANCHISING UNDER THE 15TH. AMENDMENT. THAT GENTRY CASE RULING FROM 2005 SPITS IN THE FACE AND STANDS IN BLATANT DEFIANCE TO THE MANDATES OF "JUSTICE AND FAIRNESS" BEING A VIOLATION OF DUE PROCESS LAW PRODUCED BY A JUDGE TOAL CONTROLLED COURT.

THEREFORE, IT MUST BE REVISITED AND ABOLISHED, BEING A CLEAR VIOLATION OF DUE PROCESS LAW, BEING UNCONSTITUTIONAL AND "VOID". THIS EGREGIOUS MANIFEST INJUSTICE DONE LED BY JUDGE TOAL MUST BE ADDRESSED WITHIN THE SUPREME COURT, NOT ANY OTHER STATE LOWER COURT WHO DON'T HAVE THE AUTHORITY TO OVERRULE THE SUPREME COURT. DO NOT BE AFRAID TO FULFILL YOUR FIDUCIARY DUTY TO THE PUBLIC AND TO "JUSTICE AND FAIRNESS" IN THE FACE OF THE ONE TRUE GOD. THOSE INMATES WHO ARE TRULY WICKED WILL INDEED RETURN GIVING THE S.C. ATTORNEY GENERAL'S OFFICE ANOTHER OPPORTUNITY TO MAKE THE PROCESS RIGHT THIS TIME. IN FUNDAMENTAL FAIRNESS, NOT JUST TO THE APPELLANT, BUT TO ALL INMATES WITHIN THIS STATE. THE REVERSAL OF THE GENTRY CASE IS PARAMOUNT AND WOULD BE THE FIRST STEPS AT PRISON REFORM IN LIGHT OF THE FACT THAT WE MAY BE DEALING WITH A NEFARIOUS, SURREPTITIOUS PLOT TO DISENFRANCHISE THE AFRICAN AMERICANS, OTHER MINORITIES AND POOR WHITES OF THIS STATE BECAUSE THE REPUBLICAN LED LEGISLATURE FIGURES THAT IF THESE INMATES WERE FREED THEY WOULD MORE THAN LIKELY VOTE DEMOCRATIC PRODUCING A 13th., 14TH. AND 15TH. AMENDMENT ATTACHMENT TO THESE LEGAL ISSUES THAT ARE THE SOURCE OF THE CONTROVERSY. THE LEGAL ISSUES ARGUED WITHIN THESE CASES MUST BE HEARD WITHIN THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION WHICH PRODUCE SUBSTANTIAL PUBLIC JURIS CLAIMS EFFECTING EVERY COURT, EVERY COUNTY AND EVERY INMATE AND PRETRIAL DETAINEE WITHIN THE STATE OF SOUTH CAROLINA.

AS THE OTHER INMATES BEFORE THE S.C. SUPREME COURT, I TOO, PETITION TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION TO HEAR ALL OF THESE MATTERS AS JUSTICE REQUIRES AND DEMAND. THE APPELLANT(S) KNOW THAT THE REVERSAL OF THE GENTRY MAY SCARE A LOT OF PEOPLE. BUT IT IS "JUST AND FAIR" WHETHER ANYONE LIKES IT OR NOT. THE LAW IS NOT SUPPOSE TO OPERATE ON FEELINGS. THE LAW IS SUPPOSE TO OPERATE ON JUSTICE, ON FAIRNESS, ON LAW. THIS IS POTENTIALLY THE INMATES OF THIS STATE ONLY CHANCE AND OPPORTUNITY FOR ANY SORT OF PRISON REFORM SINCE THE LEGISLATORS OF THIS STATE FAILED IN THEIR FIDUCIARY DUTY BEFORE GOD AND COUNTRY TO ACT, VIOLATING THEIR OATHS OF OFFICE TO PROTECT ALL CITIZENS, EVEN THE

ALLEGED OR "SO-CALLED" GUILTY OF THIS STATE AS THE STATE AND FEDERAL CONSTITUTIONS REQUIRE. THUS, THIS SACRED DUTY AND TRUST HAS NOW FALLEN ON THE SHOULDERS OF THE S.C. SUPREME COURT, THE BEATTY COURT, TO CORRECT THE INJUSTICE PRODUCED BY THESE TWO PRECEDENT SETTING CASES ARGUED. THE APPELLANT PETITIONS TO INVOKE THE S.C. SUPREME COURT'S ORIGINAL JURISDICTION AS IS ARGUED AND SEEKS THAT HIS CONVICTION BE REVERSED AND VACATED. THE APPLICANT/PETITIONER PRAYS THE COURT WILL GRANT THIS RELIEF TO INCLUDE ANY AND ALL OTHER RELIEF THE COURT WOULD DEEM JUST, FAIR AND PROPER, MOHAWK INDUSTRIES, INC. v. CARPENTER, 558 U.S. 100, 130 S.Ct. 599, 175 L.Ed.2d. 458(U.S.2009); TAMM v. CINCINNATI INSURANCE COMPANY, 2020 WL 60932 (S.D.N.Y.2020); UNITED STATES v. VALLADARES, 2019 WL 4888629, \* 1, W.D.Tex.; BURGESS v. UNITED STATES, 2019 WL 7293400 \* D.Md.; BRADLEY v. HULLANDER, 266 S.C. 188, 222 S.E.2d. 283 (S.C.App.1976); HEMINGWAY EX REL ESTATE OF DAVIS v. MARION COUNTY, S.E.2d., 2013 WL 8538725 (S.C.App.2013); ADAMS v. McMASTER, 432 S.C. 225, 851 S.E.2d. 703 (S.C.App.2020); MONTGOMERY v. LOUISIANA, 136 S.Ct. 718, 193 L.Ed.2d. 599, 84 U.S.L.W. 4063(U.S.2016); 24 SENATORIAL DIST. REPUBLICAN COMMITTEE v. ALCORN, 820 F3d. 624 (4th.Clr.2016).

RESPECTFULLY,

JAQUESE KAVON HYATT



JULY 10, 2021

## The Supreme Court of South Carolina

Jaquese Kavon Hyatt, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-000296

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### ORDER

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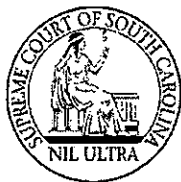
Petitioner has failed to serve and file the petition for writ of certiorari and appendix, as required by Rule 243(d) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY Patricia A. Howard  
CLERK

Columbia, South Carolina  
October 6, 2021

cc:  
Lillian Loch Meadows, Esquire



## The Supreme Court of South Carolina

PATRICIA A. HOWARD  
CLERK OF COURT

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August 30, 2021

Mr. Jaquese Hyatt, 00363113  
Lee Correctional Inst.  
990 Wisacky Highway  
Bishopville SC 29010

Re: Jaquese K. Hyatt v. State  
Appellate Case No. 2021-000296

Dear Mr. Hyatt:

Mr. Yarborough's office has advised that the transcript in the above case has been sent to you. In view of this, the Petition for Writ of Certiorari and appendix should be served and filed on or before September 29, 2021. Failure to timely file these documents can result in dismissal of your post-conviction relief case.

Very truly yours,

*Patricia A. Howard*

CLERK

cc: Lillian Loch Meadows, Esquire