

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2013-000928
Lower Court Case No. 2011-CP-32-2954

RECEIVED

DEC - 9 2013

S.C. Supreme Court

SAMUEL HARMON, #328335,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT.

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 Fax
jeremyatlaw@yahoo.com

ATTORNEY FOR PETITIONER.

INDEX

Index	i
Trial Transcript dated May 5-7, 2008	1
Jury Selection.....	9
Pre-Trial Instructions to the Jury	32
State’s Opening Statement.....	36
Defense’s Opening Statement.....	44
Sherman Davis	
Direct.....	47
Cross	69
Redirect.....	81
Brandon Harmon	
Direct.....	89
Cross	108
Alex Haigler	
Direct.....	119
Cross	133
Redirect.....	142
James Keitt	
Direct.....	144
Cross	165
Redirect.....	175
Jamar Porcher	
Direct.....	176
Cross	189
Redirect.....	192
Recross.....	197
Jonathan Washington	
Direct.....	207
Cross	235
Redirect.....	238

Richard Geiger	
Direct.....	239
Cross	256
Redirect	257
Tasha Jones	
Direct.....	257
Raymond Brown	
Direct.....	267
Cross	293
Redirect	295
Recross	296
Marco Harper	
Direct.....	296
Cross	306
Steve Larosa	
Direct.....	307
Tyler Dennison	
Direct.....	310
Gini Youmans	
Direct.....	314
Dennis Tyndall	
Direct.....	317
Traci Barr	
Direct.....	323
Troy Crump	
Direct.....	328
Cross	345
Redirect	345
Recross	345
Luke Fossum	
Direct.....	346
Cross	351
Paige Tucker	
Direct.....	352

Kent Correll	
Direct.....	357
David Collins	
Direct.....	359
Cross	368
David Black	
Direct.....	369
Cross	389
Eric Russell	
Direct.....	394
Cross	405
Joel Sexton	
Direct.....	411
Cross	425
Directed Verdict Motion	426
Cathy Etheridge	
Direct.....	430
Cross	433
Michelle McLaurin	
Direct.....	438
Cross	439
Samuel Harmon	
Direct.....	441
Cross	456
Redirect	462
Sonya Peak	
Direct.....	463
Cross	465
Hope Frick	
Direct.....	478
Cross	481
Redirect	485
Eric Russell	
Direct.....	487
Cross	492

Hope Frick	
In Camera Direct	496
Directed Verdict Motion.....	500
Defense's Closing Argument.....	503
State's Closing Argument.....	517
Charge to the Jury	534
Verdict.....	561
Sentencing.....	565
Amended Final Brief of Appellant	576
Initial Brief of Respondent.....	597
Court of Appeals Opinion filed February 24, 2011	639
Petition for Rehearing.....	641
Order Denying Petition for Rehearing filed April 21, 2011	650
Remittitur filed May 27, 2011	652
Application for Post-Conviction Relief filed August 4, 2011	653
State's Return dated April 5, 2012.....	661
Clerk of Court Records	667
SCDC Records.....	686
Amended Application for Post-Conviction Relief filed November 14, 2012	692
PCR Hearing Transcript dated January 31, 2013.....	696
Wayne Floyd	
Direct.....	705
Cross	726
Redirect.....	730
Samuel Harmon	
Direct.....	733

Applicant's Exhibit #1	763
Applicant's Exhibit #2	764
Order of Dismissal filed March 28, 2013	770
Notice of Appeal filed April 30, 2013	786

1 THE COURT: Defense four is in evidence without
2 objection.

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

5 THE COURT: All right. Anything further from
6 the State?

7 MS. GARRICK: No, Your Honor.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you.

10 (Whereupon the witness left the stand.)

11 MR. MYERS: Your Honor, with that, the State
12 would rest at this time.

13 THE COURT: Okay. Ladies and gentlemen, you
14 have heard all of the testimony you're going to hear
15 in this case. Now we have come to the point you will
16 hear the closing arguments of the attorneys and I
17 will charge you on the law.

18 And that's probably going to take a couple
19 hours. I don't know. And it's 10 minutes to 12. So
20 we'll probably just break for lunch now and come
21 back -- at 1:30?

22 That -- we'll come back at 1:30 and have the
23 closing arguments and I will charge you on the law
24 and then give you this case to deliberate. I remind
25 you you can't discuss it yet. Don't allow anybody to

1 discuss it with you.

2 Have a nice lunch. And if you will be back in
3 the jury room at 1:30, we will have the closing
4 arguments.

5 (Jury left the courtroom at 11:52 am.)

6 THE COURT: Anything we need to take up?

7 MR. FLOYD: Your Honor, if I can just call
8 Mrs. Frick back to the stand to cross-examine.

9 THE COURT: Sure.

10 HOPE FRICK, resumed the stand and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. FLOYD:

14 Q Mrs. Frick, how many cases would you say are
15 presented to the Grand Jury every year or every month,
16 whatever...

17 A Every month that -- it varies from -- it averages
18 about 195 to 250 a month.

19 Q And of those presented to the Grand Jury, how many no
20 bills do you usually get in a month?

21 A A month or the year?

22 Q Let's start with a month.

23 A Some months none, and then other months I'll have
24 two, three, four.

25 Q So out of the 3000 or so in a year, you get a

1 handfull of no bills?

2 A About a dozen. About a dozen I'd say in a year.

3 Q Thank you. No more questions.

4 THE COURT: Any questions from the State?

5 MR. MYERS: No, sir.

6 THE COURT: Thank you, ma'am. Thank you, sir.

7 (Whereupon the witness left the stand.)

8 THE COURT: All right. Anything further before
9 we break for lunch?

10 MR. MYERS: Not from the State.

11 MR. FLOYD: No, sir.

12 THE COURT: Do y'all have any particular charges
13 that you -- besides the standard and I was going to
14 charge obviously the crimes that are in the
15 indictment.

16 MR. FLOYD: Your Honor, we're going to ask for a
17 mere presence charge.

18 THE COURT: What's the State's position on that?

19 MR. MYERS: Whatever you want to charge. Charge
20 mere presence, you have to charge the hand of one is
21 the hand of all.

22 THE COURT: And that's true. I mean, if
23 there -- so if I charge mere presence, I -- and it's
24 kind of all in the same charge, hand of one, hand of
25 all. You understand that?

1 MR. FLOYD: Oh, I understand that, Your Honor.

2 THE COURT: And I'll, you know, do typical
3 criminal intent and everything else, then... then
4 just the crimes there on the indictment.

5 MS. GARRICK: And expert.

6 THE COURT: Right. I'll have that. We have
7 expert testimony, too.

8 MR. FLOYD: Your Honor, we would ask that you
9 charge accessory after the fact as a lesser included.

10 MR. MYERS: It's not a lesser included.

11 THE COURT: Okay. I didn't think it's a lesser
12 included either. It's different elements.

13 MR. FLOYD: Well, Your Honor, I realize under
14 the traditional analysis it may not be. However, if
15 you look at the crime, the typical timeline,
16 basically we would have planning the crime, we have
17 commission of the crime, we have pleading to avoid
18 prosecution. It's all the same criminal act.

19 And if you happen to come down on helping them
20 escape, then you're -- then you're accessory after
21 the fact which on a timeline is a lesser included of
22 a continuing criminal act.

23 MR. MYERS: No, sir. It's the traditional
24 lesser included in the law. And accessory after the
25 fact is -- not come under that. Then this court

1 created lesser included like aggravated assault and
2 battery being a lesser of CSC, and the Court hasn't
3 created that either.

4 So under either theory, accessory after the fact
5 is not a lesser included offense of the crime of
6 murder. Be our position obviously of the State. The
7 different defenses I think. Just want to be clear on
8 that.

9 *THE COURT:* Because if it's not a lesser
10 included offense then I charge accessory after the
11 fact, how are they going to find him guilty of
12 accessory after the fact when it's -- when it's no
13 plea sheet and no indictment for it?

14 If it's not a lesser included offense, then I
15 can't put it on the verdict form.

16 *MR. FLOYD:* I agree. It's our position it would
17 be a lesser included.

18 *THE COURT:* I don't think it is, but I will look
19 at it over lunch just to be sure. And if I find it
20 is, we will address that when we get back.

21 *MR. FLOYD:* Thank you. Your Honor, will we be
22 allowed to review what you're going to tell the jury
23 on -- like mere presence and so forth so that our
24 argument is consistent with it?

25 *THE COURT:* Sure. You have to speak to my Law

1 Clerk about that, whether she will get it ready in
2 time. How long do y'all think you're going to take?

3 MR. MYERS: The State would take about 30, 35
4 minutes.

5 THE COURT: Are y'all going to -- are you going
6 to open and close, just close or what...

7 MR. MYERS: Just close.

8 THE COURT: Okay. And how long...

9 MR. FLOYD: My guess is 35, 45 minutes.

10 THE COURT: Okay. You can take up to two hours.
11 When I was in law school they told us that the
12 average adult attention span was 19 minutes. Now I
13 think they have re-evaluate it, it's down to eight
14 minutes, but y'all can talk as long as you want to.
15 I will see you at 1:30.

16 MR. FLOYD: Thank you, Your Honor.

17 (Whereupon court was in recess for lunch.)

18 THE COURT: Any matters we need to take up
19 before we bring the jury in?

20 MS. GARRICK: No, Your Honor.

21 MR. FLOYD: Two things, Your Honor.

22 THE COURT: Okay.

23 MR. FLOYD: First, Your Honor, I would like to
24 renew my motion now that all the evidence is in as to
25 a directed verdict of acquittal being it's our

1 position that now particularly in light of the
2 evidence presented by the defense in this matter that
3 as a matter of law there's not sufficient evidence to
4 establish guilt beyond a reasonable doubt in this
5 matter.

6 *THE COURT:* Thank you, Mr. Floyd. I
7 respectfully deny your motion. I think there's
8 sufficient evidence in this record that a jury could
9 find him guilty.

10 *MR. FLOYD:* Thank you, Your Honor. One other
11 matter on the Jury charges.

12 *THE COURT:* Yes, sir.

13 *MR. FLOYD:* Your Honor, is it your ruling or
14 your finding here that since I asked for a mere
15 presence then you are giving the hand of one charge?

16 *THE COURT:* That's the request of the
17 Solicitor's Office.

18 *MR. FLOYD:* If I withdraw my mere presence
19 request, does that withdraw the hand of one charge?

20 *THE COURT:* What says--

21 *MR. MYERS:* We will leave it up to Your Honor.

22 *THE COURT:* And I can -- I mean, one of these
23 scenarios, if either side wants to -- I think there's
24 certainly some evidence in this record that would
25 support both of those charges. And so if both sides

1 want them, I will charge them. If both sides don't
2 want them, I won't charge them.

3 I'm not sure -- even though the number of people
4 here, that the jury has I think heard from everyone
5 except -- well, everyone involved in this -- this
6 crime, so I think they'll be able to differentiate
7 that.

8 But at least from what everyone that's testified
9 to, they were -- other than your client -- going to
10 plead guilty or had been offered accessory after the
11 fact.

12 So it's -- I won't charge it if the State
13 doesn't request it. What is the State's position? I
14 know -- there's evidence. If you request it, I will
15 charge it. If you don't want it charged -- I'm not
16 real sure what the jury is going to do with it, but I
17 will do whatever.

18 MR. MYERS: Charge it. We request to charge it.

19 THE COURT: All right. Then you--

20 MR. FLOYD: Then I request mere presence.

21 THE COURT: Okay. Anything else?

22 MR. FLOYD: Nothing further.

23 THE COURT: All right, sir. Bring us the jury.

24 (Jury entered the courtroom at 1:35 pm.)

25 THE COURT: Thank you, ladies and gentlemen.

1 Mr. Floyd?

2 MR. FLOYD: Thank you, Your Honor.

3 CLOSING STATEMENT

4 MR. FLOYD: Ladies and gentlemen of the jury,
5 this portion of the trial is what we call the closing
6 argument. It's a chance or the opportunity that we
7 lawyers have to try to sum up the case, present our
8 client's position to you.

9 Before I get into that, I would like to thank
10 each and every one of you for the attention that you
11 have given to this matter. It's a most important day
12 in the life of Samuel Harmon.

13 And as you have heard during this trial, the
14 decision that you make about him will effect him for
15 a long, long time. So we appreciate you giving us
16 your close attention.

17 Now, I'm going to repeat something to you. It's
18 not that I think you have forgotten it. It's just
19 that it's so important because it goes to what you,
20 the jury, actually decide in a criminal case.

21 Remember, we talked to you some in opening
22 statement about what's called the presumption of
23 innocence. And by the way, both Mr. Myers and I,
24 we'll be talking to you some about the law that
25 applies in this case in our closing arguments.

1 I caution you, Judge Cothran is the judge of the
2 law. When we finish our summations to you, he will
3 address you on the law, give you what's called the
4 charge on the law, and you're to rely on what he says
5 because he's the judge of the law.

6 On the other hand, you the jury are the judges
7 of the facts. You're the only ones with that power
8 and that responsibility. So if either Mr. Myers or I
9 say something to you about the evidence in this case
10 that is different than your recollection of it, you
11 go by your recollection of it because you're the
12 judges of the facts.

13 But remember this. Samuel Harmon comes before
14 you to be judged. You must accept the proposition of
15 law that Samuel Harmon is charged with. And Samuel
16 Harmon remains innocent unless the State proves his
17 guilt to each one of your satisfactions beyond a
18 reasonable doubt.

19 What do we mean by that? Some people define
20 reasonable doubt as that doubt which would cause a
21 reasonable person to hesitate to act. That doubt
22 which would cause a reasonable person to hesitate to
23 act.

24 So if you could somehow take all the evidence
25 you have heard in this case, put it in the shape of

1 this piece of paper, and because of one piece of that
2 evidence or the lack of one piece of evidence you
3 would hesitate before you would vote him guilty of
4 this charge or these charges, well then your
5 obligation as a juror is to return a verdict of not
6 guilty even if there's other evidence in the case
7 that makes you suspicious of his guilt.

8 Because when you vote guilty or not guilty, you
9 don't vote on whether or not you think he did it.
10 What you're voting on, does this evidence convince me
11 of the defendant's guilt beyond a reasonable doubt.

12 Now, as I told you at the beginning, we don't
13 dispute that crimes occurred on this day, terrible
14 crimes, uncalled for crimes. Someone fired a gun.
15 Someone died as a result of that gunfire. Someone
16 was injured seriously. Others were frightened by it.

17 There's no excuse for it. I don't stand up here
18 and try to argue to you there's any excuse for that.
19 There was nothing done by any of these other people
20 to justify somebody shooting that gun out. It's a
21 terrible thing. Terrible waste of life.

22 The question we have before us today is whether
23 or not the evidence proves beyond a reasonable doubt
24 that Sammy Harmon was the one that fired that weapon.

25 Now, there are several charges that are before

1 you. Murder, assault and battery with intent to
2 kill, assault with intent to kill, possession of a
3 firearm during the commission of a violent crime.

4 Now, I'm sure that Mr. Myers will probably get
5 up and go through each one of the elements of those
6 crimes. Maybe he won't. We don't have an argument
7 as to whether or not the actions of whoever fired
8 that gun satisfy the evidence -- fired it.

9 We agree with you -- we would agree with the
10 State that whoever fired that gun, whoever did it,
11 will be guilty of this crime. Now, the question is,
12 Sammy Harmon is the only one on trial today. Has the
13 evidence proven him guilty beyond a reasonable doubt?

14 You know, I'm not going to come back. I'm not
15 going to go back through everything that everybody
16 said. I think all of you listened closely. I'm
17 going to touch on some points, but obviously taking
18 some notes... but really in order to understand how
19 this thing developed, you have got to go back to how
20 the day started.

21 Now, what do we know? Let's hit a couple of
22 things that are undisputed. I will come back to some
23 details on them.

24 It is undisputed that at some point on this
25 afternoon in question, Denise Boykin, Randy Boykin,

1 Trey Brown, Tasha Brown, Jamar Porcher, and Jerome
2 Washington, and if I -- we indicated went to The
3 Number One Flea Market to shop.

4 It is undisputed that while they were there,
5 they met or saw or encountered Brandon Harmon, and
6 the people in the burgundy, three people in the
7 burgundy car.

8 George Mack, the driver, Sherman Davis, who had
9 a child with him at the time, nobody disputes that.
10 We know because nobody disputes it that Denise and
11 her crowd, they leave there end up at The Barnyard
12 Flea Market.

13 We know that then these three people, George,
14 Brandon, Sherman, and Little James, James Keitt, they
15 show up at The Barnyard Flea Market in the burgundy
16 Crown Vic.

17 It's not disputed that Alex Haigler and Sammy
18 Harmon also arrived at The Barnyard Flea Market in
19 the green Cavalier. Okay. All that's undisputed.

20 We know that at some point someone fired that
21 rifle, this SK rifle that's placed in evidence,
22 however times -- some of the bullets strike it and
23 killing Denise and striking and injuring Trey Brown.
24 Those are in evidence.

25 Now let's go to the investigation matter. What

1 do we learn what happened? The police come. They
2 get two pieces of information which they get started
3 on the investigation.

4 They get the license tag the other car they say
5 Trey's -- they have the name of George Mack. And
6 then Scooter, Richard Geiger, gives them the name of
7 Brandon Harmon because he recognizes Brandon.

8 He knows Brandon. I saw him -- oh, saw him. He
9 gave the name Brandon Harmon and then -- remember the
10 gentleman who did a very good job of following the
11 car, getting the license tag -- through that they
12 have George Mack. So they got two names, George
13 Mack, Brandon Harmon.

14 So, they do interviews of victims. So they got
15 the name Brandon Harmon at that point. And they get
16 Jamar Porcher to identify Brandon Harmon as the
17 shooter. Remember that?

18 Then what happens? They arrest George Mack.
19 Run down that license tag and bring George Mack in
20 here. They get George Mack in there. Say, well, we
21 didn't promise him anything. Good citizen that he
22 is. He says, that's Sammy Harmon.

23 This good citizen who called to tell him his car
24 was stolen, stay there not too long... Now, where
25 are we now? Well, we got Jamar picking out Brandon,

1 we got George Mack saying, Brandon, it's Sammy
2 Harmon. I just saw that.

3 Well, go back to Jamar and we get him to do
4 another photo line-up and we get him to identify
5 Sammy this time. Of course, we got to explain that,
6 so we didn't get a statement saying, well, yeah, --
7 yeah, I -- this -- I think the statement is in
8 evidence.

9 When I picked out number four, I was only saying
10 he was there, not that he was the shooter, which is
11 always... Don't know what happened, but now
12 everybody is on the same page.

13 Now we bring in everybody was there, Sherman
14 Davis, Alex Haigler, James Keitt, Brandon Harmon,
15 Sammy's brother. Now, y'all heard every one of them
16 testify.

17 They all say, well, it's -- Sammy's the shooter.
18 Then they try to say, no, I really wasn't promised
19 anything. Oh well, yeah -- oh, well, yeah, I'm going
20 to get to plead to accessory after the fact.

21 And they are all charged with murder to start
22 with, okay? Got them all charged with murder. And
23 all the charges facing here but Sammy. Think that
24 they didn't already know that George pointed out
25 Sammy? Promised... even though it don't make sense,

1 we're going to talk about that.

2 Were they promised anything? How about, well
3 that's why we brought in that -- notice they didn't
4 bring George Mack in here; did they? They didn't let
5 you know George Mack.

6 They didn't want you to see what George Mack
7 looked and sounded like even though he's the one that
8 got the whole thing started. They didn't let you see
9 it. They didn't let me bring him here to be
10 cross-examined.

11 We had call the Clerk of Court's office to show
12 you what happened with him, what happened with him.
13 Murder dismissed. Assault and battery with intent to
14 kill dismissed. Assault with intent to kill,
15 dismissed. Conspiracy, dismissed. Possession of a
16 firearm, dismissed. Accessory after the fact.
17 That's what all of this...

18 Now, let's talk about the evidence we heard from
19 the other people. First it's a couple of things that
20 make you hesitate. Scooter Geiger, Richard Scooter
21 Geiger, he knew Sammy Harmon just like he knew
22 Brandon Harmon.

23 And you know what? He never even saw Sammy
24 Harmon. He saw -- he saw the people with the gun,
25 but he never saw Samuel Harmon. How about Trey

1 Brown? His statement is in evidence.

2 You saw the driver, saw the driver take the gun
3 out of the car, put it back in. He said the same
4 thing... shooter. Sammy Harmon doesn't have a
5 record. Samuel Harmon wasn't the driver.

6 Let's talk about just whether or not it even
7 makes sense that Sammy Harmon would be the shooter.
8 What do we know? What is uncontroverted in this
9 case?

10 How did a gun get to The Barnyard Flea Market?
11 Well, it got there in the trunk of George Mack's car.
12 How did Sammy Harmon get to The Barnyard Flea Market?
13 He rode as a passenger in Alex Haigler's vehicle
14 which had no gun.

15 Now, why -- what was causing this dispute?
16 Words exchanged at The Number One Flea Market between
17 George, Brandon, and Sherman and Scooter, not Samuel
18 Harmon. Samuel Harmon wasn't having any dispute with
19 these people.

20 Second -- second thing -- or maybe it's the
21 fourth, fifth, whatever one I'm on. What do we know?
22 Who opened the trunk of the car for access to the
23 gun? Was it Sammy Harmon? Haven't heard anything
24 about that; have you?

25 Well, you heard two stories. Most people said

1 as the vehicle drove up, as that Crown, that burgundy
2 Crown Vic drove up, the trunk was popped. Remember
3 that?

4 Well now, they put in his statement of George,
5 George Mack. He said different -- he said, well,
6 Little James came around and popped that trunk, I
7 didn't do it. But one thing is for sure, Samuel
8 Harmon didn't do it. Sorry. Samuel Harmon didn't do
9 it.

10 Now, second question. Who took the gun out of
11 the trunk? Anybody say Sammy Harmon did that?
12 Didn't; did they? Most everybody said George Mack
13 took the gun out of the trunk and flashed it.

14 Who was the second person that everybody said
15 had the gun? Well, Little James Keitt. They say he
16 picked it up second.

17 Now, let's stop here. You know what's important
18 about that? None of the victims, none of the victims
19 ever said more than two people had their hand on the
20 gun. You think about that. You think about that.

21 Now, they admit all these people come here and
22 pointing their finger at Sammy Harmon for their
23 deals. They all admit that George Mack had his hands
24 on the gun and that Little James Keitt had his hands
25 on the gun.

1 But what's so ironic is that all the victims
2 say, only two people had their hands on the gun. You
3 know what? That fits right into what Samuel Harmon
4 said. What did he say?

5 Well, he said he drove over to the flea market,
6 rode over there. Y'all heard everything. You know,
7 brother calls, they go over there. They park -- if I
8 do this differently than you remember -- go by your
9 memory.

10 My understanding, my recollection is that the --
11 Miss Boykin and Scooter, their cars were parked
12 somewhere in parking area and that George Mack, he
13 came in -- you know, I think there were different
14 distances, four or five parking places whatever.

15 Go by your memory. Parked somewhere in that
16 parking area, too. Alex Haigler parked over in this
17 area. I don't think everybody testified exactly what
18 that distance was.

19 I think Haigler thought the distance was, you
20 know, from the witness chair to the column. And I
21 believe Sammy thought it was -- went on past the
22 front -- I mean, it's a pretty good distance away.

23 Now remember this because everybody is
24 consistent on this. When George Mack drove up, when
25 he stopped his car, the trunk popped. It's out.

1 Takes the gun out, flashes it. The gun goes in.
2 Somebody else gets the gun, little James Keitt.
3 Talking about something -- matter of seconds.

4 Now, if we are to believe these guys who gets
5 the deal story, Sammy had to take off, drive that
6 distance, go over, grab the gun out of Little James
7 Keitt's hand and start firing.

8 All right. Let's take -- let's examine that.
9 Does that make sense? Let's start with that. Why?
10 He wasn't even in the dispute. Why would he come
11 over, grab the gun and start shooting? Think of
12 this, too.

13 In looking back all the people that testified
14 that would be the victims in the case, know what
15 nobody ever said they saw? Somebody advancing
16 rapidly toward the gun?

17 Now, if you looking back and you got a gun
18 you're looking at, aren't you going to see somebody
19 hauling it toward that gun? Aren't you going to
20 catch them in your eye? Nobody did.

21 Now, the Judge is going to charge you as to the
22 law. One of the things he's going to tell you is
23 that there's a thing in the law called the hand of
24 one is the hand of all.

25 Now, you got to interpret that along with

1 another charge called mere presence at the scene does
2 not make him guilty of a crime. I suggest to you
3 take them together.

4 What that means is is if you and some guys get
5 together or you and some girls, you and some other
6 people, some other people get together, plan a crime,
7 say you plan to rob a bank, take guns in there, and
8 somebody pulls the gun and shoots somebody, all had
9 the gun, all took -- all agreed to take the gun, go
10 rob the bank, so everybody is guilty, equally guilty.

11 In this case there is absolutely no evidence
12 whatsoever that Samuel Harmon ever agreed to do
13 anything with a gun. He didn't take the gun there.
14 No evidence -- all it -- wasn't in on the first
15 incident.

16 Of course, obviously the hand of one is not the
17 hand of all in this case because everybody else is
18 getting a plea to accessory after the fact.

19 The mere fact that Sammy Harmon was present when
20 that gun was fired does not make him guilty. The
21 question is did he fire the gun.

22 When you go to consider that question, want you
23 to think of something. And I'm going to shut up and
24 sit down in just a few. I see the -- I've been up
25 here talking a long time. I apologize.

1 But see where it's -- I shut up, I know when I
2 sit next to Sammy, I don't get to say another thing
3 to you. The Solicitor gets up behind me, and he is
4 very good, he is very good at it, and he is going to
5 talk about it different than me.

6 Now, he gets to go last, which is an advantage
7 for the same reason they get to sit closer to you.
8 You see, they got the burden of proof. They got to
9 prove him guilty beyond a reasonable doubt.

10 So I have to stand up here and try to figure out
11 every possible thing he might say, and I never do.
12 Never do. So all I can do is to ask you, when you
13 get back in that jury room, if he brings up something
14 different than I do, think how we could have
15 responded to it if we had the opportunity.

16 When you go to make that decision about whether
17 or not this evidence proves guilt of Sammy Harmon
18 beyond a reasonable doubt, think about some of the
19 things we'd say. Think about the fact that none of
20 the victims would identify him. Think about it.

21 All the victims said two people had their hands
22 on the gun, not three. Scooter Geiger. He knew him.
23 Didn't see -- he saw the people with the gun but he
24 didn't see Sammy Harmon.

25 Think about the deals that got offers to the

1 people who pointed the finger at him, even his
2 brother. Terrible. Think about it. Sammy had
3 nothing to do with that gun in the mean time. He
4 wasn't even in the car at the... Nobody saw him
5 hurrying over there to grab the gun.

6 Think about it. Sammy took the stand. He
7 looked him in the eye. I suggest if you believe him,
8 that's all you need. Is he a believable person?

9 Thank you again for your attention. And we feel
10 comfortable placing Sammy Harmon in your hands.
11 Thank you all.

12 MR. MYERS: Need -- excuse us.

13 THE COURT: Need -- ladies and gentlemen, we're
14 going to take a five minute break and then we'll come
15 back and continue closing arguments and I will charge
16 you on the law.

17 (Jury left the courtroom at 2:10 pm.)

18 MR. MYERS: Thank you.

19 (Whereupon there was a brief recess.)

20 THE COURT: Okay. Bring us the jury if they are
21 ready.

22 (Jury entered the courtroom at 2:19 pm.)

23 THE COURT: Mr. Solicitor, you may proceed.

24 MR. MYERS: Thank you, Your Honor.

25 CLOSING STATEMENT

1 MR. MYERS: Angry words, even fighting words,
2 they don't justify 24 blasts from an AK47 assault
3 rifle. Angry words, even fighting words, don't
4 justify shooting down in cold blood an unarmed,
5 innocent 19 year old. And that's what you have.
6 That's what you have.

7 And oh, the police, they are so bad. Oh, I'm so
8 horrible. Giving people deals. Who killed this
9 woman? Sammy Harmon. Who had the intent to murder
10 Denise? Sammy Harmon.

11 Who is the only person that pulled the trigger
12 taking the life of a young girl? Sammy Harmon. Who
13 is the only one guilty of murder? Sammy Harmon.

14 Others had a chance, but they didn't have that
15 meanness. Others had the opportunity, but they
16 didn't have that maliciousness. Others held the gun,
17 but they didn't have evil on their mind and murder in
18 their heart. One did. Sammy Harmon.

19 Now, you're the judges of the facts. The Judge
20 will tell you that. He's already told you that. You
21 decide the believability and the credibility of the
22 witnesses.

23 Do you know before I even knew this thing
24 happened, these officers were already talking with
25 the witnesses. That good fellow Marco Harper in his

1 little blue truck with his brother with him having
2 the guts to follow a car from a mass shooting out
3 here, 23 rounds in a parking lot, he had the guts to
4 follow the car which on the tape I think they said
5 took out like a bat out of -- whatever. Get the tag.

6 Everything else was chaos. People screaming,
7 people yelling, you heard some of the tapes. Mass
8 confusion. Officers not knowing who is involved in
9 the shooting, who is the victims of the shooting,
10 trying to get things under control. Chaos.

11 Thank goodness for Marco Harper's
12 courageousness. The officer's dedication. They
13 start getting things together. It's on the weekend.
14 It's on Saturday.

15 And by Saturday night, somebody is already in
16 custody, George Mack who gives a statement. He gives
17 a statement here. Detective Eric Russell takes it.
18 See, I don't even know anything has happened yet.
19 I'm not even in town, but I'm promising people
20 things.

21 Then by morning, two more in custody in
22 Orangeburg, the murderer and his good friend Little
23 James Keitt in a motel. On that day two more are in
24 custody. His brother, Brandon, and Sherman Davis
25 turn themselves in and they give out a statement.

1 And all this is done by Monday morning. And
2 they given statements the shooter is Sammy Harmon.
3 The murderer, Sammy Harmon. And how does it start?
4 How does this whole senseless episode start? By
5 young fellows trying to act mean, mouthing off.

6 What does Sherman and what does Brandon say?
7 You know, they were first ones out there at Number
8 One. Rode out there with George Mack. Sherman and
9 the defendant's brother Brandon said Scooter comes up
10 and accuses Brandon of being in a gang, Gpan.

11 And hey, you got something against my family.
12 And what does Sherman and what does Brandon testify
13 to? You got me mixed up with my brother Sammy. He's
14 the Gpan, not me. He's -- he's the one in Gpan, the
15 gang, not me, you got me mixed up. Sherman and
16 Brandon said that. And things kind of calmed down.

17 Now, old worthless no good George Mack and his
18 brother, who is own blood and kin, now he's saying is
19 lying, and Sherman, his other friend, if they wanted
20 to kill somebody, they could have done it right then
21 because that awful assault rifle is in the trunk of
22 George Mack's car.

23 And you know when it got in there. It got in
24 there the night before. Where was the car when the
25 rifle was put in there? Even the defendant admits

1 this.

2 Friday night, the night before George Mack,
3 Brandon Harmon, Sherman Davis, and Sammy Harmon, and
4 Little James Keitt, and a bunch of others were out
5 Apple Valley at Duriel and Sammy's house. And that's
6 a bad neighborhood because they all got guns out
7 there.

8 And Duriel, whoever he is, is living with the
9 defendant Sammy out there in Apple Valley. They have
10 got a blue Crown Victoria. And his brother takes
11 that awful weapon out of the defendant's blue Crown
12 Victoria, puts it on the hood of the car and then
13 puts it in the burgundy Crown Victoria of George
14 Mack.

15 That happened in the place where he was living.
16 But he's innocent. How did that gun get in his car
17 Friday night to begin with? Why was it transported
18 to George Mack's? I don't know.

19 I don't know. Because I don't think they had
20 any idea they were going to run into all these other
21 folks here on Saturday morning. But the defendant,
22 oh, he's pure as Ivory soap. He ain't got nothing to
23 do with this. He's innocent. He told you so.

24 Does he have anything to lose by lying to you
25 folks? You're the judge of the facts. And whatever

1 goes on at Number One is done. It's over until
2 brother Brandon calls killer Sammy and tells him what
3 happened.

4 And what does Sammy Harmon say? I'm on the way.
5 The calvary is coming. We'll even up the odds.
6 We'll straighten this mess out. We'll show them who
7 is the toughest and who is the meanest.

8 Brandon was calling to find out where Little
9 James was. He called his brother said, wonder where
10 Little James is. Sammy says, I just left him, been
11 over at his house helping him clean up, but I'm on
12 the way.

13 I'm at the barbershop with my other good friend
14 Alex. Does Alex just dropped off his girlfriend or
15 his wife and their kids to take Sammy Harmon to the
16 barbershop. But Alex is nothing but a double-faced
17 liar now.

18 Others show up unfortunately. Three on Number
19 One. They picked up Little James by now in the car
20 with the first three, and here comes the calvary.
21 Alex brings and Sammy to the place that a 19 year old
22 has probably less than 30 minutes to breathe clean
23 air of the Earth. Her life is coming. In minutes
24 she'll be dead because the calvary is on the way.

25 And what happened out there again? Ya, ya,

1 mouthing back and forth. Now, we are going to even
2 up the odds. But you know what? These folks in
3 those two little cars, Camry and Toyota, they ain't
4 even got a weapon, not even a knife.

5 Here comes an armed vehicle and the leader of
6 the calvary. And whatever happens out there, it's no
7 excuse. That God awful weapon came out of the trunk
8 of that burgundy Crown Vic.

9 How many people handled it? You heard that
10 George got it. You heard Little James said that he
11 took it from George. Now, what was Little James
12 thinking? He did it.

13 You judge the facts, but he ain't smart enough
14 to make something up. He was pretty dumb up there.
15 You could look at him and tell he was dumb. I don't
16 think he's got enough brain matter to lie because
17 he's being led around.

18 He's so dumb he carries around a 38 pistol that
19 doesn't even work. Now, that's an Einstein for ya.
20 He carries around a 38 pistol that won't even fire.
21 I bet he made A's in school -- if he was copying
22 Sammy's papers.

23 But he says, I took that gun from George.
24 Said -- and here the leader of the calvary starts
25 charging in. Why? I don't know, folks. I don't

1 have to prove that to you.

2 I submit to you it's malicious, it's mean, and
3 it's a total disregard for human life because that's
4 what he did. He doesn't care about the law. Not
5 him. He's Gpan.

6 And when he got that gun in his hand, don't care
7 how many people touched it before. None of them were
8 going to shoot. He was. When he put his hand around
9 that handle and his finger on that trigger, he
10 already had evil on his mind, malice in his heart,
11 and murder consumed him.

12 Now, he couldn't come in here and say, well, it
13 went off by accident. Couldn't say that. He
14 couldn't say, well, I shot up in the air or on the
15 ground.

16 You don't shoot 23 times from an assault rifle,
17 you don't leave 23 shell casings in a parking lot,
18 you don't do the damage to the vehicle unless you
19 have murder on your mind and malice in your heart and
20 you intend to kill somebody and you just don't care.
21 Folks, that's what you do.

22 Now, take his testimony and everybody else's.
23 Who is the one person who said that Sammy Harmon was
24 lying on the ground in The Barnyard parking lot when
25 the shooting happened?

1 Did anybody say one person was lying on the
2 ground other than the leader of the calvary of
3 murder, the shooter? Kind of like in a bar shooting
4 in 45 people in a little restroom.

5 But he was on the ground. He don't know who did
6 the shooting. But he said, I looked in the eye, and
7 I didn't do it. What's he got to gain about lying to
8 you. He doesn't care about another human being's
9 life. For you to consider. That's up to you.

10 Assault rifle. They make them and we have to
11 put up with them. Mr. Floyd said take off that
12 little sheet or corner of a paper, you have to find
13 him not guilty. That ain't right. That ain't the
14 law.

15 You can take that off. But if you firmly
16 believe that this fellow is the murderer, you find
17 him guilty. The Judge will tell you that. That's
18 what proof beyond a reasonable doubt is. That is,
19 what it is.

20 Now, what is the defense? The defense is simply
21 this. That from the time this shooting was over with
22 until Monday morning when Alex Haigler was the last
23 one arrested and the victim's dead, there is one huge
24 conspiracy by the other five Einsteins because they
25 have to somehow come up with a story that their

1 friend, their companion, their brother was the
2 shooter and how the gun went from George to Little
3 James to him?

4 Now, if they came up with this story, who -- who
5 dreamed it up? Who is the mastermind of the
6 conspiracy? What is it, brother Brandon, going to
7 conspire on his own flesh and blood who he called to
8 come help?

9 Or was it George Mack who was the first person
10 arrested that told them what the others said after
11 they were arrested? Or was it Sherman Davis, another
12 friend who was with him the night before?

13 And now you remember when Sherman -- when the
14 shooting was over with -- that they got together, but
15 Sherman, he left and went home. So how did he get
16 with these other people to dream up this big
17 conspiracy?

18 Was there Alex Haigler, the fellow that he had
19 worked with, the fellow who dropped off his
20 girlfriend and his kids to take him to get his hair
21 cut, who drove him over to the flea market?

22 You know, Alex Haigler, he, too was at some
23 apartment in Columbia. Was it brilliant Little James
24 that -- did he think of all this? Where and when did
25 this conspiracy evolve because he was with him the

1 whole time.

2 So how could the other five come up with this
3 preposterous lie about him when he's there with him.
4 All at his place. And why would they pick him out?
5 If it was me, I'd pick out Little James. He's the
6 dumbest one in the crowd.

7 He's so dumb nobody saw him with that worthless
8 pistol, but he told the police he had a pistol. That
9 is how smart he is. Nobody saw him with the pistol,
10 not even these other folks.

11 The police first found out about it when they
12 went out there and George took them to look for the
13 rifle, and by God, they found a pistol. They said,
14 where did that come from? We don't know nothing
15 about it.

16 And James being down in Orangeburg, they didn't
17 even have warrants for him when the defendant was
18 trying to hide and run away, and they said, well,
19 what you want to do? He said, well, I'm going to
20 ride back to Columbia with y'all. He wasn't even
21 under arrest.

22 And he said, by the way, I had a pistol out
23 there, and it didn't work, and I pulled the trigger a
24 few times, and sure enough that's what happened.
25 Now, why would he lie? That's for you to decide.

1 Who is the leader of the conspiracy to frame
2 poor old Sammy Harmon? One who was arrested Saturday
3 this happened. These two take off to Orangeburg.

4 Now, whose idea was it to go to Orangeburg?
5 Sammy Harmon's. He said you know something, Little
6 Jim? You got relatives down there, let's go to
7 Orangeburg. Little James said, oh, yes, let's --
8 James didn't even pack a bag. Had his cellphone.

9 Sammy Harmon even finds an unknown fellow
10 walking down the street to rent him a motel because
11 he said he didn't have an ID. That make sense to
12 you?

13 Does that appeal to your good old common sense?
14 He's laying low because it was hot. He was getting
15 out of town. He took his Patsy (sic) with him.
16 Thank God for technology. Thank God he used these.

17 It's through all that stuff that I don't
18 understand either, pinpointed him with the cellphone.
19 By daybreak Sunday morning they know the motel where
20 he's at. They know whose phone it is.

21 George Mack gave it to them. But charged with
22 conspiracy? He too is the one that's lying? Had
23 them earlier that morning. They could have left
24 James there. They had no warrant for him. You know,
25 I'm going to ride back with y'all.

1 Then Brandon and Sherman turn themselves in.
2 Now, how did Brandon and Sherman get back with smart
3 James and George Mack to think of this conspiracy?
4 And where is Alex? How did they do that, folks?

5 How did they come up with a lie to frame this
6 man over here? If you can think of it, find him not
7 guilty and we'll give him that gun back and let him
8 walk out the door. And hold it against me for
9 prosecuting an innocent man.

10 Or was Alex -- he wasn't arrested till Monday.
11 Hadn't talked with these guys since they have been
12 arrested. Didn't know what they had told the police.
13 But by God, holy moly, who did they say the shooter
14 was? The same person that...

15 Now, I ask you this one question. Why Sammy
16 Harmon -- what would he have done to his brother
17 Brandon for his brother Brandon to lie and say Sammy
18 was the shooter?

19 But why? Brandon is not guilty of murder. He
20 didn't shoot the gun. Why would you lie against his
21 own brother unless he's telling the truth, and his
22 brother Sammy Harmon is the murderer.

23 And why were charge -- young, dumb Little James,
24 why would he say something like that unless it was
25 the truth? He's going down to Orangeburg with him.

1 And here is something else I want to ask you.

2 If you were as pure as Ivory soap, and they say
3 it's 99.4, whatever, and you out in a parking lot and
4 you are laying on the ground and the last fellow you
5 see with this assault rifle is Little James, you
6 going to go to Orangeburg with him? You going to
7 hang out with him? And not even going to ask him
8 what happened, what went on?

9 That appeal to your common sense? That
10 appeal -- why would -- why would Alex -- his brother.
11 But folks, they weren't lying. They were telling the
12 truth.

13 They told the truth on that Saturday night.
14 They told the truth Sunday morning. They told the
15 truth Sunday afternoon. And they told the truth
16 Monday before I even got back from Orangeburg.

17 But here I'm -- try make up all this stuff. You
18 tell a prosecutor's job is to seek justice. And I'm
19 going to prosecute five people who have given full --
20 for murder?

21 I don't -- I can't -- that lady over there that
22 Mrs. Frick, I have got to wait till the Grand Jury to
23 do something. All those indictments up there, Sammy
24 Harmon, murder, murder, murder.

25 And he was spraying that car with all those

1 bullets, two -- one in the head. Firing all those
2 rounds shooting left and right. There's one even up
3 there on that x-ray that bullet still in that child's
4 head.

5 Assault and battery with intent to kill. That's
6 where Trey Brown was seated. There's a car full of
7 people, folks, and you have got something as menacing
8 as an AK47 assault rifle, and that magazine has 30
9 rounds and you pull the trigger 24 times, you are
10 going to kill people.

11 You don't intend to kill a person. You intend
12 to kill some people. Trey Brown is a lucky man. Sew
13 him back. He's lucky that when all these bullets
14 were flying in the air busting out the back window on
15 his side one didn't get as high as it did on Denise's
16 side.

17 That young girl Tasha, her brother Randy in the
18 back seat, they are lucky folks. You saw the
19 pictures. The only thing that saved them was the
20 seat of their car, that metal seat. Otherwise we
21 would have four bodies in here. One is bad enough.

22 You look him in the eyes and they said, well,
23 you don't have any forensics. It was raining. It
24 was a downpour. Thank goodness that Chief Tyndall
25 had gotten out there when he was next door at the

1 auto shop place and he had that blue tarp and he
2 covered up this stuff. You could still see some
3 water out here afterwards.

4 And there's 23 of these yellow placards plus the
5 one that Chief Tyndall got and turned over. Total of
6 24. You can't get from guns out in the woods in a
7 rain storm.

8 And by the way, CSI and that stuff on
9 television, y'all look at it for entertainment, but
10 that stuff is bologna. That don't happen. It's good
11 TV, but it ain't what happens.

12 Sammy Harmon was malicious. He was mean. And
13 you know, when you tell a lie, you will slip up.
14 Don't care how good you are, you'll slip up.

15 Mr. Harmon, why were you nervous? Why were you
16 scared? Why did you run to Orangeburg? Well, I just
17 seen somebody die. Remember that? Had just seen
18 somebody die.

19 Glass -- no, no, no, I saw it on the television.
20 I didn't know anybody died. I saw it on television.
21 After that, I didn't know anybody died. Y'all
22 scratch that out. Disregard that. Didn't have an
23 ID.

24 That's why he got that other man. And Gpan is a
25 music group. Talks about -- killing people and jail

1 and stuff like that, but he isn't into that. That's
2 not him. Don't know why his brother and Sherman said
3 that. Of course, they are lying.

4 And the mass conspiracy. This even tops the
5 Kennedy assassintion. This is much better than that.
6 When you folks go back to your room, I want you to do
7 something.

8 I want you to look at that magazine in there.
9 You know, it's kind of like in the war -- have these
10 horrible things. And I want you to look at this.
11 Sammy Harmon held this.

12 Sammy Harmon started pulling this trigger for no
13 reason at all because life means nothing to him. He
14 didn't pull it one time. You remember some of those
15 people said started on the ground and kicking up
16 dust, was coming right into the car.

17 And then you look in it and see 45. It's a
18 bottle in here labeled number one by Dr. Joel Sexton.
19 That bullet was taken from the brain of Denise.

20 That bullet came out of the end of this assault
21 rifle. That bullet was fired because Sammy Harmon
22 had his finger on the trigger. He had murder on his
23 mind and he had malice in his heart, and he killed a
24 sweet, innocent child.

25 And they say a -- you know, this is the most

1 important day in the life of Sammy Harmon. Your
2 decision will effect the rest of his life. That's a
3 lie.

4 The most important day in his life and the
5 decision that will effect his life was July the 15th
6 of 2006 when he took his own actions, he made his own
7 decision, and now he's got to accept the
8 responsibility of his cowardly act.

9 They said oh, officer, why don't you arrest him,
10 keep him out of all this violence, why don't you do
11 something? They have done it. They have brought him
12 here.

13 Solicitor, why don't you prosecute these
14 murderers? We have done it and have done a marvelous
15 job. Why don't you do something?

16 Well folks, now is the time and here's the
17 place. I ask you judge this, do something, make him
18 take responsibility because he is a cowardly
19 murderer. Thank you.

20 JURY CHARGE

21 *THE COURT:* Now ladies and gentlemen, you have
22 heard the evidence in this case and the arguments of
23 both the State and the defendant, and I will explain
24 to you the law that applies.

25 Under our Constitution and code of laws, only

1 the jury can make finding of fact in this case. I am
2 not permitted to you to indicate how I might feel
3 about the facts.

4 So if I have said anything or done anything
5 throughout this trial that would indicate to you I
6 have a feeling about these facts, you need to
7 disregard that because you alone must determine the
8 evidence presented during this trial and render your
9 verdict based solely on the facts that came before
10 you, and I'm not allowed to have an opinion about the
11 facts.

12 The same Constitution and code of law that makes
13 and designates you the exclusive judges of the facts
14 also makes me the exclusive judge of the law.

15 So if you have an opinion as to what you think
16 the law is or what you think the law ought to be and
17 if that opinion differs from what I now tell you the
18 law is, you must disregard your opinion under your
19 oath and accept the law precisely as I give it to
20 you.

21 The fact that this defendant was arrested,
22 charged, and indicted in this case is not evidence in
23 this case and cannot be considered by you as evidence
24 of guilt in this case.

25 Nor does it create any presumption or inference

1 of guilt. The indictment is simply a formal written
2 instrument which contains the charges or charge that
3 brings the defendant into the courtroom. It is
4 simply a formal document to process this case with.

5 The defendant has pled not guilty to these
6 indictments. And that plea casts the burden of proof
7 upon the State of South Carolina to prove him guilty
8 beyond a reasonable doubt.

9 Now, a person charged with committing a criminal
10 offense in South Carolina is never required to prove
11 himself or herself innocent. It is an important rule
12 of law in this country that a defendant in a criminal
13 trial will always be presumed innocent of the crime
14 or crimes for which he is charged unless and until
15 his guilt has been proven by evidence which satisfies
16 you the jury of his guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere legal
18 theory. It is not just a legal phrase. It is a
19 substantial Constitutional right to which every
20 defendant is entitled.

21 The presumption of innocence accompanies this
22 defendant from the time he is charged, throughout the
23 trial, until you reach a verdict based upon the
24 evidence that satisfies you of that guilt beyond a
25 reasonable doubt.

1 Reasonable doubt is a doubt which makes an
2 honest, sincere, conscientious juror in search of the
3 truth in this case to hesitate to act. Proof beyond
4 a reasonable doubt must therefore be proof of such
5 convincing character that a reasonable person would
6 not hesitate to rely and act upon it in the most
7 important of his or her own affairs.

8 Proof beyond a reasonable doubt can also be
9 described as proof that leaves you firmly convinced
10 of the defendant's guilt.

11 There are very few things in this world that we
12 know with absolute certainty. And in a criminal
13 case, the law does not require proof that overcomes
14 every possible doubt.

15 If based on your consideration of the evidence
16 you are firmly convinced that the defendant is guilty
17 of the crimes charged, you must find him guilty.

18 On the other hand, if you think there's a real
19 possibility that he is not guilty, you must give him
20 the benefit of that doubt and find him not guilty.

21 In determining what the facts are in the case,
22 you must necessarily pass upon the credibility, which
23 simply means the believability of the witnesses, and
24 give what value and weight you think their testimony
25 deserves.

1 You alone must decide the force and effect of
2 the truth of their testimony. In making these
3 decisions there are many things you may and should
4 take into consideration.

5 One, the appearance and manner of the witness on
6 the stand, sometimes referred to as the demeanor of
7 the witness. Was the witness forthright or hesitant.
8 Was the witness's testimony consistent or did it
9 contain discrepancies.

10 What was the ability of a witness to know the
11 facts about which he or she testified. Did the
12 witness have a cause or reason to be biased or
13 prejudiced in favor of the testimony he or she gave.

14 Was the testimony of a witness corroborated or
15 made stronger by other testimony and evidence or was
16 it made weaker or impeached by such other testimony
17 or evidence.

18 The rules of evidence do not ordinarily permit a
19 witness to testify to opinions or conclusions. An
20 exception to this rule exists for a witness who we
21 call expert witnesses.

22 A witness who by education and experience has
23 become an expert in some art, science, profession, or
24 calling may state an opinion as to relevant and
25 material matters in which the witness claims to be an

1 expert and may also state the reasons for that
2 opinion.

3 You should consider an expert's testimony or
4 opinion received into evidence in this case like any
5 other evidence. Give it the weight you think it
6 deserves.

7 If you decide the opinion of the expert is not
8 based on sufficient education and experience or if
9 you conclude that the reasons given in support of
10 that opinion are not sound or that the opinion is
11 outweighed by other evidence, you may disregard the
12 opinion in its entirety.

13 An expert's testimony is to be given no greater
14 weight than that of any other witness simply because
15 that witness is an expert. Further, you're not
16 required to accept an expert's opinion even though it
17 is not contradicted.

18 As jurors you have the right to believe a small
19 portion of a witnesses testimony and disregard the
20 larger or vice versa. You may believe all of a
21 witness's testimony or none of a witness's testimony.

22 You may believe the testimony of a single
23 witness against that of many or the other way around.

24 Now, there are two types of evidence that
25 generally are presented during the trial, direct and

1 circumstantial evidence.

2 Direct evidence is evidence -- is testimony from
3 a person who asserts or claims to have actual
4 knowledge of such a fact such as an eye witness.

5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a
7 fact. The law makes absolutely no distinction
8 between the weight or value given to either direct or
9 circumstantial evidence.

10 I'll give you an example. If I go to bed one
11 December night and I look out my front window and my
12 lawn is clear. I wake up the next morning and it's
13 covered with snow.

14 I did not see it snow, but I -- but through
15 circumstantial evidence I can assume that some time
16 during the night it snowed because when I got up the
17 next morning, my whole yard was covered in snow.
18 That is the circumstantial evidence. If I saw it
19 snow that would be direct evidence.

20 After weighing all of the evidence, if you are
21 not convinced the defendant is -- the guilt of the
22 defendant beyond a reasonable doubt, you must find
23 the defendant not guilty.

24 Criminal intent is a necessary element of each
25 crime and must be proven by the State beyond a

1 reasonable doubt. Criminal intent is always a matter
2 that must be determined by the jury from the
3 circumstances surrounding the situation.

4 There is no way to prove intent to a
5 mathematical certainty. There is no way medical
6 science can dissect a person's brain and determine
7 what he or she had in mind.

8 So the law states that criminal intent may be
9 inferred from the circumstances shown to have existed
10 both before and after the fact. This is how you the
11 jury makes the determination of whether or not the
12 element requiring intent is present.

13 Criminal intent is a state of mind that operates
14 jointly with an act or omission in the commission of
15 a crime. Criminal intent is a mental state of
16 conscious wrongdoing.

17 So it's up -- it is up to you the jury to
18 determine what the defendant intended to do based on
19 circumstances shown to have existed.

20 I tell you that the State must prove criminal
21 intent beyond a reasonable doubt just as the State
22 must prove every element beyond a reasonable doubt.

23 Now, mere presence at a scene is insufficient to
24 prove someone guilty of a crime. The burden is upon
25 the State to prove every element of the crime

1 charged.

2 If you find after receiving all of the evidence
3 that the State has proved the defendant was only
4 present at the scene of the crime, and that they
5 had -- they had not proven beyond a reasonable doubt
6 any other participation in the crime, then you must
7 find the defendant not guilty.

8 The law is that proof of mere presence at the
9 the scene of a crime is not sufficient to find
10 someone guilty.

11 If a crime is committed by two or more people
12 who are acting together in committing of a crime, the
13 act of one is the act of all. A person who joins
14 with another to accomplish an illegal purpose is
15 criminally responsible for everything done by other
16 person which occurs as a natural consequences of the
17 acts done in carrying out common plan and purpose.

18 Two or more people are acting together,
19 assisting each other in committing of the offense,
20 the act of one is the act of all or sometimes said
21 the hand of one is the hand of all.

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

1 the defendant is present when the crime is committed,
2 is not sufficient to convict the defendant as a
3 principal.

4 Guilt as a principal is shown by actual and
5 constructive presence at the scene as a result of a
6 prior arrangements. Therefore, a finding of a prior
7 arranged plan or a common scheme is necessary for a
8 finding of guilt as a principal.

9 The State must prove beyond a reasonable doubt
10 by competent evidence the theory of the hand of one
11 is the hand of all.

12 A principal in a crime is one who either
13 actually commits the crime or who is present aiding,
14 abetting, or assisting in the committing of the
15 crime.

16 When a person does an act in the presence of or
17 with the assistance of another, the act done is done
18 by both.

19 Where two or more acting with a common plan or
20 intent are present at the commission of a crime, it
21 does not matter who actually commits the crime. They
22 are -- all are guilty. The hand of one is the hand
23 of all.

24 Presence at the commission of -- of a crime
25 means to be sufficiently near to aid and abet and

1 assist in the commission of a crime. However, mere
2 presence at the crime scene is not sufficient to
3 convict one as the principal under the theory of
4 aiding and abetting.

5 Intent is also a necessary element which there
6 must have been a common scheme or design or intent to
7 commit a crime, and the crime must have been
8 committed pursuant thereto when the person aiding and
9 abetting by some overt act.

10 Intent means intending the result which actually
11 occurred, not accidentally or involuntary. Intent
12 may also be shown by acts and conducts of the
13 defendant and others -- circumstances for which you
14 may naturally and reasonably infer, and the State
15 must prove these elements beyond a reasonable doubt.

16 Now, the defendant is charged with murder. The
17 State must prove beyond a reasonable doubt the
18 defendant killed another person with malice
19 aforethought.

20 Malice is hatred, ill will, or hostility towards
21 another person. It is the intentional doing of a
22 wrongful act without just cause or excuse and with an
23 intent to inflict an injury or under circumstances
24 that the law would infer an evil intent.

25 Malice aforethought does not require that malice

1 exist for any particular time before the act is
2 committed, but malice must -- must exist in the -- in
3 the mind of the defendant just before and at the time
4 the act is committed. Therefore, there must be a
5 combination of previous ill intent and the act.

6 Malice aforethought may be expressed or
7 inferred. The terms express and inferred do not mean
8 different kinds of malice, but merely the manner in
9 which the malice would be shown to exist.

10 That is, either by direct evidence or may be
11 inferred from some other fact the circumstances which
12 will -- which are proven.

13 Express malice is shown when a person speaks
14 words which express hatred or ill will for another or
15 when the person prepares beforehand to do the act
16 which was later accomplished.

17 For example, lying in wait for a person or in --
18 or in any other act of preparation going to show that
19 the deed was within the defendant's mind would be
20 express malice.

21 Malice may be inferred from the conduct showing
22 a total disregard for human life. Inferred malice
23 may also arise when the deed is done with a deadly
24 weapon.

25 A deadly weapon is any article, instrument, or

1 substance which is likely to cause death or great
2 bodily harm. Whether an instrument has been used as
3 a deadly weapon depends on the facts and
4 circumstances of each case.

5 The following are examples of instruments which
6 may be deadly weapons. A pistol, a shotgun, a rifle,
7 a dirk, a dagger, a knife, a slingshot, metal
8 knuckles, a razor, gasoline, fire bomb, Molotov
9 cocktail, lighter fluid. A gun may be a deadly
10 weapon even if it is not operating.

11 The defendant is also charged with assault with
12 intent to kill. In order to prove assault with
13 intent to kill, the State must prove beyond a
14 reasonable doubt the defendant with malice
15 aforethought unlawfully attempted or offered to
16 commit a violent injury upon another person and had
17 the present ability to complete that attempted
18 injury.

19 Assault is the intentional creation of a
20 reasonable fear of immediate -- of immediate bodily
21 harm. It is not necessary that the attempted injury
22 or harm actually took place.

23 For example, if I walk up to you and when we are
24 within arms reach, I draw back to hit you, that is an
25 assault. And this assault must also be accompanied

1 by malice. And I had explained to you what malice is
2 in my definition of murder.

3 Now, the defendant has been charged with assault
4 and battery with intent to kill. In order to prove
5 assault and battery with intent to kill, the State
6 must prove beyond a reasonable doubt that the
7 defendant committed an unlawful act of violence -- of
8 a violent nature to the person of another with malice
9 aforethought.

10 Assault occurs when a person unlawfully attempts
11 or offers to commit a violent injury upon another
12 person and had the present ability to commit the
13 attempted injury.

14 Assault is the intentional creation of an
15 unreasonable fear of immediate bodily harm. And as I
16 have explained to you in the other definition, it's
17 not necessary that the attempted injury or harm
18 actually take place. Just as I said, if I walk up to
19 you within arms range and draw back to hit you,
20 that's an assault.

21 Battery is the unlawful touching of another
22 person by a person who has committed the assault. An
23 unlawful touching can be caused by a part of the
24 accused's body or by any object that the accused puts
25 in motion.

1 A battery is the completion of the assault by
2 using or applying force to another person, however
3 slight, in a rude, angry, or resentful manner without
4 legal justification for doing so.

5 Using my earlier example, if I carried through
6 with the assault by hitting you, then that is the
7 battery.

8 Malice is also an important part of assault and
9 battery with intent to kill. And I have explained to
10 you the definition of malice in my definition of
11 murder.

12 Now, the defendant is also charged with
13 possession of a weapon during the commission or
14 attempt to commit a violent crime. The State must
15 prove beyond a reasonable doubt the defendant was in
16 possession of a firearm or visibly displayed what
17 appeared to be a firearm during the commission of a
18 violent crime.

19 Firearm means any machine gun, automatic rifle,
20 revolver, pistol, or any weapon which will or is
21 designed to or may be readily converted to expel a
22 projectile.

23 In order to find the defendant guilty of
24 possession of a weapon during the commission of a
25 violent crime, you must first find the defendant

1 guilty of either committing a violent crime or
2 attempting to commit a violent crime.

3 Violent crimes in the South Carolina code are
4 murder, assault and battery with intent to kill, are
5 definitions of violent crimes within the State of
6 South Carolina.

7 Now ladies and gentlemen, you are not partisans
8 for the State of South Carolina or for this
9 defendant. You do not serve as jurors to reward your
10 friends or punish your enemies. Obviously that
11 system of justice would not be tolerated.

12 You have been selected by both the State and
13 this defendant to be fair and impartial jurors. And
14 it is your duty then by your joint deliberation to
15 determine the truth in this case giving to this
16 defendant the benefit of every reasonable doubt on
17 each and every issue.

18 Then to the facts which you determine to be
19 true, you are to apply the law which I have now given
20 to you and reach a verdict or arrive at a verdict
21 that speaks the truth in this case.

22 And when you have accomplished this, you will
23 have satisfied your duties to this court. And I will
24 remind you that your verdict must be beyond a
25 reasonable doubt.

1 Now, what I need you to do and what I meant to
2 do before I brought you back in, I'm going to -- I
3 had charged you on the law. What I want you to do is
4 go to the jury room and pick a foreperson.

5 And I have found out juries usually do better --
6 y'all have spent the most part of this week together,
7 so you got to know each other a little bit, and y'all
8 usually do better when you pick your own foreperson
9 than when I do because I don't know any of you.

10 The foreperson has no greater vote than anyone
11 else. They simply preside over the deliberations.
12 And they will -- once you have a unanimous verdict
13 will write that verdict down on the plea sheet (sic),
14 knock on the door, inform the bailiff you have
15 reached a verdict, and come back out and we will
16 receive the verdict.

17 So I'm going to -- what we are going to do, I
18 will send you to the jury room for a minute. We will
19 get all the evidence together. I will put the
20 verdict forms together.

21 I will bring you back out when you have selected
22 a foreperson and instruct that foreperson how to fill
23 out the verdict form and then send you back into the
24 jury room for your deliberation until you reach a
25 verdict.

1 Now, if you will go to the jury room. And when
2 you have elected that foreperson, if you will knock
3 on the door and let us know, I will bring you back
4 out.

5 (Jury left the courtroom at 3:14 pm.)

6 *THE COURT:* Any exceptions or deletions from the
7 State?

8 *MS. GARRICK:* No, Your Honor.

9 *MR. MYERS:* No, sir.

10 *THE COURT:* From the defense?

11 *MR. FLOYD:* Your Honor, we'd just renew our
12 objections to Your Honor's refusal to charge
13 accessory after the fact as a lesser included.

14 *THE COURT:* All right. All right. If y'all
15 will look at this possible verdict form. I have had
16 my Law Clerk do a separate sheet for each indictment.

17 If y'all will be sure we have all the evidence
18 together so when they come back out, I was going to
19 give it all to them and send them back.

20 *MR. FLOYD:* Looks okay to us.

21 *THE COURT:* Okay. Both attorneys be sure with
22 the Court Reporter that we've got all the evidence
23 together to give it to them to go back to you.
24 Can't -- unless going to cut that lock off, they
25 can't get the gun to work. Whatever y'all want to

1 do. What's y'all's position... Do y'all normally
2 send--

3 MS. GARRICK: We have a trigger lock on the
4 weapons.

5 THE COURT: I know. Everybody else sends them
6 back, but I don't want to mess up what y'all normally
7 do here. We don't have a trigger lock in Clarendon
8 County. We just send them back. It's in evidence.
9 What y'all...

10 THE CLERK: I was under the understanding that
11 live ammunition couldn't go back at the same time
12 with the guns.

13 THE COURT: Who told you that? That might be
14 true, but nobody ever told me that.

15 THE CLERK: The deputies told me.

16 MS. GARRICK: It's got a trigger lock and it
17 doesn't work.

18 THE COURT: I know, but it will take them...

19 THE COURT: It will take them 33 times.

20 MS. GARRICK: There's no live ammunition for the
21 assault rifle. It's all spent casings. No. There's
22 six live rounds for the gun that doesn't work.
23 Six -- these could go in the magazine of the assault
24 rifle.

25 I don't care if these bullets go back or not,

1 Your Honor. If that will ease their mind...

2 *THE COURT:* If y'all don't want it to go back, I
3 will instruct the jury the live ammunition, if they
4 want to see it, we will send it back separate.

5 *MS. GARRICK:* Everything else are spent shell--

6 *THE COURT:* I don't want to mess that up. What
7 y'all want to do?

8 (Whereupon the Court was conferring with a
9 deputy.)

10 *THE COURT:* Then we won't send it back. I'll
11 instruct them I'm sending everything back except what
12 item?

13 *MS. GARRICK:* State's -- State's 50.

14 *THE COURT:* All right. I will tell them we're
15 not going to send the live ammunition back. But if
16 they want to see it, we'll... We will give it to
17 them.

18 (Whereupon there was a pause.)

19 *THE COURT:* All right. Bring them in. Michael
20 Robinson is the foreperson.

21 *MS. GARRICK:* Who?

22 *THE COURT:* Michael Robinson.

23 (Jury entered the courtroom at 3:20 pm.)

24 *THE COURT:* I understanding y'all have selected
25 Mr. Robinson? Is that right?

1 FOREMAN: Yes, sir.

2 THE COURT: All right. I'm going to hand down
3 the possible verdict forms and I'm going to read them
4 to you simply -- the order that I put them in, you
5 are, you know, to draw no inference. Now, I just had
6 to put them in some order.

7 And it's -- the top of the form is simply titled
8 the case, State of South Carolina, County of
9 Lexington, State versus Samuel Harmon and the
10 indictment number.

11 And it's -- possible verdicts on the indictment
12 2007-GS-32-1442, we the jury unanimously find the
13 defendant Samuel Harmon guilty of murder or not
14 guilty of murder.

15 And you would check the appropriate box once you
16 have had a unanimous decision and sign it and date
17 it. Then you -- on indictment 1443, we the jury
18 unanimously find the defendant Samuel Harmon guilty
19 of assault with intent to kill or not guilty of
20 assault with intent to kill. And once you reach a
21 unanimous verdict, you sign that and date it.

22 On indictment 1444, we the jury unanimously find
23 the defendant Samuel Harmon guilty of assault and
24 battery with intent to kill or not guilty of assault
25 and battery with intent to kill.

1 Then there's another indictment -- my law Clerk
2 and I are having a problem. Hold on just a second...
3 Okay. All right.

4 And then the other possible verdict is we the
5 jury find the defendant Samuel Harmon guilty of
6 possession of a weapon during a violent crime or not
7 guilty of possession of a weapon during a violent
8 crime.

9 And before you can consider that indictment, you
10 must first find him guilty of the -- of a violent
11 crime. And I tell you that murder is a violent crime
12 and assault and battery with intent to kill is a
13 violent crime.

14 So if you don't find him guilty of either one of
15 those, then you can't consider the last one which is
16 possession of a weapon during a violent crime. Do
17 you understand that?

18 Now, once you have reached a verdict on all four
19 indictments, if you will simply knock on the door and
20 let the bailiff know. Y'all don't have a light
21 system here; do you?

22 Let the bailiff know when you have reached a
23 verdict and we will bring you back out to receive
24 your verdict.

25 If during your deliberation, if any one of you

1 need to go to the restroom, you must stop your
2 deliberation until that person returns to the table.
3 And when that person returns, you simply start back.

4 But you have to -- all 12 of you must be present
5 in the room during the entire deliberation time. Do
6 you understand that?

7 I will send the evidence into the jury room with
8 you. I think exhibit number 50 is the -- is live
9 ammunition. We normally don't send live ammunition
10 back for your safety.

11 If you want to see it separately, if you will
12 just let us know, we will send it back in. Usually
13 we want get the gun back out before we send the live
14 ammunition back in. That's just a technical problem.

15 But outside of that, you will get everything
16 back in the jury room. And if you want to see the
17 bullets, then we'll make arrangements for you to see
18 that. Okay.

19 If you will go to your jury room now and you can
20 begin your deliberation. The bailiffs will bring you
21 the evidence as well as the verdict forms. And when
22 you reach a verdict, if you will notify us.

23 (Jury left the courtroom and began deliberations
24 at 3:25 pm.)

25 (Whereupon this case was in recess.)

1 *THE COURT:* If somebody can get me the
2 Solicitor.

3 *OFFICER:* We are working on it already, Judge.

4 *THE COURT:* Okay.

5 (Whereupon there was a pause.)

6 *THE COURT:* I have just received a note from the
7 jury -- from the foreman. The note says, Trey
8 Brown's statement, exhibit number 1, did Trey say on
9 the stand Sammy was the shooter when in his statement
10 he says that the driver was.

11 That's -- that's I guess question, the
12 statement. Now, I can bring them back out. I cannot
13 answer that question. It comments on the facts. The
14 only thing I can do is play back the testimony of
15 Trey Brown.

16 And I can ask them whether they want to re-hear
17 that testimony or not. Now, I don't know of any
18 other way I can answer that question. Anything --
19 what's the State's position?

20 *MS. GARRICK:* Whatever you want to do, Your
21 Honor. I think that's the right result, though, to
22 ask them.

23 *THE COURT:* Mr. Floyd?

24 *MR. FLOYD:* Your Honor, I understand your hands
25 are kind of tied because of the nature of the

1 question, but he certainly didn't say Sammy was the
2 shooter, but then again...

3 *THE COURT:* I'm -- the question is did Trey say
4 on the stand that Sammy was the shooter when he --
5 when in his statement he says that the driver was.
6 That's what I guess is -- I don't know if that's a
7 question or statement. That's what they sent me.

8 And the only way I can respond to that is ask
9 them if they want to hear any testimony re-played.
10 All right. If you will bring me the jury, please
11 sir.

12 (Jury entered the courtroom at 4:38).

13 *THE COURT:* Mr. Foreman, I received this note
14 from y'all that states Trey Brown's statement,
15 exhibit number 1, did Trey say on the stand that
16 Sammy was the shooter when in his statement he said
17 that the driver was.

18 I guess that's a question. I can't comment on
19 the facts in this case. You have to recall them as
20 you have heard them, and you have heard all the
21 testimony you're going to hear.

22 The only thing -- I can further instruct you on
23 the law. The only thing I can do is I can re-play
24 any part of the testimony you want to hear again.
25 But outside of that, I can't comment on the facts.

1 So if you want to hear -- it will take the Court
2 Reporter a few minutes to get that testimony back up.
3 But if you want to re-hear some testimony, if you
4 tell us what you would like to re-hear, we will try
5 to accommodate you.

6 FOREMAN: Can I speak or, I mean...

7 THE COURT: Sure.

8 FOREMAN: We just had a question on -- that was
9 just different stories, and we were just trying to
10 pinpoint it down. Some heard it and some didn't.
11 And to clarify the confusion, we wanted to -- to
12 re-hear it to make sure.

13 THE COURT: Okay. So you want to re-hear his --
14 that testimony? All of Trey Brown's testimony or
15 portion?

16 JUROR: Think we need to hear -- that's a pretty
17 important line.

18 FOREMAN: Yeah, that's a pretty important line.

19 THE COURT: Okay. Y'all can either sit there
20 and wait for her to find it or you can go back to the
21 jury room. What would you rather do?

22 FOREMAN: Just wait.

23 (Whereupon the requested testimony was played
24 back for the jury.)

25 (Jury left the courtroom to continue

1 deliberations at 4:57 pm.)

2 *THE COURT:* We'll be at ease.

3 (Whereupon court was in recess.)

4 (Whereupon the following occurred at 5:20 pm.)

5 *THE COURT:* I was informed that one of the shell
6 casings fell out of the bag, and the Court Reporter
7 found it. So one of the shell casings is missing in
8 the bag in the jury room. I propose simply to send
9 it in by one of the bailiffs and tell them it fell
10 out of the bag.

11 *MR. MYERS:* That big bag with the 23 of the
12 bullets?

13 *THE COURT:* Right. Yes, sir. And I don't know
14 whether it's an issue with them or not. And I told
15 them if they are concerned about ammunition, they
16 could come back. But this is an abundance of
17 precaution. I didn't want them in there counting
18 shells.

19 *MR. MYERS:* I have no problem.

20 *THE COURT:* If one of y'all carry the bullet in
21 there and simply tell them it fell out of the bag and
22 it belongs in what exhibit? Do you know... it's the
23 big bag that's cut with all...

24 How about take this shell casing in there. It
25 fell out of the bag accidentally. We just found it.

1 Just tell them it fell out of the big bag with all
2 the shell casings, and the Court Reporter just found
3 it, so we wanted them to have it in case they are
4 counting.

5 BAILIFF: All right.

6 THE COURT: Thank you sir. Just knock on the
7 door and hand it to them.

8 (Whereupon court continued to be in recess.)

9 VERDICT

10 THE COURT: Ladies and gentlemen, I understand
11 we have a verdict. I understand this has been an
12 emotional case for both sides. If you do not feel --
13 none of us know what this verdict is going to be.

14 But if you do not feel you'd be able to control
15 your emotions no matter what it is, then now is the
16 time to leave. If you can't remain calm, you -- then
17 you need to leave. You need to leave now. All
18 right, sir. Bring us the jury.

19 (Jury entered the courtroom at 6:15 pm.)

20 THE COURT: Mr. foreman, I understand y'all have
21 reached a verdict.

22 FOREMAN: Yes, we have.

23 THE COURT: Is it a unanimous verdict?

24 FOREMAN: Yes, sir, it is.

25 THE COURT: Thank you, sir. How about passing

1 it up if you will.

2 (Foreman passed to bailiff who passed to the
3 Court.)

4 *THE COURT:* You may publish the verdict.

5 *THE CLERK:* On indictment 2007-GS-32-1442, the
6 State versus Samuel Harmon, we the jury unanimously
7 find the defendant Samuel Harmon guilty of murder.
8 It is so signed.

9 On indictment 2007-GS-32-1443, the State versus
10 Samuel Harmon, we the jury unanimously find the
11 defendant Samuel Harmon guilty of assault with intent
12 to kill. It is so signed.

13 On indictment 2007-GS-32-1444, the State versus
14 Samuel Harmon, we the jury unanimously find the
15 defendant Samuel Harmon guilty of assault and battery
16 with intent to kill. It is so signed.

17 On indictment 2007-GS-32-1440, the State versus
18 Samuel Harmon, we the jury unanimously find the
19 defendant Samuel Harmon guilty of possession of a
20 firearm during the commission of a violent crime. It
21 is so signed.

22 *THE COURT:* All right. Any motions on behalf of
23 the State?

24 *MR. MYERS:* None from the State, Your Honor.

25 *THE COURT:* Anything from the defense before I

1 dismiss the jury?

2 MR. FLOYD: Your Honor we would request the jury
3 be polled.

4 THE COURT: All right. Madam Clerk, if you
5 would poll the jury.

6 THE CLERK: As I call your name, if you'll
7 please indicate your verdict by raising your right
8 hand. Melody Howard, was this your verdict and is it
9 still your verdict?

10 JUROR: Yes.

11 THE CLERK: Alisa Chapella, was this your
12 verdict is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Bobby Phillips, was this your
15 verdict and is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Angela Wiley, was this your verdict
18 and is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Thomas Smith, was this your verdict
21 and is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: John Baucum, was this your verdict
24 and is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: Ethel smith, was this your verdict
2 and is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Michael Robinson, was this your
5 verdict and is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Stephanie Thain, was this your
8 verdict is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Robert Baker, was this your verdict
11 is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Christy Nicholson, was this your
14 verdict and is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: Roger Watson, was this your verdict
17 is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: All jurors polled, Your Honor.

20 THE COURT: Anything else?

21 MR. FLOYD: Nothing further, Your Honor.

22 THE COURT: Ladies and gentlemen, I want to
23 thank you for your service this week. And I have
24 been telling you all week you can't discuss this
25 case. Now you can talk about it with anyone you want

1 to.

2 You do not have to talk about it. If somebody
3 approaches you and asks you questions and you don't
4 want to discuss it, you simply tell them you don't
5 want to. But you are certainly free to talk about it
6 with anybody you want to. I appreciate your service
7 as citizens of Lexington County do...

8 (Jury dismissed and left the courtroom at
9 6:20 pm.)

10 THE COURT: All right. Anything further we need
11 to address and any reason we can't proceed with
12 sentencing tonight?

13 MS. GARRICK: No, Your Honor.

14 THE COURT: Okay. you -- somebody would hand me
15 some sheets.

16 SENTENCING

17 THE COURT: Anything else from the State?

18 MS. GARRICK: Yes, Your Honor.

19 MS. GARRICK: Your Honor, you have heard all the
20 facts of the case. Samuel Harmon does not have a
21 prior record. He had an unlawful carrying of a
22 weapon that was dismissed out of Richland County. He
23 had possession with intent to distribute marijuana
24 that was handled through the diversion program, so he
25 has no prior convictions.

1 Your Honor, but just based on the nature of the
2 offense, the senseless act. It was, as you know,
3 4:30 on a Saturday afternoon at The Barnyard Flea
4 Market.

5 For him to fire 24 times a semiautomatic rifle
6 at a carload of people, I mean, there were four
7 people in that car. Denise Boykin was killed, as you
8 know. Trey brown was shot. But luckily the two
9 people in the back seat were uninjured.

10 Luckily there was no innocent bystanders that
11 were hurt by those bullets as they -- as they just
12 flew through the parking lot there.

13 Denise's car, as you heard, crossed four lanes
14 of traffic, the Number One Highway, before she
15 crashed into another car at the Citgo. It's just a
16 miracle that no car was coming at that time on that
17 four lane highway.

18 What Samuel Harmon did is just -- it's
19 unjustified. These people were unarmed. There might
20 have been angry words that had gone back and forth --
21 not between Denise, but between the people in the
22 other car and Samuel Harmon and his people.

23 Just the facts of this case cry out for a life
24 sentence, Your Honor. And that's what we're asking
25 for. I'd ask that you hear from detective Eric

1 Russell from the sheriff's department and some of the
2 family, and I'll get to them in just one minute.

3 *THE COURT:* Yes, sir.

4 *OFFICER:* Eric Russell, detective with the
5 Lexington County Sheriff's Office. As Mrs. Garrick
6 has stated, there's no such thing as a murder that
7 makes sense, but this is just completely off the
8 wall.

9 Not only did this family lose their daughter.
10 By grace of God we don't have a bunch of people dead.
11 I don't know if you have ever been to The Barnyard on
12 a Saturday afternoon, but there's hundreds of people
13 there.

14 Cars all over the place. There's traffic like
15 crazy going up and down Highway Number One. The good
16 Lord was watching out for everybody there to keep
17 anybody else from being killed.

18 Mr. Harmon has demonstrated that it doesn't take
19 much to tick him off to get him to the point that
20 he'll take a human life. There -- they argued that
21 he was not involved in the original argument at
22 Number One Flea Market, and they are exactly right,
23 he was not.

24 So it doesn't take a lot to make him to the
25 point where he's going to grab a gun and start

1 killing people. And as Solicitor Myers said in his
2 closing, if you fire 23 rounds from an AK47 at a full
3 parking lot, you're not trying to kill a person,
4 you're trying to kill people, a lot of people.

5 We would definitely ask for a life sentence
6 because if he gets out, what's it going to take to
7 tick him off again. Somebody say something cross to
8 his brother?

9 He's a very dangerous man and the county of
10 Lexington, State of South Carolina would be a lot
11 safer if he's not walking the streets, Your Honor.
12 Thank you.

13 *THE COURT:* Thank you, sir.

14 *MS. GARRICK:* Your Honor, Denise had one sister,
15 Leslie, Leslie Williams. She's here. She's not
16 going to speak, but we wanted you to know she's here.

17 Denise's father, David, is here. He's not going
18 to speak. But we'd ask that you hear from Christine
19 Boykin, Denise's mom. She's brought a picture of
20 Denise so you can see the -- the person Denise was
21 who was 19 years old as you know, Your Honor. If you
22 would hear from Chris now.

23 *THE COURT:* Yes, ma'am.

24 *MOTHER OF VICTIM:* Your Honor, I do not stand
25 here today asking you for revenge. That's not what

1 this is about. I am here representing my daughter
2 Denise and also Raymond Trey Brown who has also been
3 injured for life.

4 This has been the worst experience not only in
5 my life, but the life of my family. A pain that I
6 have never felt before, a hole that cannot be filled,
7 a loss that is felt forever by me and my family and
8 friends.

9 We're only here to ask for justice. Our loss is
10 a murdered daughter, sister, aunt, niece, and friend
11 at the hand of another, Sammy Harmon.

12 Denise was only a part of our lives for 19 years
13 and seven days. Her birthday was July 8th. She was
14 killed and murdered on July 15th. She had many
15 aspirations.

16 She was attending Midlands Tech with a life
17 scholarship towards a pediatric nurse degree. Denise
18 was also a licensed cosmetologist at the age of 18.

19 When Sammy Harmon's name is called, he can
20 answer. When Sammy Harmon has conversations with his
21 mother and other family members, they can hear him
22 and he can hear them.

23 When we call Denise's name, she cannot hear us.
24 We cannot be united with her on this Earth. Because
25 our family and friends' faith, we will be united with

1 Denise during the rapture when Jesus comes.

2 Denise's life on Earth was ended without cause,
3 without provocation, and there should be severe
4 consequences for the taking of a life. We are not
5 asking for the life of Sammy Harmon, although he took
6 Denise's life, but our family's welfare and friends
7 is a great concern to me.

8 Denise's life was taken without prior
9 association or knowledge of Sammy Harmon. Your
10 Honor, my life and the lives of Denise and our family
11 and those who knew Denise have been shattered
12 forever.

13 The murder of Denise has effected us in numerous
14 ways, both physically and emotionally, and there
15 should be consequences of murder, of taking
16 somebody's life.

17 A life was violently and deliberately taken and.
18 If anyone pulling a trigger on an assault rifle is
19 not trying to frighten or scare anyone. Their intent
20 is to do not only bodily harm, but to kill several
21 people because bullet has no name.

22 It can effect innocent lives just like Denise's
23 life. And at that time I not only lost a daughter, I
24 could have lost a son, too. And like I said, it was
25 only from the grace of God and the metal that was in

1 that back seat that saved my son's life.

2 And I just stand here before you to ask for a
3 severe punishment, which is life in prison. I do not
4 want him to die. I do not want him to die.

5 But I want him to forever remember that he took
6 what he took from us and not only from us but from
7 this world because she was going to be a productive
8 citizen in this world, to help others along the way.
9 Thank you.

10 THE COURT: Thank you, ma'am. Anything else?

11 MS. GARRICK: No, Your Honor.

12 THE COURT: Yes, sir.

13 MR. FLOYD: Thank you, Your Honor. I think you
14 have -- understand everything that went on that day
15 from this trial. And there is no excuse for the
16 taking of this life. I cannot at this stage, of
17 course, argue with the jury's verdict, although I
18 know we must accept it.

19 We have young man here who is -- has no record.
20 Young man with a high school graduate. A young man
21 who was well employed, a hard worker. You've heard
22 from his employer.

23 I have no rationale to give you as to what
24 happened. I can't help but think somehow -- now a
25 days young people, and young males in particular, and

1 the part of the brain that controls emotions,
2 actions, and cortex, the precortex -- I know they're
3 discovering that it doesn't develop in young people
4 until they are -- fully till they are 23, 24 years of
5 age.

6 I don't know whether that explains what happened
7 or not. It's not a good explanation. Doesn't excuse
8 it.

9 However, there has been terrible wrong done and
10 the question is what do we do about it now. I know
11 your options are limited with the words -- verdict.
12 You must give him either life or you must give him 30
13 years, day for day 30 years.

14 He's a young man now. We ask that you consider
15 giving him 30 years. By the time he does that 30
16 years, which is day for day, no good time, he will of
17 course be a middle-aged man going on to his elderly
18 years.

19 Perhaps at that point in time he can make some
20 contribution to our community and to our society to
21 somehow rectify what he's -- what he's done maybe.
22 Maybe less.

23 I don't know that we will accomplish anything by
24 putting him and warehousing him for till he's 70
25 years old, for the next 60 years, 52 years, and

1 paying for that.

2 I think you have got to see him. And his mother.
3 is out here. His mother is devastated by this also.
4 She tells me that she just so surprised, that she
5 had -- never had expected something like this from
6 Sammy because he has never been this way.

7 And we would ask that Your Honor consider just
8 giving him the 30 years day for day rather than
9 life -- life sentence. Want to say anything?

10 *THE DEFENDANT:* Yes, sir. I want to say that
11 don't agree with -- don't agree with the verdict, but
12 I accept it. I never denied my involvement in the
13 crime.

14 Like I stated on the stand, I was not the
15 shooter and I will still say it again. I was not the
16 shooter. I understand one -- also want to apologize
17 to the family for their loss. I understand that.

18 I understand they want justice, but I was not
19 the shooter. I was not the shooter in that crime.

20 *THE COURT:* Okay.

21 (Whereupon there was a pause.)

22 *THE COURT:* Okay. And I am deeply sorry about
23 your loss. And this is a senseless crime. On
24 assault and battery -- on assault with intent to
25 kill, the sentence of the Court -- that's indictment

1 2007-GS-32-1443, the Sentence of the Court is the
2 defendant is committed to the State Department of
3 Corrections for a term of 10 years. That's to run
4 concurrent with murder charge.

5 On possession of a weapon during the commission
6 of a violent crime, the sentence of the Court is the
7 defendant is committed the State Department of
8 Corrections for a term of five years to run
9 concurrent with the murder charge.

10 On assault and battery with intent to kill, the
11 sentence of the Court is the defendant is committed
12 to the State Department of Corrections for a term of
13 15 years. That is consecutive to the murder charge.

14 On crime of murder, the defendant is committed
15 to the State Department of Corrections for and during
16 the term of his natural life. Good luck to you.

17 *SISTER OF VICTIM:* Thank you, Your Honor.

18 *FATHER OF VICTIM:* Thank you, Your Honor.

19 *THE COURT:* Court is adjourned.

20 (End of requested transcript of record.)
21
22
23
24
25

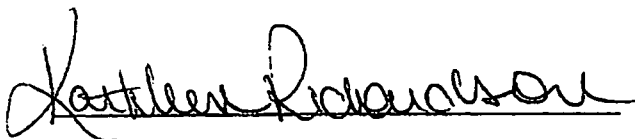
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

I, KATHLEEN RICHARDSON, RPR, CRR, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, on the seventh day of May, 2008.

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

January 18, 2009



KATHLEEN RICHARDSON, RPR, CRR

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMUEL W. HARMON,

APPELLANT

AMENDED FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases

<u>Cooper Corporation v. Jeffcoat</u> , 217 S.C. 489, 61 S.E.2d 53 (1950).....	14
<u>Crawford v. Washington</u> , 541 U.S. 46, 204 (2002)	15
<u>Jolly v. State</u> , 314 S.C. 17, 443 S.E.2d 566 (1994).....	14
<u>Lazcano v. State</u> , 836 S.W.2d 654 (Tex.Ct.App.1992).....	15, 16
<u>Orangeburg Department of Social Services v. Schlins</u> , 291 S.C. 477, 354 S.E.2d 388 (1987)	14
<u>State v. Adondri</u> , 143 Or.App. 298, 923 P.2d 658 (1996), ...	16
<u>State v. Campbell</u> , 30 S.C. L. 1 (Rich.) 124 (1844)	14

Other Authorities

Collins, <u>South Carolina Evidence</u> , §16.1 at pp. 473–474 (2d. ed. 2000).....	14
--	----

Rules

Rule 801 (c), SCRE	14
Rule 803 (a), SCRE	11, 15
Rule 803(8), SCRE	16

STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by admitting the statement of co-defendant George Mack where Mack did not testify, since this statement was inadmissible hearsay?

2.

Whether it was an abuse of discretion to essentially require appellant to concede that Mack's hearsay statement was admissible in return for the jury hearing the public record of co-defendant Mack's conviction for a lesser offense and his sentence under Rule 803 (8), SCRE, since the judge had already ruled this public record was admissible, and since this placed appellant in an untenable unfair position?

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County grand jury for the offenses of murder, assault and battery with intent to kill, assault with intent to kill, and possession of a firearm during the commission of a violent crime. R. 496-503. All of the counts arose from a shooting incident on July 15, 2006 at the Barnyard Flea Market on U.S. 1 in Lexington County. As will be seen infra, each of appellant's co-defendants claimed appellant was the shooter even though there was evidence Mack and co-defendant James Keitt handled the AK-47 at the time the decedent was killed and the survivor was wounded.

Appellant's case was called for trial on May 5, 2008 before the Honorable R. Ferrell Cothran and a jury. Wayne Floyd represented appellant. Donnie Myers and Angela Garrick were the solicitors prosecuting the case. R. 1.

At the conclusion of the trial on May 7, 2008 the jury found appellant guilty on all counts. R. 493, ll. 5 – 21. Judge Cothran sentenced appellant to life imprisonment for murder, fifteen years consecutive for assault and battery with intent to kill, ten years concurrent for assault with intent to kill and five years concurrent for possession of a weapon during a violent crime. R. 494, l. 22 - 495, l. 16.

This appeal follows.

ARGUMENT

The admission of the statement of George Mack through Detective Russell was clearly error since the statement was inadmissible hearsay. Further, in the alternative, the judge erred by essentially requiring appellant to agree with the solicitor that the public record of Mack's plea to a lesser offense and his light sentence -- that the judge had already ruled was admissible under Rule 803 (8), SCRE -- would only be admitted if appellant agreed to Mack's hearsay statement coming before the jury (Issues one and two).

Relevant Facts

Twenty-one-year-old Sherman Davis was appellant's friend. R. 3, ll. 4 – 17. Davis remembered that on the morning of July 15, 2006 he was at his house with George Mack and appellant's brother, Brandon Harmon. Davis went to pick up his young son and they decided to go to the Number One Flea Market in West Columbia. R. 5, ll. 14 – 20.

Appellant was not with them at the time. George Mack drove to the Flea Market in his Crown Victoria. Davis remembered that Brandon Harmon got in a discussion with some other young men, including Scooter, the boyfriend of the decedent. Davis said Scooter and his crowd were asking if Brandon was in a gang. Brandon denied he was in a gang. R. 6, l. 1 – 7, l. 12. "Things got a little headed" and there was talk of a fight. One of the young men in Scooter's crowd let Brandon know he was carrying a weapon. It was at this point that Davis decided to take his young son back to Columbia. Davis admitted he had every intention of coming back to the Flea Market after he took his son home. R. 7, l. 16 – 8, l. 22.

Davis said after he dropped his child off they picked up "Little James" -- James Keitt. Keitt usually carried a .38 revolver around with him, and this day was no exception. R. 9, ll. 7 – 20. There would later be evidence that the gun was inoperable. The solicitor

told the jury this was a sign Keitt was stupid, and he therefore could be believed because he was not clever enough to lie. R. 453, ll. 15-22. "He's so dumb he carries around a 38 pistol that doesn't even work. Now, that's an Einstein for ya . . . I bet he made A's in school – if he was copying Sammy's [appellant's] papers." R. 453, ll. 21-22. Davis testified he learned that appellant was going to ride to the Flea Market with Alex Haigler when he was notified of the earlier confrontation. R. 10, l 19 – 11, l. 1.

The men drove in separate cars, and they arrived at the Number One Flea Market. They did not find Scooter and his group so they drove down U.S. 1 to the Barnyard Flea Market. Several of the co-defendants would testified they spotted Scooter and his crowd there, and Davis remembered that as George Mack drove his Crown Victoria into the Barnyard Flea Market Mack popped the lid on the trunk. Davis said Keitt then grabbed the assault rifle out of the trunk of Mack's car. Davis' claim was that appellant got the gun from Keitt and "started firing . . . shooting at the decedent's [Scooter's girlfriend's] car." R. 11, l. 20 – 13, l. 25.

Davis said after the shooting he "hopped back in the Crown Victoria and they noticed they were being followed by a blue truck" as they fled the scene. R. 14, l. 10 – 15, l. 13. There was evidence the men disposed of the guns in Lexington County, and that they ran through the woods. Davis remembered that Brandon called appellant and asked him to pick them up because the police were looking for them. R. 16, l. 20 – 18, l. 25.

Davis claimed that afterwards appellant told everyone to "try to lay low." R. 19, ll. 1 – 7.

Appellant's brother, Brandon Harmon, also recalled the argument at the Number One Flea Market with Scooter, who again was the boyfriend of the decedent who was later

shot at the Barnyard Flea Market while driving away. R. 42, l. 9 – 44, l. 10. Brandon testified that when they spotted Scooter and his group at the Barnyard Flea Market. He recalled that that Keitt got the AK-47 out the trunk of Mack's Crown Victoria, and that he was "flashing" the gun around. R. 216, l. 1 – 224, l. 15; R. 363, ll. 13 – 24.

Brandon maintained that Keitt then "tried to put the gun down," and that appellant "picked the gun up." Brandon claimed appellant then started "shooting at the car" in which Scooter, his girlfriend, and Trey Brown were riding. Trey Brown was hit by the gunfire but he survived to testify. Scooter was not hit. However, his girlfriend, Denise, who was driving, was shot in the back of the head and killed and they drove out of the Barnyard. The car went out of control, crossed four lanes of traffic and hit a car in the parking lot of the Citgo station across the street. R. 216, l. 1 – 224, l. 15; R. 363, ll. 13 – 24.

Brandon said after the shooting he went to Orangeburg with appellant and Keitt. R. 52, l. 16 - 53, l. 12. Brandon said after he was arrested, and he was charged with murder, that he told the police that appellant, his brother, was the shooter. R. 54, l. 3 – 56, l. 6. Jamar Porcher, who was with Scooter and Denise that day at the Barnyard Flea Market picked Brandon out of a line-up as being the man firing the AK-47. R. 141, ll. 3-5. Porcher admitted "the sheriff's department let [him] know they did like [him] picking out Brandon Harmon." R. 147, ll. 18-21.

On cross-examination, Brandon acknowledged his criminal record. He acknowledged he was no longer charged with murder having named his brother – appellant -- as the shooter. All of the other co-defendants, including Mack and Brandon, were

allowed to plead as an accessory after the fact in return for their cooperation in naming appellant as the shooter.¹ R. 57, l. 22 – 60, l. 19.

Brandon acknowledged appellant was not involved in the dispute at the Number One Flea Market, that appellant was not present when they disposed of the gun, but he still maintained on cross-examination that appellant was the shooter that day regardless of any apparent motive on appellant's part. R. 67, l. 3 – 68, l. 5.

James Keitt's story was that George Mack "popped the trunk" on his car as they drove into the Barnyard Flea Market and that Mack got the AK-47 out of the trunk. R. 98, l. 21 – 99, l. 16. Keitt said Mack "flashed" the AK-47 during the argument, and Keitt said he grabbed the assault rifle from Mack. R. 99, l. 9 – 100, l. 6.

Keitt then claimed: "Sammy grabbed it" from him, and "started shooting." R. 99, l. 6 – 100, l. 23. Keitt said he pulled out his .38 and pointed it into the air. However, Keitt said "it didn't shoot." R. 101, ll. 7 – 11.

Keitt admitted he hid the assault weapon in the woods, and that appellant was not with him at the time. R. 104, ll. 18 – 21. Keitt acknowledged in his statement to the police that he told them that the victims were also shooting at them at the time. R. 122, ll. 4 – 8. Keitt, as a state's witness, now explained "at the time" was what he thought following the shooting. R. 122, ll. 4 – 6.

Jonathan Washington was Scooter's friend, and he was also a friend of the decedent, Denise. He rode with them that day when they ended up at the Barnyard Flea Market. R. 150, l. 4 – 158, l. 7. Washington recalled as they were getting ready to leave the Barnyard

¹ This Court can take judicial notice from the SCDC website that each of the co-defendants received a sentence of about seven years imprisonment. Appellant was

Flea Market that they saw Mack's Crown Victoria drive in to the Flea Market and the trunk popped open before Mack stopped the car. R. 159, l. 1 - 160, l. 23.

Washington remembered that Mack "pulled out a rifle" from the trunk. Washington said he told Mack that they did not want a confrontation, and he said that Mack "put the gun back up." R. 161, l. 6 - 162, l. 3. Washington said during the confrontation, Denise, the driver, told him that the other men were not "going to do nothing." Washington said Scooter and Brown apparently urged Denise to drive away quickly as they -- but not she -- sensed extreme trouble. R. 162, l. 13 - 175, l. 7.

Washington testified that he only saw two people handle the assault rifle, and he essentially assumed the second person who handled the gun shot at their car. R. 179, l. 19 - 180, l. 25.

Richard "Scooter" Geiger was twenty-two years old. He grew up with Denise who was from Red Bank. Denise was his girlfriend at the time she was shot. R. 182, l. 13 - 184, l. 20.

Scooter said he confronted Brandon at the Number One Flea Market. Scooter said: "You and your click got a problem with my family or what." Somehow the issue of whether Brandon was a gang member entered the conversation. Scooter recalled that Brandon responded that he was not a member of the gang, but that appellant, his brother, was a gang member.² Scooter said he knew appellant, who was not present, from Dutch Fork. R. 187, ll. 3 - 19.

sentenced to life without parole.

² The gang references in this case are vague and barely above the surface. However, the solicitor did accuse appellant of being a "Gpan," which the state asserted was a gang. R. 455, ll. 2-5.

Scooter said he later saw four men jump out of the car at the Barnyard Flea Market, and that Mack "came to the trunk and pulled out the AK." R. 192, ll. 1 – 9. Scooter admitted he did not see appellant at the Barnyard Flea Market -- or anywhere -- that day. R. 194, ll. 7 -6; R. 199, ll. 16 – 20.

Trey Brown, who was with Scooter and the decedent, was shot in the gunfire inside the car as the decedent drove away from the Barnyard Flea Market. He said he was "telling Denise to drive off," and he saw "bullets flying everywhere." R. 219, l. 5 – 238, l. 20. A fair reading of Brown's testimony was that he told the police after the shooting while in the hospital that Mack was the shooter. R. 237, l. 1 – 238, l. 23.

Appellant testified in his own defense. He remembered Brandon telephoned him that afternoon about Brandon's altercation with Scooter at the Number One Flea Market. R. 382, l. 16 – 383, l. 13. Appellant got a ride with Alex Haigler and they followed Mack in his Crown Victoria back to the Number One Flea Market. R. 382, l. 16 – 384, l. 4.

When they did not find Scooter in his group at the Number One Flea Market they drove their separate cars to the Barnyard where they found Scooter and his friends. Appellant remembered the trunk on Mack's car "popped open before he stopped the car." Appellant testified that Mack went to the trunk and took out the AK-47. He then saw Mack put it "back down." R. 384, l. 5 – 387, l. 20.

Appellant said after Mack put the gun down that Keitt grabbed it. Appellant testified that he then "heard gun shots. I hit the ground. I can't say I seen (sic) who shot, but I heard gunshots so I hit the ground." Appellant said the gunshots lasted between ten and thirty seconds, he then got off of the ground, and he ran to Alex's car. Alex drove away from the Barnyard. Appellant denied that he ever shot the gun. R. 386, l. 7 – 389, l. 2.

Appellant also testified he was not involved in the earlier confrontation at the Number One Flea Market, and he denied that he was in a gang or that he was trying to impress "your older friends." R. 397, l. 2- 398, l. 21.

George Mack

George Mack was not called as a witness by the state. Defense counsel Floyd said he had served a subpoena duces tecum on the Clerk of Court's Office to show that the indictment on Mack was true-billed, and to show his sentence had been modified on the sentencing document. R. 405, l. 10 – 406, l. 8. The documents would also show that the murder indictment was not prossed. Assistant Solicitor Garrick objected stating Mack was not a witness, and he had not been subject to cross-examination. She also argued the documents appellant wanted to admit on Mack were not relevant. R. 406, l. 2 – 407, l. 25.

Defense counsel Floyd responded that the documents were relevant because they showed Mack also had been given a good deal by the state, and Mack had reason to point at appellant as the shooter to gain favor with the state. R. 407, ll. 3 – 14. The judge ruled he was going to admit the documents under Rule 803(a), SCRE as a public record. R. 407, ll. 15 – 24.

After the judge ruled Solicitor Myers told the judge that then Mack would either have to be called as a witness to testify, or that his statement to the police would have to be introduced. "If he [appellant] is going to get into hearsay with nothing to support what's going on with a fellow [Mack] who hasn't testified." R. 407, l. 25 – 408, l. 4. The solicitor continued to complain that Mack had not testified, and that the public record could not be admitted "unless there is testimony about it." R. 408, ll. 1 – 24. The solicitor demanded

“somebody has to testify what it means, and that would have to be George Mack.” R. 409, ll. 1 – 4.

The judge began to waver on his ruling given the solicitor’s demands. R. 409, ll. 5-14. Solicitor Myers continued to complain: “I can’t cross-examine a document.” R. 410, ll. 5 – 10. The solicitor added that if Mack testified then he had no objection to the public documents being introduced, but that without cross-examination the records could not be admitted into evidence. R. 410, l. 5 – 411, l. 21.

Defense counsel Floyd continued to argue that the document involving Mack was a “public record,” and it was not excluded under the evidentiary rules as hearsay. R. 412, ll. 11 – 15. The solicitor responded that based on defense counsel’s argument he would not object to the documents being admitted into evidence if the state was allowed to put in George Mack’s written statement. R. 412, ll. 16 – 23.

The judge then asked for a defense counsel’s position on that offer. Defense counsel responded: “Your honor, *it’s our position we should not be required to do that.*” The solicitor then stated, “No, sir, we’ll do it. We are offering it.” R. 412, l. 16 – 413, l. 18. (emphasis added).

Defense counsel then conferred with appellant, and he said to the judge: “If the only way that the Court will allow us to get this in (the public record) is with the statement also coming in, we are not . . .” The judge interrupted and said that he had not ruled. Defense counsel responded: “we will (accept that) offer that if that is the only option we have.” The judge stated that he was not saying it was the only option available. He noted that the solicitor had put forth that proposal and either the court needed more time to research the issue or defense counsel could accept the solicitor’s offer. Defense counsel then said: “We

will go with it.” Counsel verified that given the situation they would accept the solicitor’s offer to get the public documents into evidence. R. 414, l. 19 – 415, l. 8.

Hope Frick of the Lexington County Clerk of Court’s Office then verified from the documents that Mack pled guilty to being an accessory after the fact of a felony, and he received a seven year sentence with credit for time served. An order was later issued amending his credit for time served from five hundred forty-nine days to four hundred seventy-two days. R. 418, ll. 4 – 18.

On cross-examination, the solicitor had Frick acknowledge that the grand jury had indicted Mack as an accessory after the fact. The solicitor asked: “I can’t try anybody unless the grand jury indicts them for a crime; can I?” Frick then agreed that in her legal opinion that was a correct statement of the law. R. 421, l. 14 – 422, l. 9.

Frick also agreed that it was her understanding of the law that it would be solely up to the judge whether to sentence Mack from “zero to fifteen years.” She also told the jury that the solicitor’s office “didn’t have anything to do with the sentencing.” R. 422, ll. 7 – 22.

Defense counsel on redirect asked Frick how many cases were presented to the grand jury every year. The solicitor successfully argued this was not relevant. R. 423, l. 3 – 424, l. 16.

The solicitor then called Detective Eric Russell as a witness regarding Mack’s statement. R. 425, ll. 10 – 13. When the state went to introduce Mack’s statement, defense counsel objected: “Just subject to our earlier objection.” R.. 427, ll. 3 – 7.

In this statement, Mack blamed appellant for being the one who “started shooting towards Scooter and his friends.” R. 429, ll. 10-14. “Sammy shot a bunch of times and then threw the gun in the trunk of my car.” R. 429, ll. 10-14.

In his closing argument, the solicitor stated that when George Mack gave a statement to Detective Russell that he -- the solicitor -- was not even in town but yet the defense was claiming he was promising the co-defendants consideration for their statements. “Oh, the police, they are so bad. Oh, I am so horrible. Giving people deals.”³ R. 449, l. 7 – 450, l. 20.

I. Mack’s statement was hearsay, and it was not admissible (Issue one).

The George Mack statement to Detective Russell was obviously hearsay. “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. See Rule 801 (c), SCRE. South Carolina follows the general rule that hearsay evidence is not admissible unless it falls within an exception to the hearsay rule. Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994).

The primary basis for the hearsay rule is that the declarant is not present and is unavailable for cross-examination. Orangeburg Department of Social Services v. Schlins, 291 S.C. 477, 354 S.E.2d 388 (1987). The lack of an oath and opportunity for observation of the witness are generally considered to be secondary reasons for the hearsay rule. Cooper Corporation v. Jeffcoat, 217 S.C. 489, 61 S.E.2d 53 (1950).

³ There was no evidence offered at trial of the solicitor’s whereabouts at the time any statements were given to the police.

The real reason for not allowing hearsay is that the jury, judge, and everyone else in the courtroom is being asked to take the word of an absent, unsworn, possibly unknown, declarant who has made accusation behind a person's back, which generally does not inspire confidence in the statement. State v. Campbell, 30 S.C. L. 1 (Rich.) 124 (1844). Collins, South Carolina Evidence, §16.1 at pp. 473–474 (2d. ed. 2000).

Appellant submits that the admission of George Mack's inadmissible hearsay statement was highly prejudicial. There was evidence that Mack drove the car in which the murder weapon was in his trunk. There was evidence Mack handled the gun, and Porcher named him as the shooter to the police. Mack's hearsay statement was placed before the jury with no opportunity to cross-examine him.

Since the truncated colloquy in the court below did not include a discussion beyond hearsay, and the inability to cross-examine Mack, appellant on appeal does not advance a confrontation clause or Crawford v. Washington, 541 U.S. 46, 204 (2002) argument although it obviously is lurking largely in the background. Suffice it to say that Mack's statement was inadmissible highly prejudicial hearsay because Mack claimed appellant was the shooter where Mack could easily have been deflating attention from himself.

The solicitor had the judge essentially make appellant stipulate to the admission of Mack's hearsay statement through Detective Russell or lose his right to having Mack's public sentencing records admitted into evidence (Issue two).

As seen, the judge ruled that the public documents showing Mack pled guilty to being accessory after the fact and received a seven year sentence were admissible under Rule 803 (a), SCRE as a public record, and an exception to the hearsay rule.

The solicitor complained that these Mack documents should not be admitted without either requiring Mack to testify and be cross-examined, or Mack's statement being

submitted to the jury without his testimony. Defense counsel correctly stated that he should not be forced to make such a choice, and he again objected when Mack's statement was offered into evidence.

In Lazcano v. State, 836 S.W.2d 654 (Tex.Ct.App.1992) the Texas Court of Appeals held it was reversible error to require the defendant to stipulate to the admission of otherwise inadmissible evidence in order to be entitled to cross-examine the state's witness. See Lazcano v. State, 835 S.W.2d at 663. In that case, the court agreed to allow cross-examination only if the defendant would stipulate to admit the reports of inconclusive test results was unfair. The defendant argued his right to cross-examine was impermissibly restricted by this forced stipulation.

The court noted that the trial judge thought he was acting in fairness to present a truly balanced picture to the jury. However, the court stated "when considered together with the fundamental right to confront one's accusers, we conclude that the balance tips in favor of the rights of the accused which should received preferential [treatment]." The court also stated "the trial courts requirement that the reports be admitted by stipulation prior to an examination of the defendant placed appellant in a no-win situation." Lazcano v. State, 836 S.W.2d at 663.

Here, the trial judge also placed appellant in a no-win situation. To be able to place a very mild public document before the jury to show that Mack pled guilty and received a seven-year sentence as an accessory after the fact, appellant was forced to agree that Mack's statement would be admitted through Detective Mack. As a matter of policy that was fundamentally unfair.

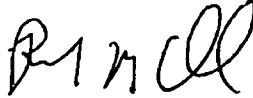
Further, even under a doctrine of "curative admissibility" -- which would not apply even if the solicitor was right since the public records under Rule 803(8), SCRE -- in no way opened the door in fairness to the admission of Mack's hearsay statement. As the Court observed in State v. Adondri, 143 Or.App. 298, 923 P.2d 658, 661 (1996), "[T]he aim of curative admissibility is to give the party harmed by the introduction of inadmissible evidence an opportunity to counter the inferences that may be drawn from that inadmissible evidence; he should not be given a license to create prejudice of a different sort, unrelated to the prejudice caused him, merely so that he has a better chance of winning. Curative admissibility, in short, is designed to improve the accuracy of fact finding and is not designed simply to permit a party to avoid the harm done by giving him an opportunity to improve his chances of winning by increasing the possibility of erroneous factual adjudication with respect to some other matter."

The solicitor here effectively convinced the trial court to alter its ruling by the solicitor's demand that Mack's hearsay statement should be admitted to in some way "counter" the public documents the judge ruled were admissible. As stated, appellant was put in a "no win" situation, and what occurred her was fundamentally unfair. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed and his case remanded to the Lexington County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 14th day of April, 2011.

CERTIFICATE OF COUNSEL

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

April 14, 2011



Robert M. Dudek
Chief Appellate Defender

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

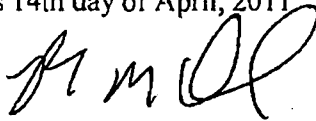
V.

SAMUEL W. HARMON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Amended Final Brief of Appellant in the above referenced case has been served upon Alfonso Simon, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 14th day of April, 2011

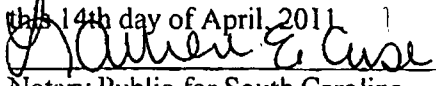


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me

this 14th day of April, 2011

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

The Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE

RESPONDENT,

V.

SAMUEL HARMON,

APPELLANT

INITIAL BRIEF OF RESPONDENT

HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6305

DONALD V. MYERS
Solicitor, Eleventh Circuit
Lexington Judicial Center
205 E. Main Street
Lexington, South Carolina 29072
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES	II
APPELLANT'S STATEMENT OF ISSUES ON APPEAL	1
RESPONDENT'S STATEMENT OF ISSUES ON APPEAL	2
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
ARGUMENT	21
I. THE TRIAL COURT DID NOT ERR IN ADMITTING THE STATEMENT OF HARMON'S CO-DEFENDANT, GEORGE MACK, INTO EVIDENCE: HARMON STIPULATED TO THE STATEMENT'S ADMISSION AND NEVER OBJECTED TO ITS ADMISSIBILITY ON HEARSAY GROUNDS. EVEN IF THE EVIDENCE WAS IMPROPERLY ADMITTED, ITS ADMISSION WAS HARMLESS BECAUSE IT WAS CUMULATIVE TO THE TESTIMONY ALREADY PRESENTED AT TRIAL.....	21
II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADDRESSING THE ADMISSIBILITY OF GEORGE MACK'S COURT RECORDS; THE TRIAL COURT DID NOT REQUIRE HARMON TO AGREE TO A STIPULATION IN ORDER TO SECURE THE ADMISSION OF MACK'S PLEA RECORDS, AND THE PLEA RECORDS WERE NOT CLEARLY ADMISSIBLE.....	29
CONCLUSION.....	36

TABLE OF AUTHORITIES

Cases

<u>Butler v. Sea Pines Plantation Co.</u> , 282 S.C. 113, 317 S.E.2d 464 (Ct.App.1984)	25
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)	25
<u>Greene v. Greene</u> , 351 S.C. 329, 569 S.E.2d 393 (Ct.App.2002)	24
<u>Griffith v. Griffith</u> , 332 S.C. 630, 506 S.E.2d 526 (Ct.App.1998)	24
<u>In re Corley</u> , 353 S.C. 202, 577 S.E.2d 451 (2003)	33
<u>Lazcano v. State</u> , 836 S.W.2d 654 (Tex. Ct. App. 1992)	30, 31
<u>Porter v. S.C. Pub. Serv. Comm'n</u> , 333 S.C. 12, 507 S.E.2d 328 (1998)	24
<u>State v. Adams</u> , 354 S.C. 361, 580 S.E.2d 785 (S.C. Ct. App. 2003)	23
<u>State v. Bailey</u> , 298 S.C. 1, 377 S.E.2d 581 (1989)	26
<u>State v. Ballenger</u> , 322 S.C. 196, 470 S.E.2d 851 (1996)	28
<u>State v. Beckham</u> , 334 S.C. 302, 513 S.E.2d 606 (1999)	27
<u>State v. Blackburn</u> , 271 S.C. 324, 247 S.E.2d 334 (1978)	21
<u>State v. Brown</u> , 344 S.C. 302, 543 S.E.2d 568 (Ct.App.2001)	21
<u>State v. Clark</u> , 315 S.C. 478, 445 S.E.2d 633 (1994)	25
<u>State v. Gillian</u> , 360 S.C. 433, 602 S.E.2d 62 (Ct.App.2004)	34
<u>State v. Gillian</u> , 373 S.C. 601, 646 S.E.2d 872 (2007)	34
<u>State v. Mitchell</u> , 286 S.C. 572, 336 S.E.2d 150 (1985)	25
<u>State v. Moore</u> , 337 S.C. 104, 522 S.E.2d 354 (Ct.App.1999)	33
<u>State v. Murphy</u> , 270 S.C. 642, 244 S.E.2d 36 (1978)	33
<u>State v. Pagan</u> , 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004)	33
<u>State v. Pagan</u> , 369 S.C. 201, 631 S.E.2d 262 (2006)	33, 34
<u>State v. Perez</u> , 334 S.C. 563, 514 S.E.2d 754 (1999)	23
<u>State v. Pichardo</u> , 367 S.C. 84, 623 S.E.2d 840 (Ct.App.2005)	24
<u>State v. Reeves</u> , 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990)	25
<u>State v. Sherard</u> , 303 S.C. 172, 399 S.E.2d 595 (1991)	26
<u>State v. Taylor</u> , 360 S.C. 18, 598 S.E.2d 735 (Ct.App.2004)	21
<u>State v. Tucker</u> , 319 S.C. 425, 462 S.E.2d 263 (1995)	23
<u>State v. Williams</u> , 297 S.C. 290, 376 S.E.2d 773 (1989)	21

<u>State v. Williams</u> , 350 S.C. 172, 564 S.E.2d 688 (Ct.App.2002).....	28
<u>U.S. v. Mitchell</u> , 1.F.3d. 235 (4 th Cir. 1993).....	33

Rules

Rule 401, SCORE.....	33
Rule 801, SCORE.....	22

Other Authorities

29 <u>Am.Jur.2d Evidence</u> § 532.....	28
<u>Black's Law Dictionary</u> 1415 (6th ed.1990).....	24

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred by admitting the statement of co-defendant George Mack where Mack did not testify, since this statement was inadmissible hearsay?
2. Whether it was an abuse of discretion to essentially require appellant to concede that Mack's hearsay statement was admissible in return for the jury hearing the public record of co-defendant Mack's conviction for a lesser offense and his sentence under Rule 803(8), SCRE, since the judge had already ruled this public record was admissible, and since this placed appellant in an untenable unfair position?

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in admitting the statement of Appellant's co-defendant George Mack when Appellant made no hearsay objection, Appellant stipulated the statement could be introduced into evidence, and any error in admitting the statement was harmless?
2. Whether the trial court abused its discretion when it did not require Appellant to agree to a stipulation in order to admit his co-defendant George Mack's plea records into evidence, and when the records were otherwise inadmissible because they were irrelevant?

STATEMENT OF THE CASE

On May 5-7, 2008, Appellant Samuel Harmon ("Harmon") was tried by a jury for the murder of Denise Boykin, assault with intent to kill, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. He was tried in the Lexington County Court of General Sessions before the Honorable R. Ferrell Cothran, Circuit Court Judge. Wayne Floyd, Esquire, represented Appellant. Solicitor Donald Myers, Esquire, and Assistant Solicitor Angelo Garrick, Esquire, of the Eleventh Judicial Circuit, represented the State. On May 7, 2008, Harmon was convicted of murder, assault with intent to kill, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. Tr. 562. Harmon was sentenced to life on the murder conviction, ten (10) years confinement for the assault with intent to kill conviction to be served concurrently with the murder conviction, five (5) years confinement for the possession of a weapon during the commission of a violent crime conviction to be served concurrently with the murder conviction, and fifteen (15) years confinement for the assault and battery with intent to kill conviction to be served consecutive to the murder conviction. Tr. 573-74. Before this Court is Harmon's direct appeal. He requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Harmon's appeal and affirm his convictions for murder, assault with intent to kill, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime.

STATEMENT OF FACTS

On July 15, 2006, Appellant Samuel Harmon ("Harmon") fired a Romar model WS WASR-10 rifle into a black Toyota Camry in the parking lot at the Barnyard Flea Market in West Columbia, SC. See Tr. 105, 131, 163, 374. Denise Boykin ("Denise"), the driver of the Camry, died as the result of a gunshot wound from the rifle to the back of her head. Tr. 177, 210, 242, 417, 421, 424. Raymond "Trey" Brown ("Trey") suffered three gunshot wounds to the back, one to the knee, and two underneath his arm. Tr. 290-91. The two other passengers of the Camry, Randy Boykin¹ ("Randy") and Tasha J. ("Tasha"), were not physically harmed in the shooting.

The First Confrontation

On July 15, Denise, her boyfriend Richard "Scooter" Geiger ("Scooter"), Randy, Trey, Jamar Porcher² ("Porcher"), Johnathan Washington ("Washington"), and Jones went together to the U.S. #1 Flea Market ("the Number One"). Tr. 177, 207-09, 241, 259, 267. They drove in two cars. Tr. 177, 242. Scooter drove Porcher and Tasha in his Mitsubishi Gallant. Tr. 177, 209, 242. Denise drove Trey, Randy, and Washington in her black Toyota Camry. Tr. 208-09, 210, 242.

On that same afternoon, Brandon Harmon³ ("Brandon"), George Mack ("Mack"), Sherman Davis ("Davis"), and Davis' infant son also went to the Number One. Tr. 50, 90. Mack drove the group in his burgundy Crown Victoria.

¹ Randy was Denise's younger brother. See Tr. 266.

² Porcher is Scooter's cousin. Tr. 176. He knew Denise and Randy. Id.

³ Brandon is Harmon's brother. Tr. 50, 90.

50, 90. Brandon testified that at the time, he had twists in his hair. Tr. 108. Mack had braids. Tr. 107. Harmon had a low haircut. Tr. 108.

While at the Number One, Scooter and Brandon engaged in a heated verbal confrontation. Tr. 51, 91; see Tr. 178-79, 211, 260, 268. Scooter testified that he knew Brandon from school, and he spoke to Brandon first at the Number One. Tr. 242, 244. He testified that he asked if Brandon's click had problems with Scooter's family. Tr. 243-44. Davis testified that Brandon was confronted by a group asking if he was in a gang. Tr. 50. Both Scooter and Davis noted that Brandon denied he had any issues with Scooter, and Brandon indicated that Scooter's issues were with Brandon's brother. Tr. 51, 244. Several members of Scooter's group noted that there were three males in the group with whom they had a confrontation. It included a tall male with braids, a shorter male with twists, and a third male carrying a baby. Tr. 179, 180, 212, 259; see Tr. 243. Witnesses from both sides of the confrontation testified that it ended in a truce, and there was no more dispute between the two sides. Tr. 213, 260, 268. Brandon's group left the Number One. Tr. 52, 91, 181, 213, 269; see Tr. 246. Several members of Scooter's group testified they saw Brandon's group pull up in a burgundy Crown Vic before they left. Tr. 181, 214, 260, 269. They noted that the driver was tall and had braids. Tr. 181, 212, 261, 269.

The Interlude

Brandon's group returned to Davis' home to drop off his son. Tr. 70, 92. Brandon testified that he called his brother, Harmon, and told him about the confrontation with Scooter on the phone. Tr. 92-3. Harmon testified that he

received the phone call while he was at the barbershop with his friend, Alex Haigler ("Haigler"). Tr. 443-444. He confirmed that Brandon told him about the altercation he had with Scooter at the Number One. Tr. 445. Harmon also testified that Brandon said they were going back to the Number One. Tr. 445. Haigler also confirmed they received the phone call while at the barbershop. Tr. 121. Haigler, who drove a teal Chevrolet Cavalier, testified that Harmon asked him to drive him to the Number One. Tr. 121. Brandon also testified that Harmon said he was on his way to the Number One with Haigler. Tr. 93; see Tr. 445. Meanwhile, Brandon's group went and picked up a friend, James Keitt. Tr. 53, 70, 92, 147. They then returned to the Number One. Tr. 53. They intended to fight with Scooter's group. Tr. 92, 122, 147.

While Brandon's group was picking up Keitt, Scooter's group left the Number One. They drove down the highway to the Barnyard Flea Market ("the Barnyard"). Tr. 180-81, 214, 246, 261, 270. Scooter, Porcher, and Washington left in Scooter's car. Tr. 180-81, 215, 247. Denise, Randy, Tasha, and Trey drove in Denise's car. Tr. 181, 215, 270. They parked the two cars side by side in the Barnyard parking lot. Tr. 247.

Haigler and Harmon arrived at the Number One first. Tr. 54, 122, 445-46. When Brandon, Davis, Mack, and Keitt arrived at the Number One, they could not find Scooter's group. Tr. 54, 93, 122, 148, 446. They left the Number One and proceeded on to the Barnyard.⁴ Tr. 55, 94, 122, 148, 446. Mack, Davis,

⁴ Some of the witnesses testified that they were heading home when they saw Scooter's group in the Barnyard parking lot. Tr. 55, 94, 148. Haigler and Harmon testified that they planned on going to the Barnyard from the beginning. Tr. 122, 446.

Brandon, and Keitt rode in Mack's Crown Victoria. Tr. 55. Harmon and Haigler rode in Haigler's Cavalier. Tr. 55.

Meanwhile, Scooter's group decided to leave the Barnyard not too long after they arrived. Tr. 182, 216, 261, 270-71. As they went to their cars, they saw the burgundy Crown Victoria pull into the Barnyard parking lot. Tr. 182, 216, 247, 262, 270-71.

The Second Confrontation and Shooting

The Crown Victoria pulled up closer to Denise's car. Tr. 183, 248. Several witnesses testified that after the Crown Victoria pulled up, the trunk popped open. Tr. 56, 72, 149, 217, 262, 273, 447. Several witnesses also testified that everyone who was in the Crown Victoria got out of the car. Tr. 55, 95, 122-23, 183, 249, 272. Some members of Scooter's group started arguing with the people who got out of the Crown Victoria. Tr. 122-23, 183.

Davis testified he saw Keitt with an assault rifle that he retrieved from the trunk. Tr. 56. Davis also testified that he saw Harmon get out of Haigler's car. Tr. 57, 76. Harmon proceeded to take the gun away from Keitt. Tr. 57, 77. According to Davis, Harmon then started firing the assault rifle at the black car as it attempted to drive away from the parking lot. Tr. 57, 78. Davis then saw Harmon throw the gun back into the trunk of the Crown Vic and proceed back to Haigler's car. Tr. 58.

Brandon recalled Keitt retrieved the assault rifle from the trunk of the Crown Vic. Tr. 96. Brandon testified that Keitt flashed the gun, but then tried to put the gun back down. Tr. 96, 116. As he was doing so, Harmon picked up the

gun, moved from behind the Crown Vic, and started firing the gun at the dark colored Toyota. Tr. 97-8, 116. Brandon hopped back into the Crown Vic. Tr. 98. He testified that Harmon put the gun back into the trunk of the Crown Vic and ran back to Haigler's car. Tr. 98. Harmon was the only person Brandon saw fire the gun. Tr. 107.

Haigler saw five people standing outside of two cars in Scooter's group. Tr. 123. He did not see any weapons as they pulled up. Tr. 124. He saw Mack pull the assault rifle out of the trunk of the Crown Vic. Tr. 124, 142. Mack did not point the gun at anyone. Tr. 136. He further testified that Keitt took the gun from Mack. Tr. 124, 136, 142. Keitt held the gun for a short period, and then Harmon took the gun away from Keitt. Tr. 124-25, 136. Harmon then shot at the dark colored Camry. Tr. 125, 138. Harmon was the last person he saw with the assault rifle. Tr. 142. He also definitely saw Harmon fire the gun. Tr. 143. Haigler testified that he was shocked when Harmon started firing the assault rifle at the car. Tr. 126. Haigler got back into his car. Tr. 126. He did not see Harmon put the assault rifle back into the trunk of the Crown Vic, but he noted that Harmon did not have the rifle with him when he returned to Haigler's car. Tr. 126.

Keitt testified that Mack was the first one to get the assault rifle out of the trunk. Tr. 150, 169. Keitt testified that he did not know the rifle was in the trunk of the car. Tr. 150. Mack flashed the rifle. Tr. 150, 170. Keitt then grabbed the rifle from Mack. Tr. 151. He also did not fire the rifle. Tr. 151. He testified that Harmon took the rifle from him. Tr. 151, 170. He noted that Harmon had ridden

with Haigler. Tr. 151. When Harmon took the rifle, he started shooting. Tr. 151, 171. Keitt testified that he saw one of the cars in Scooter's group was hit by the gunfire. Tr. 152. It was a dark colored Camry. Tr. 152. When this happened, Keitt pulled out his .38 pistol, aimed it in the air, and attempted to fire it.⁵ Tr. 152, 172. He testified that Harmon put the rifle back into the trunk of the Crown Vic. Tr. 154. Harmon then went back to Haigler's car. Tr. 154. Keitt got back into Mack's Crown Vic. Tr. 154.

Porcher got into Scooter's car. Tr. 183. He saw the driver of the Crown Vic pull out a long gun from the trunk of the car. Tr. 184, 190. Porcher noted that he cocked the gun back, but put it back. Tr. 184. Shortly thereafter, he saw another man with the long gun. Tr. 185. He noted that the person who had the gun when he saw it was not involved in the earlier dispute at the Number One. Tr. 185. He did not know who the guy who had the gun was. Tr. 185. He did testify that he saw a turquoise colored car pull up. Tr. 185. Porcher saw a guy shooting at Denise's car, and he saw the back window go out. Tr. 286.

Washington testified that the driver of the Crown Vic got out of the car, ran to the trunk, and pulled out a rifle. Tr. 218, 235-36. Washington talked with the driver. Tr. 218. He pleaded for his life. Tr. 237. The driver put the gun back in the trunk, and Washington attempted to convince his friends to get into their cars and leave. Tr. 219, 237. Washington hopped back into Scooter's car, and they started to drive away from the scene. Tr. 219. As Denise's car began to pull out behind them, Washington looked over at the Crown Vic and saw that a different

⁵ Keitt testified that he had known Harmon for over two years before the shooting. Tr. 145. Keitt testified that he brought his .38 special with him. Tr. 148. The pistol did not work. Tr. 148.

guy had the rifle. Tr. 223. According to Washington, the guy started shooting at the ground, but then fired the gun at the back of Denise's car. Tr. 224. He saw the back windshield of her car pop out and could hear the gunshots. Tr. 224.

Scooter saw Mack pull out what he believed was an AK-47 out of the trunk of the Crown Victoria. Tr. 249. Scooter told everyone in his group to get into the cars. Tr. 249. He noted that he heard Washington talk to one of the guys from the other group. Tr. 249. Scooter saw Mack put the gun back down into the trunk. Tr. 250. When Scooter turned around, he saw a little dark skinned guy grab the rifle. Tr. 250. He saw the second guy pull up the gun. That was when Scooter drove off. He did not recognize the second guy, but he was not one of the individuals involved in the confrontation at the Number One. Tr. 250. He did not see this second guy pull the trigger. Tr. 250. He also did not see Harmon at the scene or a teal car at the scene. Tr. 251, 256. Scooter did not see what happened after he pulled off from the scene. Tr. 251-52. He also did not see the actual shooting. Tr. 252. Scooter testified that the other guys in his car told him that the shots hit Denise's car.

Tasha testified the driver pulled a long gun from the trunk. Tr. 262. When he did that, Tasha testified that she got into the back seat of Denise's car. Tr. 263. She saw Scooter's car pull off. Tr. 263. The guy with the braids put the gun back into the trunk of the Crown Vic. Tr. 263. She turned to tell Denise to get into the car. Tr. 263. When she looked back at the Crown Vic, she saw that someone else had the long gun. Tr. 263. She did not know where the guy who had the gun came from, but she noted that he was not one of the guys involved

in the conflict at the Number One. Tr. 264. They started firing the gun. Tr. 264. Shots hit Denise's car. Tr. 264. Tasha and Randy ducked down in the backseat of the car. Tr. 264. She testified that Trey was shot in the car. Tr. 265. Denise was not saying anything, and her car was rolling. Tr. 265.

Trey tried to convince Denise to get into the car. Tr. 273. When he looked back, he saw someone holding what appeared to be an AK-47. Tr. 274. Trey noted that the person with the gun was not at the Number One. Tr. 274-75. The guy with the rifle put it back in the Crown Victoria, but he did not close the trunk. Tr. 275. Trey testified that everyone in Denise's car told her to drive off. Tr. 275. After she starts to get into the car, Scooter drives off. Tr. 275. Trey noted that the other group continued screaming and hollering. Tr. 276. Trey recalled seeing the dark-skinned guy with braids having the gun. Tr. 278. He turned back to Denise and told her to drive off. Tr. 278. After that, he heard the first gunshot. Tr. 278. After he was shot in the knee, he attempted to cover Denise so she could drive off. Tr. 278. He was then hit in the back with several shots. Tr. 278-79. Trey testified that he saw Randy tucked down, and noted that Randy pulled Tasha down. Tr. 279. Trey testified he heard rapid fire hitting the car. Tr. 279. He thought he saw Denise duck down in the car. Tr. 279. He testified that both he and Denise were coughing up blood. Tr. 279. He also noted that her car was headed towards the highway. Tr. 280.

Harmon testified that he watched Mack pick up the rifle from the trunk and flash it. Tr. 449. Mack then put the gun back down. Tr. 449. He then saw Keitt pick up the rifle. Tr. 450. Harmon testified that when he got close to the Crown

Vic, he heard gunshots, so he hit the ground. Tr. 450. He asserted that he did not touch a weapon that day. Tr. 450-51. He noted that after the gunshots stopped, he went back to Haigler's car and they drove off. Tr. 450.

The Getaway

After the shooting ended, Mack, Brandon, Davis, and Keitt all jumped back into the burgundy Crown Victoria and drove away. Tr. 58, 98, 154. Harmon and Haigler drove away in Haigler's Cavalier. Tr. 126, 154, 450. The Crown Victoria was followed. Tr. 58-9, 99, 155. Marco Harper, a bystander who saw the Crown Victoria leave the parking lot, testified that he followed the burgundy Crown Vic after the shooting. Tr. 297-302. During his chase, he was able to retrieve the tag number on the car. Tr. 303. He called 911 and informed them of the tag number. Tr. 303.

The Crown Victoria was able to evade Harper. Tr. 59, 99, 155, 302. Shortly thereafter, the group in the Crown Victoria had Keitt dump the assault rifle and his pistol in the woods behind a church on a dirt road. Tr. 60, 99-100, 154-55. They also later abandoned the Crown Victoria on a dirt road. Tr. 60, 100, 158. Brandon, Haigler, Keitt and Harmon all testified that Brandon called Harmon for a ride. Tr. 101, 127, 158, 451-52. Mack, Davis, Brandon, and Keitt were later picked up by Harmon and another individual known as L.T.⁶ Tr. 61, 158, 452. Harmon did not say anything about the shooting during the drive back to L.T.'s home. Tr. 61-2, 127, 159. They later learned that someone died as a result of the shooting. Tr. 62, 102, 129, 159, 453.

⁶ Harmon indicated that Haigler also went with them to pick up the group that rode in the Crown Victoria. Tr. 452.

The Aftermath at the Scene

After the shooting, Denise's car rolled across U.S. Highway 1. Tr. 186-87, 225, 253; see Tr. 265. It came to a stop after hitting a parked car at the gas station across the street from the Barnyard. Tr. 186-87, 225, 253; see Tr. 266. Trey jumped out of the car before it crossed the highway. Tr. 265, 281. Tasha jumped out of the car before it made impact with the parked car at the gas station. Tr. 266. Porcher and Washington, who were in Scooter's car, both jumped out and ran over to Denise's car in the parking lot. Tr. 186, 228, 266.

Washington testified that Denise's car was in bad condition: there were bullet holes everywhere, the car had hit a parked car, and there was blood everywhere. Tr. 228. Washington talked to Denise, and he testified that she responded in motion. Tr. 228. He ran to get help. Tr. 229. Washington ran into Trey, who told him his back was hurting. Tr. 229. Washington took Trey's shirt off, and Trey started bleeding. Tr. 229-230. He saw two holes in Trey's back. Tr. 231. He tried to stop the bleeding, but an officer who responded to the scene told him to leave Trey alone. Tr. 231. Denise was dead after it started raining. Tr. 232.

Porcher saw that Denise was injured, but did not know if Randy or Tasha were injured. Tr. 187. He noted that Trey was also injured. Tr. 187. Scooter testified that he saw Denise slumped over the steering wheel. Tr. 254. There was blood all over, and there were numerous holes in her car. Tr. 254. He saw Tasha on the ground. Tr. 255. He also observed Trey as he crossed the street.

Tr. 255. An officer who arrived on the scene told him to get on the ground. Tr. 255. Scooter called 911. Tr. 256.

Trey testified that at first, he attempted to obtain help at a car lot near the Barnyard. Tr. 283. When he asked for help there, the woman in the building ran away screaming. Tr. 284-85. He then crossed the highway. Tr. 286. Trey's cousin, Porcher, and Washington attempted to assist him when he walked up to the gas station. Tr. 287-88.

Tyler Dennison, the paramedic who treated Denise at the scene, testified that when he arrived, she was not breathing and she had no pulse. Tr. 312. He observed a large hole in the back of her head with apparent brain matter around it. Tr. 312. He testified there was nothing he could do for her, and declared her dead at the scene. Tr. 312-13. Trey was treated at the scene and transported to Richland Memorial Hospital. Tr. 289, 314-16. He was shot three times in the back, two times under his arm, and once in the kneecap. Tr. 291.

Harmon and Keitt Leave, Arrested in Orangeburg

After hearing someone died at the scene, Harmon advised the rest of the guys at the shooting to lay low. Tr. 63, 102. Later that evening, Brandon, Harmon, Keitt, and a fourth person drove down to Orangeburg.⁷ Tr. 102-04, 161, 455. Harmon and Keitt planned on staying with some of Keitt's family in the Orangeburg area. Tr. 160-61, 454. After dropping off Harmon and Keitt, Brandon went back to Columbia and turned himself into police. Tr. 104, 162.

⁷ Harmon testified that he decided to go to Orangeburg after he heard Mack was arrested. Tr. 454.

The Lexington County Sheriff's Office was able to track Harmon and Keitt down in Orangeburg by locating the signal from Harmon's cell phone. Tr. 348-50, 353. Harmon and Keitt were arrested at the hotel early the next morning. Tr. 163, 354-56, 455.

The Investigation

During the course of their investigation, police were able to recover the assault rifle used in the shooting. Tr. 399-400. David Black, a SLED firearms and toolmarks examiner, testified that twenty-one cartridge cases retrieved from the scene were fired by the assault rifle. Tr. 387. He also testified that the assault rifle fired a bullet jacket fragment retrieved from autopsy. Tr. 376, 387.

Detective Eric Russell, the primary investigator assigned to the case, testified that Porcher identified Harmon as the shooter in a third photo lineup. Tr. 397-98. He also testified that Davis, Brandon, Haigler, and Keitt all identified Harmon as the shooter when they gave their statements. Tr. 402-05. Brandon, Haigler, and Keitt also testified that they told police Harmon was the shooter. Tr. 105, 121, 163. Porcher also testified that he identified Harmon as the shooter in a photo lineup.⁸ Tr. 196.

Harmon testified that he was not saying that Keitt was the one who fired the rifle. Tr. 460. Keitt was just the last person he saw with the weapon. Tr. 460.

Introduction of George Mack's Court Records

⁸ Porcher initially picked Brandon as the shooter out of a lineup. Tr. 192. He later identified Harmon as the shooter in a third lineup. Tr. 196. He explained that he initially identified Brandon in the photo lineup because he was the person Scooter confronted at Number One. Tr. 196. He also noted that the shooter at the Barnyard had a low haircut, while the person who confronted Scooter at the Number One had twists. Tr. 196-97.

During the presentation of Harmon's case, the defense wanted to present Mack's court records, which included an indictment for accessory after the fact of murder, the sentencing sheet from the guilty plea on the accessory after the fact of murder charge, and arrest warrants for murder, two counts of assault with intent to kill, one count of assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, and criminal conspiracy. Tr. 467-68. The State objected, arguing that the documents were not relevant to Harmon's case because Mack had not testified at trial. Tr. 468. Harmon's counsel argued that the records were relevant because they were indicative of the deal some of the other witnesses who did testify would receive. Tr. 469. The trial court initially ruled that it was going to let the records in under Rule 803(8) of the South Carolina Rules of Evidence. Tr. 469. The court noted that there had been testimony from co-defendants that they had been offered accessory after the fact of murder pleas, and Mack was present. Tr. 469.

The State then argued they would need to bring Mack over to testify to explain. Tr. 470. The Solicitor argued that while the document would qualify as a public record, that did not make the document relevant. Tr. 470. The trial court noted that it understood that the guilty plea was the result of this incident and that Mack was present and the driver of the vehicle. Tr. 471. The Solicitor asked if the defense would explain why the records were relevant. Harmon's counsel argued it was relevant because the defense's contention was that Harmon did not fire the gun and the co-defendants were blaming Harmon because they had been offered deals to testify against him. Tr. 471. He further argued that the

deal was offered to Mack, and there was already testimony on the record that Mack was the first one to give law enforcement Harmon's name. Tr. 472. The Solicitor countered that at no point during the trial did Mack testify against Harmon. Tr. 472. He further noted that had Mack testified he would not have had an objection. Tr. 472. Further, the solicitor noted "[t]here's a death penalty case, even though it's not relevant here, that says what one co-defendant gets as punishment is not admissible when we are trying the other one." Tr. 472. The Solicitor argued that he was referring to either State v. Cooper or State v. Charping, and he provided the court with a copy of the case. Tr. 472-73. After a short recess, Harmon's counsel argued the records were relevant because of what everyone had been promised to testify against Harmon. Tr. 473. The court further asked how that was relevant since the co-defendant was not a witness in the case. Tr. 473. Harmon's counsel argued that it was already in evidence that Mack was the one who first gave police Harmon's name, there was vague talk that the other co-defendants would get some help as a result of their cooperation at trial, and the records were evidence that made the defense's argument more likely than not, which counsel asserted was the standard of relevance. Tr. 474. Since the court records were public records, they were not excludable as hearsay. Tr. 474.

The Solicitor then argued that based upon that argument by defense counsel, the State would not object to allowing the records in if the State could put in Mack's written statement. Tr. 474. The Solicitor noted that the defense was basing the admissibility of the records on the charge to which Mack pled,

and the sentence Mack received was inadmissible. Further, the Solicitor argued that they should be allowed to put in Mack's statement because that was the basis upon which he is offering the court records. Tr. 475. The trial court interpreted the statement by the Solicitor as an offer for a stipulation, and asked defense counsel what his position was on the stipulation. Defense counsel stated that it should not be required to do that. The Solicitor countered that he was going to offer into evidence Mack's statement in reply. He stated that they would put up the officer, let him testify that no promises were made to Mack for his statement, and present the statement. Tr. 475.

In response, defense counsel noted that the State had a right to call the officer in reply to say that Mack was not promised anything. After reviewing the statement, defense counsel asked if the only way the court would allow Mack's court records in would be for the defense to agree to allowing the statement into evidence. Tr. 476. He indicated that he would do it if that were the only option that he had. Tr. 476. The trial court stated that was not the only option available, and that it just wanted to know what the defense's position was on the matter. Tr. 476. The court noted that the law clerk was researching the issue, and that the other option available would be to give the court more time to research the issue. Tr. 476-77. "[I]f y'all want to work out a stipulation, then we can move forward. But if not, I need some time." Tr. 477. At that point, defense counsel agreed to stipulate that the statement was admissible. Tr. 477.

George Mack's Statement

During reply, the State published Mack's statement through Detective Russell. According to Mack's statement, Mack, Davis, Brandon and Davis' baby all went to the Number One in Mack's car. Tr. 489-90. While there, they ran into Scooter. Tr. 490. Scooter and Brandon knew each other from high school and had problems before. Tr. 490. Scooter and Brandon exchanged words regarding whether Brandon was Gpan and Scooter a Blood.⁹ Tr. 490. Davis interjected didn't want to do that b/c his baby was right there.¹⁰ Tr. 490. Mack, Brandon, and Davis took Davis' baby home. Tr. 490. On the way, Brandon called Harmon on his cell phone and told him what happened. Tr. 490. According to Mack's statement, Brandon told Harmon to meet them at the Barnyard and he saw Scooter, "they were going to bam it out." Tr. 490. Mack's statement indicated that Brandon said he and Scooter were going to "bam it out one on one." Tr. 490. The statement also indicated that the group in Mack's car picked up Keitt. Tr. 490.

According to Mack's statement, they met up with Harmon and Haigler, who were in a green Cavalier, at the light in front of the Barnyard. Tr. 490. Once they pulled into parking lot, they saw Scooter and his friends. Tr. 490. They pulled up close to them and Brandon jumped out. Tr. 490. Mack stated that Brandon and Scooter started cussing each other out. Tr. 491. Keitt kept saying pop the trunk. Tr. 491. According to Mack, Keitt then came to his side of the car and hit the trunk button. Tr. 491. Keitt went to trunk and got the gun out and cocked it. Tr. 491. Mack stated he could not see him, but heard him cock the

⁹ At the end of the statement, Mack clarifies that Scooter was calling Brandon a Gpan and a Blood. Tr. 492.

¹⁰ This was a fact that was consistent with the testimony of Davis and Washington, Tr. 52, 213.

gun. Tr. 491. Keitt then walked from the trunk to passenger's side without the gun. Tr. 491. Harmon then threw down cigarette, cursed, and then ran to the trunk of the Crown Victoria and got the gun out. Tr. 491.

According to Mack, Harmon started shooting towards Scooter and his friends. Tr. 491. Harmon shot a bunch of times, and then threw the gun in the trunk of Mack's car. Tr. 491. Harmon and Haigler left in the green car. Tr. 491. Mack, Brandon, Keitt and Davis went in Mack's car. Tr. 491. Mack's statement indicated that Keitt told him to stop to hide the guns. Tr. 491. According to the statement, they pulled into a dirt road, stopped and popped the trunk. Tr. 491. Keitt got out and hid the gun. Tr. 491. That was where Mack took the police and showed them where the gun was. Tr. 491. Mack stated in his statement that he did not know about the pistol until police found it. Tr. 491.

According to Mack's statement, after Keitt hid the guns and got back into the car, Mack drove them back to Broad River Road and dropped the others off near Davis' house. Tr. 492. Mack stated he then went home and called the police. Tr. 492.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN ADMITTING THE STATEMENT OF HARMON'S CO-DEFENDANT, GEORGE MACK, INTO EVIDENCE: HARMON STIPULATED TO THE STATEMENT'S ADMISSION AND NEVER OBJECTED TO ITS ADMISSIBILITY ON HEARSAY GROUNDS. EVEN IF THE EVIDENCE WAS IMPROPERLY ADMITTED, ITS ADMISSION WAS HARMLESS BECAUSE IT WAS CUMULATIVE TO THE TESTIMONY ALREADY PRESENTED AT TRIAL.

Standard of Review

The admission of evidence is addressed to the sound discretion of the trial court. State v. Williams, 297 S.C. 290, 293, 376 S.E.2d 773, 774 (1989). "On appeal, the question presented is whether the trial court's decision is controlled by an error of law or is without evidentiary support." State v. Taylor, 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct.App.2004). If any evidence supports the trial court's decision, the appellate courts will affirm it. Id. Additionally, the admission of improper evidence is deemed harmless if it is merely cumulative to other evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978).

When interpreting a court rule, an appellate court applies the same rules of construction used in interpreting statutes. State v. Brown, 344 S.C. 302, 307, 543 S.E.2d 568, 570 (Ct.App.2001). Thus, the language of a rule must be given its plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule. Id. Hearsay is defined as "a statement, other than one

made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801, SCRE.

A. Harmon’s argument is not preserved for appellate review because no hearsay objection was made to the admission of Mack’s statement at trial.

The admission of George Mack’s statement to police became an issue during the discussion of the admissibility of the Mack’s court records relating to the crimes for which Harmon was being tried. Harmon sought to admit the indictment for accessory after the fact to murder, the sentencing sheet to his guilty plea, and warrants for murder, two counts of assault with intent to kill, assault and battery with intent to kill, criminal conspiracy, and accessory after the fact of murder. The Solicitor objected to the admission of the documents, asserting they were not relevant to the proceeding because George Mack had not testified. Tr. 468. Harmon argued the documents were admissible under Rule 803(8) of the South Carolina Rules of Evidence. The Solicitor contended that even if the documents were admissible under Rule 803(8), they were not admissible because they were not relevant. Then the Solicitor argued that it would not object to the admission of the documents if the State were allowed to introduce George Mack’s statement into evidence. Tr. 474. Harmon argued that it was the defense’s position that it should not be required to make such an agreement. Id. The Solicitor then stated that he was now offering George Mack’s statement for admission in reply. Tr. 475. The State would present the officer who took the statement, have him assert that no promises were made in exchange for the statement, and the statement would be published to the jury.

Id. When asked what was Harmon's position on the matter, Harmon's counsel argued that he thought the State had a right to call the officer in reply to say that they did not promise Mack anything. After reviewing Mack's statement, counsel indicated that he would agree to a stipulation if that were his only option. After the trial court informed him that it was not his only option, and explained that it would need more time to research the admissibility issue before it could make a ruling, Harmon stated that they would agree to a stipulation for the admission of Mack's court documents and Mack's statement. Tr. 476-77.

During the discussion regarding the admissibility of Mack's statement outside the presence of the jury, Harmon never objected on the grounds that the statement was inadmissible hearsay. See Tr. 475-77. Further, when the trial court asked Harmon if it had anything to say when Mack's statement was offered into evidence during the State's reply, Harmon stated "[j]ust subject to our earlier objection." Tr. 489. The defense never argued that the statement was inadmissible hearsay. Since no objection was ever made on the grounds the evidence was improper hearsay, such an argument cannot be considered on appeal. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (S.C. Ct. App. 2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then another on appeal).

B. Appellant waived any hearsay objection to the admissibility of Mack's statement by stipulating it was admissible.

Harmon's appeal on this issue should be dismissed because he stipulated to the admissibility of Mack's statement.

A stipulation is

an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations, of course, are binding upon those who make them. A stipulation is an agreement, an understanding. The court must construe it like a contract, i.e., interpret it in a manner consistent with the parties' intentions.

Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 30, 507 S.E.2d 328, 337 (1998) (internal citations and quotations omitted). "The purpose of a stipulation is to 'obviate need for proof or to narrow [the] range of litigable issues.'" Greene v. Greene, 351 S.C. 329, 569 S.E.2d 393 (Ct.App.2002) (quoting Black's Law Dictionary 1415 (6th ed.1990)). Parties are bound by their trial stipulations. See State v. Pichardo, 367 S.C. 84, 102, 623 S.E.2d 840, 850 (Ct.App.2005); see also Griffith v. Griffith, 332 S.C. 630, 644-45, 506 S.E.2d 526, 533-34 (Ct.App.1998).

The record clearly indicates that Harmon stipulated to the admission of Mack's statement to police. The trial court informed Harmon that there were essentially two options. The court indicated that the parties could either allow him to complete his research the issue on the admissibility of the court records that Harmon sought to introduce, or they could work out a stipulation regarding the admission of the court records and Mack's statement. Tr. 476-77. Harmon's counsel clearly agreed to stipulate that Mack's statement was admissible. Tr.

477. Since Harmon stipulated that the statement would be admitted, he waived any objection to its admissibility. See Butler v. Sea Pines Plantation Co., 282 S.C. 113, 121-22, 317 S.E.2d 464, 469 (Ct.App.1984). As a result, this issue should be dismissed.

C. Any error in admitting Mack's statement to police was harmless; the contents of the statement were not important to the State's case, cumulative to testimony at trial, the statement was extensively corroborated by the testimony of other witnesses, and the prosecution had a very strong case establishing Harmon's guilt.

Error is harmless where it could not reasonably have affected the trial's outcome. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990); State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Reeves, 301 S.C. at 193-94, 391 S.E.2d at 243. In considering whether error is harmless, a case's particular facts must be considered along with various factors including:

... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 635 (1994) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

Thus, an insubstantial error not affecting the result of the trial is harmless where

“guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991).

Any error in admitting Mack’s statement was clearly harmless. First, the statement was not important to the prosecution’s case. The State did not call Mack to testify, and it only wished to offer the statement into evidence to rebut Harmon’s assertion that Mack’s statement was favorable to the State because he was promised a good deal. See Tr. 475. The State had already presented the testimony of four co-defendants, including Harmon’s brother, and all identified Harmon as the one who fired the assault rifle. Tr. 57, 105, 131, 163. Detective Russell also confirmed that all four men indicated that Harmon was the shooter. Tr. 402-05. He also testified that no promises were made when he took statements from the four. Id. Porcher also identified Harmon in a photo lineup as the one who fired the assault rifle. Tr. 196, 398.

Second, the contents of Mack’s statement were cumulative to the testimony at trial. His recollection of the first confrontation at the Number One was consistent with the testimony of the other witnesses about that confrontation between Brandon and Scooter. Tr. 51, 91; see Tr. 178-79, 211, 260, 268. Further, his statement’s indication that Brandon called Harmon after the confrontation was corroborated by the testimony of Brandon, Haigler, and Harmon. See Tr. 92-93, 121, 444-445. His statement also indicated that they

picked up Keitt after dropping off Davis' child, which was cumulative to the testimony of Davis and Brandon in that regard. Tr. 53, 92, 93. The other co-defendants and Harmon had testified that they found Scooter's group in the Barnyard parking lot. Tr. 55, 94, 122, 148-49, 446-47. Mack's statement did diverge from some other witnesses' testimony regarding who popped the trunk on the Crown Victoria, and who was the first to handle the assault rifle. Mack's statement indicated that Keitt was the one who popped the trunk, and he indicated that he never held the assault rifle. However, Mack's recollection of who handled the assault rifle just before the shooting and who actually fired the assault rifle was cumulative to the testimony of the others who saw the shooting. Mack indicated that Keitt put the assault rifle down, Harmon picked it up, and Harmon was the one who fired the weapon. This was consistent with the testimony of Davis, Brandon, Haigler, and Keitt. See Tr. 56-8, 77-8, 96-7, 117, 124-26, 151-52. Mack's statement was even cumulative in regards to the fact that Keitt was the one who dumped the assault rifle near a church. Tr. 60, 99-100, 154-55. Clearly, Mack's statement was cumulative to the testimony and evidence that was presented at trial. Further, the testimony of others clearly corroborated the facts contained within the statement.

Finally, the state had a very strong case establishing Harmon's guilt. Five witnesses, including Harmon's brother, identified him as the one who fired the assault rifle into the Camry. Harmon fled the scene after the shooting, and left the jurisdiction later that evening, which was further evidence of his guilt. See State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999) (stating that

evidence of flight has been held to constitute evidence of guilty knowledge and intent); State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) (noting that flight is "at least some evidence" of defendant's guilt); State v. Williams, 350 S.C. 172, 176, 564 S.E.2d 688, 691 (Ct.App.2002) (citing 29 Am.Jur.2d Evidence § 532 (1994)) (noting that flight, when unexplained, is admissible as indicating consciousness of guilt). Since Mack's statement was cumulative to the testimony presented in the State's case in chief, it was corroborated by the testimony of other witnesses, and the State had a very strong case establishing Harmon's guilt, the admission of Mack's statement was harmless. As a result, Harmon's claim for relief on this issue should be dismissed, and his convictions should be affirmed.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADDRESSING THE ADMISSIBILITY OF GEORGE MACK'S COURT RECORDS; THE TRIAL COURT DID NOT REQUIRE HARMON TO AGREE TO A STIPULATION IN ORDER TO SECURE THE ADMISSION OF MACK'S PLEA RECORDS, AND THE PLEA RECORDS WERE NOT CLEARLY ADMISSIBLE.

A. Harmon Was Not Forced to Stipulate to the Admission of Mack's Statement to Police in Order to Have the Plea Records Admitted.

Appellant's second claim for relief in this appeal should be dismissed because the record does not support it. Harmon claims that the trial court essentially made him stipulate to the admission of Mack's statement through Detective Russell or lose his right to have Mack's public sentencing records admitted into evidence. At no point in time was Harmon forced to agree to the stipulation.

At trial, the State argued that if the basis for Mack's plea was what he said in his statement, then the State should be allowed to introduce the statement. Tr. 475. Harmon argued that he should not be forced to make a deal to allow court records into evidence. Tr. 475. The Solicitor then stated he was not asking for deal; instead, the State would offer the statement into evidence in reply. Tr. 475. The State would put the officer who took the statement on the stand to say no promise was made in return for the statement. Tr. 475. The officer would then publish the statement. Tr. 475.

After reviewing Mack's statement, Harmon stated that he would agree to allow the statement in if that was the only way the court would allow the plea.

records into evidence. Tr. 476. The Court stated "I'm not saying that at this point. I haven't ruled." Tr. 476. Harmon again stated that they would offer that if that was the only option they have. Tr. 476. Again, the Court responded,

Well, I'm not saying that's the only option you have. That's the proposal the Solicitor put up. And I just wanted to know what your position was.

He's handed up this case. My Law Clerk is researching. You don't think there's cases of law - - you think it's admissible, if you give me another case, my other option is give me some more time to research it or if you want to, you know, if y'all want to work out a stipulation, then we can move forward. But if not, I need some time.

476-77. Harmon then immediately agreed to stipulate to the admission of Mack's statement in exchange for the admission of Mack's plea records. Tr. 477.

Clearly, the trial court provided Harmon with three options: first, he could provide the court with a case that would clear up the admissibility issue regarding the plea records; second, he could allow the court more time to complete its research; and third, he could agree to a stipulation with the State regarding the admissibility of the plea records. The record clearly indicates that Harmon voluntarily chose to agree to a stipulation in order to get the plea records into evidence. Since the record does not support a finding that the trial court forced the defense to agree to a stipulation, Harmon's second argument on appeal should be dismissed, and his convictions should be affirmed.

Since Harmon was clearly not forced to agree to the stipulation, this case is clearly distinguishable from Lazcano v. State, 836 S.W.2d 654 (Tex. Ct. App. 1992). In Lazcano, the detective working on the case submitted casts of shoe and tire prints, the defendant's shoes, and blood, hair, and soil samples to the F.B.I. for forensic review. Id. at 663. The test results came back inconclusive.

Id. Since the results were inconclusive, the F.B.I. agent who ran the tests declined to testify because of pressing matters in other cases where he obtained conclusive results. Id. At trial, the defendant sought to cross-examine the detective about his collection of the evidence. Id. The trial court required the defendant to stipulate to the admission of the inconclusive test results in exchange for allowing the defense to cross-examine the detective on the evidence collection. Id. On appeal, the Texas Court of Appeals held the trial court erred in requiring the stipulation, finding the record “fails to demonstrate a sufficiently compelling state interest that would substantially outweigh Appellant’s constitutional right to have an opportunity to cross-examine his accusers.” Id. However, due to the fact that another error in Lazcano’s trial was dispositive, the Texas Court of Appeals chose not to engage in an in-depth harmless error analysis. Id. at 663-4.

Harmon’s case is clearly distinguishable from Lazcano. First, the trial court in Harmon’s case did not require the defense to stipulate to the admissibility of Mack’s statement to police in exchange for admitting Mack’s plea records. Instead, the trial court clearly gave Harmon three options: provide the court with case law supporting the admission of the plea records, allow the court a more time to complete its research regarding the admissibility of the plea records, or come to some agreement with the State about a stipulation. Tr. 476-77. Harmon clearly decided go with the third option and agreed to a stipulation. Tr. 477. Second, as noted in Respondent’s argument in Section I, C above, any error in admitting Mack’s statement was harmless. Third, unlike the appellant in

Lazcano, Harmon did not assert a Confrontation Clause challenge at trial.

Instead, at best Harmon argued that the stipulation was not warranted because the plea records were admissible. The record did not support this assertion.

B. Mack's Plea Records Were Not Readily Admissible Because They Were Not Relevant to Harmon's Case.

Contrary to Harmon's assertions on appeal, the public records regarding Mack's guilty pleas were not clearly admissible. In support of his argument, Harmon misstates what the solicitor argued before the trial court. The solicitor objected to the admission of Mack's plea records because they were not relevant to Harmon's case. At trial, Solicitor Myers argued that Harmon failed to establish that Mack's plea records were relevant to this proceeding. See Tr. 470. The Solicitor noted that just because a document was a public record, that status does not automatically make it relevant or material to a case. Tr. 470. He further noted that someone would have to testify to what it means, and that someone would have to be George Mack. Tr. 471. Harmon responded that the records were relevant because the defense as always that the co-defendants were pointing the finger at Harmon because they were offered deals to testify against him. Tr. 471. In response, the Solicitor noted that Mack did not testify, and further acknowledged that had Mack testified, the State would have no objection to admitting his plea records. Tr. 472. However, without his testimony, the State asserted that the records were not admissible. Tr. 472.

"Relevant evidence" is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action

more probable or less probable than it would be without the evidence.” Rule 401, SCRE; State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004), affirmed as modified by State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006). Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003).

Harmon has failed to show that the plea documents he sought to admit without stipulation were admissible because they were irrelevant. The plea records Harmon sought to present were not clearly admissible. In general, guilty pleas of co-defendants are neither relevant nor admissible as substantive evidence of a defendant's guilt or innocence. State v. Moore, 337 S.C. 104, 106 n.2, 522 S.E.2d 354, 355, n.2 (Ct.App.1999), see U.S. v. Mitchell, 1.F.3d. 235, 245 (4th Cir. 1993). There are exceptions to this general rule. A co-defendant's guilty plea may be introduced to impeach the co-defendant if he testifies. See Moore, 337 S.C. at 108-09, 522 S.E.2d at 357; see also State v. Murphy, 270 S.C. 642, 244 S.E.2d 36 (1978). In this case, this exception did not apply because Mack did not testify at trial. See Moore, 337 S.C. at 108-09, 522 S.E.2d at 357; see also Murphy, 270 S.C. 642, 244 S.E.2d 36.

Harmon fails to establish the plea records were relevant in any other fashion. At trial, Harmon argued the records were admissible to support his argument that the other co-defendants were motivated to testify by favorable plea deals. However, none of the witnesses who testified at trial indicated that they had any knowledge of Mack's plea arrangement with the State. Davis testified

that his arrangement consisted of the reduction of his murder charge to an accessory after the fact charge. Tr. 65. He testified he was not told he would not go to prison. Tr. 65. He also testified on cross-examination that he was aware of the potential differences in sentencing for murder. Tr. 80. Brandon testified that he did not have any deal with the State when he told police his brother, Harmon, was the shooter. Tr. 105. Brandon also testified that he did not have a deal with the Solicitor's Office, and that he was not promised that he would not go to prison if he testified. Tr. 106. Similarly, Haigler testified that he was not promised any assistance with his charges when he told police that Harmon was the shooter, and he did not have a deal with the Solicitor's Office. Tr. 130-31. Keitt also testified that he told police that Harmon was the shooter, he was not promised anything for his statement, and he had no deal in place for his testimony at trial. Tr. 163-64. Since there was no testimony indicating that any of the four co-defendants who testified against Harmon knew about Mack's plea agreement and sentence, no clear nexus could be made between his plea and the motives of the co-defendants who testified against Harmon. See generally State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006)(finding evidence of flight irrelevant when no connection between flight and offense charged); State v. Gillian, 360 S.C. 433, 458-59, 602 S.E.2d 62, 75-6 (Ct.App.2004), affirmed as modified by, State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007) (finding evidence of use of police tactic to obtain confession irrelevant because of lack of connection between tactics and a confession; no confession resulted from tactics). As a result, Mack's plea records were irrelevant to Harmon's case.

Since Mack's plea records were irrelevant to Harmon's case, the record did not support Harmon's argument that Mack's plea records should have been admitted without any mention of a stipulation. As a result, his second argument on appeal should be dismissed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court to deny Harmon's appeal and affirm his convictions for murder, assault and battery with intent to kill, assault with intent to kill, and possession of a firearm during the commission of a violent crime.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DONALD V. MYERS
Solicitor, Eleventh Circuit
Lexington Judicial Center
205 E. Main Street
Lexington, South Carolina 29072

ATTORNEYS FOR RESPONDENT

By: 

Alphonso Simon Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

November 30, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

The Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE

RESPONDENT,

V.

SAMUEL HARMON,

APPELLANT

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

In addition to the matter designated by the Appellant, Respondent proposes the following to be included in the Record on Appeal:

1. From the Transcript, Respondent agrees and requests the pages set forth by Appellant;

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

The Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE

RESPONDENT,

V.

SAMUEL HARMON,

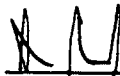
APPELLANT

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Dudek, Esq., SCCID, Division of Appellate Defense, 1330 Lady St., Ste #401, Columbia, SC 29201-3332.

I further certify that all parties required by Rule to be served have been served.

This 30th day of November, 2009.



ALPHONSO SIMON, JR.

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

ATTORNEY FOR RESPONDENT

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Samuel W. Harmon,

Appellant.

Appeal From Lexington County
Ralph F. Cothran, Circuit Court Judge

Unpublished Opinion No. 2011-UP-080
Submitted February 1, 2011 – Filed February 24, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka,
Assistant Attorney General Alphonso Simon, Jr., all

of Columbia, and Donald V. Myers, of Lexington, for Respondent.

PER CURIAM: Samuel H. Harmon was convicted of murder, assault and battery with intent to kill, assault with intent to kill, and possession of a firearm during the commission of violent crime. Harmon appeals, alleging the trial court erred in (1) forcing Harmon to concede to the admission of a co-defendant's written statement in return for the admission of public records evidencing the co-defendant's conviction and sentence for a lesser offense, and (2) admitting the written statement because the statement constituted impermissible hearsay. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

As to issue (1): State v. Dicapua, 383 S.C. 394, 399, 680 S.E.2d 292, 294 (2009) (finding in the absence of force, a party's concession to the admission of evidence waives any direct challenge to the admissibility of that evidence); State v. Pichardo, 367 S.C. 84, 94, 623 S.E.2d 840, 846 (Ct. App. 2005) (stating parties are bound by their trial stipulations).

As to issue (2): Dicapua, 383 S.C. at 399, 680 S.E.2d at 294 (indicating concession to the admission of evidence waives any direct challenge to the admissibility of that evidence); State v. Rice, 348 S.C. 417, 420, 559 S.E.2d 360, 362 (Ct. App. 2001) (noting issues not raised to the trial court are not preserved for appellate review).

AFFIRMED.¹

FEW, C.J., THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 2:15, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

SAMUEL W. HARMON,

PETITIONER

Appeal from Lexington County

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 2011-UP-080

PETITION FOR REHEARING

Petitioner Samuel Harmon requests rehearing pursuant to Rule 221(a), SCACR, because State v. Dicapua, 383 S.C. 394, 399, 680 S.E.2d 292, 294 (2009), upon which this Court relied to affirm petitioner's convictions involved the trial judge impermissibly granting a new trial where the defense consented to the admission of the videotape evidence. The judge *sua sponte* granted a new trial because of concerns about the videotape the defense consented to be admitted.

Respectfully, this Court may have overlooked the fact that this case involves the consent to the admission of *inadmissible evidence under duress* which is the equivalent of force. Petitioner argued that the judge erred by essentially requiring petitioner to agree with the solicitor that the public record of co-defendant Mack's plea to a lesser offense and his light sentence -- that the judge

had already ruled was admissible under Rule 803 (8), SCRE -- *would only be admitted if petitioner agreed that Mack's hearsay statement would also come into evidence.* This is respectfully a case of the solicitor bullying the court into an improper ruling, and the court forcing the defense to agree to the admission of an inadmissible hearsay statement of co-defendant Mack if the court was going to allow into evidence the public record of co-defendant Mack's conviction and sentence for a lesser offense which the court had already ruled was admissible.

All of the other co-defendants in this case, including Mack and Brandon, were allowed to plead as an accessory after the fact in return for their cooperation in naming Petitioner as the shooter.¹ Tr. 108, l. 22 – 111, l. 19. Brandon acknowledged petitioner was not involved in the dispute at the Number One Flea Market, that petitioner was not present when they disposed of the gun, but Brandon still maintained on cross-examination that petitioner was the shooter that day regardless of no apparent motive on petitioner's part. Tr. 118, l. 3 – 119, l. 5.

A brief review of the facts and the disputed testimony to refresh this Court's memory follows: Petitioner testified that Brandon telephoned him that afternoon about Brandon's altercation with Scooter at the Number One Flea Market. Tr. 444, l. 16 – 445, l. 13. Petitioner got a ride with Alex Haigler and they followed Mack in his Crown Victoria back to the Number One Flea Market. Tr. 444, l. 16 – 446, l. 4.

When they did not find Scooter in his group at the Number One Flea Market they drove their separate cars to the Barnyard where they found Scooter and his friends. Petitioner remembered the trunk on Mack's car "popped open before he stopped the car." Petitioner testified that Mack

¹ This Court can take judicial notice from the SCDC website that each of the co-defendants received a sentence of about seven years imprisonment. Petitioner was sentenced to life without parole.

went to the trunk and took out the AK-47. He then saw co-defendant Mack put it "back down." Tr. 446, l. 5 – 449, l. 20.

Petitioner said after Mack put the gun down that Keitt grabbed it. Petitioner testified that he then "heard gun shots. I hit the ground. I can't say I seen (sic) who shot, but I heard gunshots so I hit the ground." Petitioner said the gunshots lasted between ten and thirty seconds, he then got off of the ground, and he ran to Alex's car. Alex drove away from the Barnyard. Petitioner denied that he ever shot the gun. Tr. 448, l. 7 – 451, l. 2. Petitioner also testified he was not involved in the earlier confrontation at the Number One Flea Market, and he denied that he was in a gang or that he was trying to impress "your older friends." Tr. 459, l. 2 - 460, l. 21.

George Mack

George Mack was not called as a witness by the state. Defense counsel Floyd said he had served a subpoena duces tecum on the Clerk of Court's Office to show that the indictment on Mack was true-billed, and to show his sentence had been modified on the sentencing document. Tr. 467, l. 10 – 468, l. 8. The documents would also show that the murder indictment was not prossed. Assistant Solicitor Garrick objected stating Mack was not a witness, and he had not been subject to cross-examination. She also argued the documents petitioner wanted to admit on Mack were not relevant. Tr. 468, l. 2 – 469, l. 25.

Defense counsel Floyd responded that the documents were relevant because they showed Mack also had been given a good deal by the state, and Mack had reason to point at petitioner as the shooter to gain favor with the state. Tr. 469, ll. 3 – 14. The judge ruled he was going to admit the documents under Rule 803(a), SCRE as a public record. Tr. 469, ll. 15 – 24.

After the judge ruled *Solicitor Myers* told the judge that Mack would either have to be called as a witness to testify, *or that his statement to the police would have to introduced*. "If he

[Petitioner] is going to get into hearsay with nothing to support what's going on with a fellow [Mack] who hasn't testified." Tr. 469, l. 25 – 470, l. 4. The solicitor continued to complain that Mack had not testified, and that the public record *could not be admitted* "unless there is testimony about it." Tr. 470, ll. 1 – 24. The solicitor demanded "somebody has to testify what it means, and that would have to be George Mack." Tr. 471, ll. 1 – 4.

The judge began to waver on his ruling given the solicitor's demands. Tr. 471, ll. 5- 14. Solicitor Myers continued to complain: "I can't cross-examine a document." Tr. 472, ll. 5 – 10. The solicitor added that if Mack testified then he had no objection to the public documents being introduced, but that without cross-examination the records could not be admitted into evidence. Tr. 472, l. 5 – 473, l. 21.

Defense counsel Floyd continued to argue that the document involving Mack was a "public record," and it was not excluded under the evidentiary rules as hearsay. Tr. 474, ll. 11 – 15. The solicitor responded that based on defense counsel's argument he would not object to the documents being admitted into evidence *if the state* was allowed to put in George Mack's written statement. Tr. 474, ll. 16 – 23.

The judge then asked for a defense counsel's position on that offer. Defense counsel responded: "Your honor, *it's our position we should not be required to do that.*" The solicitor then stated, "No, sir, we'll do it. We are offering it." Tr. 574, l. 16 – 575, l. 18. (emphasis added).

Defense counsel then conferred with petitioner, and he said to the judge: "*If the only way that the Court will allow us to get this in (the public record) is with the statement also coming in, we are not . . .*" The judge interrupted and said that he had not ruled. Defense counsel responded: "We will (accept that) offer that if that is *the only option* we have." The judge stated that he was not saying it was the only option available. He noted that the solicitor had put forth that proposal and

either the court needed more time to research the issue or defense counsel could accept the solicitor's offer. Defense counsel then said: "We will go with it." Counsel verified that given the situation they would accept the solicitor's offer to get the public documents into evidence. Tr. 476, l. 19 – 477, l. 8.

Hope Frick of the Lexington County Clerk of Court's Office then verified from the documents that Mack pled guilty to being an accessory after the fact of a felony, and he received a seven year sentence with credit for time served. An order was later issued amending his credit for time served from five hundred forty-nine days to four hundred seventy-two days. Tr. 480, ll. 4 – 18.

On cross-examination, the solicitor had Frick acknowledge that the grand jury had indicted Mack as an accessory after the fact. The solicitor asked: "I can't try anybody unless the grand jury indicts them for a crime; can I?" Frick then agreed that in her legal opinion that was a correct statement of the law. Tr. 483, l. 14 – 484, l. 9.

Frick also agreed that it was her understanding of the law that it would be solely up to the judge whether to sentence Mack from "zero to fifteen years." She also told the jury that the solicitor's office "didn't have anything to do with the sentencing." Tr. 484, ll. 7 – 22.

Defense counsel on redirect asked Frick how many cases were presented to the grand jury every year. The solicitor successfully argued this was not relevant. Tr. 485, l. 3 – 486, l. 16.

The solicitor then called Detective Eric Russell as a witness regarding Mack's statement. Tr. 487, ll. 10 – 13. When the state went to introduce Mack's statement, defense counsel objected: "Just subject to our earlier objection." Tr. 489, ll. 3 – 7.

In this statement, Mack blamed Petitioner for being the one who "started shooting towards Scooter and his friends." Tr. 491, ll. 10-14. "Sammy shot a bunch of times and then threw the gun in the trunk of my car." Tr. 491, ll. 10-14.

In his closing argument, the solicitor stated that when George Mack gave a statement to Detective Russell that he -- the solicitor -- was not even in town but yet the defense was claiming he was promising the co-defendants consideration for their statements. "Oh, the police, they are so bad. Oh, I am so horrible. Giving people deals."² Tr. 518, l. 7 – 519, l. 20.

Most respectfully, State v. Dicapua, 383 S.C. 394, 399, 680 S.E.2d 292, 294 (2009) does not control this situation. Dicapua was a pure case of defense consent, without duress, to the admission of evidence and a judge subsequently and impermissibly granting a new trial on the basis of the piece of evidence the defense consented to being introduced without duress or force.

Here, the George Mack statement to Detective Russell was obviously hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Sec Rule 801 (c), SCRE. South Carolina follows the general rule that hearsay evidence is not admissible unless it falls within an exception to the hearsay rule. Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994). The primary basis for the hearsay rule is that the declarant is not present and is unavailable for cross-examination. Orangeburg Department of Social Services v. Schlins, 291 S.C. 477, 354 S.E.2d 388 (1987). The lack of an oath and opportunity for observation of the witness are generally considered to be secondary reasons for the hearsay rule. Cooper Corporation v. Jeffcoat, 217 S.C. 489, 61 S.E.2d 53 (1950).

The real reason for not allowing hearsay is that the jury, judge, and everyone else in the courtroom is being asked to take the word of an absent, unsworn, possibly unknown, declarant who has made an accusation behind a person's back, which generally does not inspire confidence in the statement. State v. Campbell, 30 S.C. L. 1 (Rich.) 124 (1844). Collins, South Carolina Evidence, §16.1 at pp. 473–474 (2d. ed. 2000).

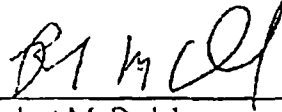
Further, as petitioner argued in his brief in Lazcano v. State, 836 S.W.2d 654 (Tex.Cl.App.1992) the Texas Court of Appeals held it was reversible error to require the defendant to stipulate to the admission of otherwise inadmissible evidence in order to be entitled to cross-examine the state's witness. See Lazcano v. State, 835 S.W.2d at 663. In that case, the court agreed to allow cross-examination *only if* the defendant would stipulate to admit the reports of inconclusive test results was unfair. The defendant argued his right to cross-examine was impermissibly restricted by this forced stipulation.

The court noted that the trial judge thought he was acting in fairness to present a truly balanced picture to the jury. However, the court stated "when considered together with the fundamental right to confront one's accusers, we conclude that the balance tips in favor of the rights of the accused which should received preferential [treatment]." The court also stated "the trial courts requirement that the reports be admitted by stipulation prior to an examination of the defendant placed petitioner in a no-win situation." Lazcano v. State, 836 S.W.2d at 663.

Here, the trial judge also placed petitioner in a no-win situation. To be able to place a public document before the jury to show that co-defendant Mack pled guilty and received a seven-year sentence as an accessory after the fact, petitioner *was forced* to agree that Mack's statement would be admitted through Detective Mack. That was fundamentally unfair, and rehearing should be granted.

² There was no evidence offered at trial of the solicitor's whereabouts at the time any statements were given to the police.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R M Dudek", written over a horizontal line.

Robert M. Dudek

Chief Appellate Defender

This 11th day of March, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

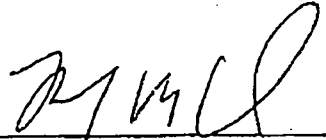
v.

SAMUEL W. HARMON,

PETITIONER

CERTIFICATE OF SERVICE

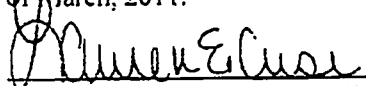
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Alphonso Simon, Jr., Esquire, this 11th day of March, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day
of March, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2010_.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Samuel W. Harmon,

Appellant.

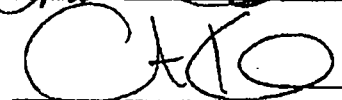
The Honorable Ralph F. Cothran
Lexington County
Trial Court Case No. 2007-GS-32-01440
2007-GS-32-01442
2007-GS-32-01444
2007-GS-32-01493

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.


C. J.

J.

J.

FILED

April 21, 2011

Columbia, South Carolina

4/19/2011

cc: Chief Appellate Defender Robert M. Dudek
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General Alphonso Simon, Jr.
Donald V. Myers, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

May 27, 2011

REMITTITUR

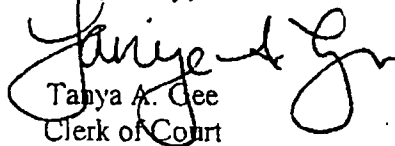
The Honorable Beth Carrigg
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: The State v. Harmon, Samuel W.
2007-GS-32-01440 2007-GS-32-01444
2007-GS-32-01442 2007-GS-32-01493

Dear Ms. Carrigg:

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

Sincerely,


Tanya A. Gee
Clerk of Court

TAG/tf

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Alphonso Simon, Jr.
Donald V. Myers, Esquire

ORIGINAL 11 KEM

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Samuel D. Harmon, 328335,

Full name and prison number (if any) of Applicant

v.

State of South Carolina

FILED

IN THE COURT OF COMMON PLEAS

2011 AUG - 4 1:01

A.C. PRIGH
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3202954

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29201
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 205 E. Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) George Mack, Sherman Davis, Brandon Harmon, James Keitt, Alex Haigler
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-32-1440: Possession of a Weapon
 - (b) 2007-GS-32-1442: Murder
 - (c) 2007-GS-32-1443: Assault with Intent to Kill

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Revised 3/2003

(d) 2007-GS-32-1444: Assault and Battery with Intent to Kill

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 7, 2008: Life & 15 years consecutive
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere. _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Conviction Affirmed.
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. April 21, 2011
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____

BETH A. CARRIGG
CLERK OF COURT
LEWISTON ST.

2011 AUG - 4 PM 1:01

FILED

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel.
- (b) Ineffective Assistance of Appellate Counsel.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to prepare and investigate.
- (b) Failure to interview and call witnesses.
- (c) Failure to present a viable defense.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____

SETH A. CARRING
CLERK OF COURT
JULY 21 2011

2011 AUG -4 2 1:01

FILED

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Post Conviction Relief is the proper forum.

(b) _____

(c) _____

FILED

2011 AUG -4 3 1:01

SETH A. CARRIGG
CLERK OF COURT
CLERK OF COURT

17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.
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. Wayne Floyd, 1611 Augusta Road, West Columbia, SC 29171
 - ii. Robert M. Dudek, Office of Appellate Defense, 1330 Lady Street, Suite 400, Columbia, SC 29201
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial.
 - ii. Direct Appeal.
 - iii. _____
19. State clearly the relief you seek in filing this application:
New trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

FILED

2011 AUG - 4 3 1:01

BETH A. CARRIG
CLERK OF COURT

Revised 3/2003

ORIGINAL

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Samuel D. Harmon, 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.

Samuel D. Harmon

SWORN to and subscribed before me this 3
day of Aug, 2011

Eugene Keuff (L.S.)
Notary Public

My Commission Expires: My Commission Expires April 4, 2016

2011CP3202954

CEITH A. CARRIG
CLERK OF COURT
JULY 2011

2011 AUG - 11 2 1:01

FILED

ORIGINAL

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

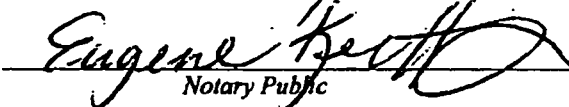
I, Samuel D. Harmon, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

3 day of Aug, 2011


Notary Public

My Commission Expires: My Commission Expires April 4, 2018

2011CP3202954

SETH A. CARRISG
CLERK OF COURT
101 6TH ST

2011 AUG - 4 2 1:01

FILED

Samuel Harmon # 328335-

Broad River Correctional Institution Mur-255

4460 Broad River Rd

Columbia, SC 29210

Lexington County Clerk of Court
205 E. Main Street
Lexington, SC 29072

CONFIDENTIAL

AUG 03 2011

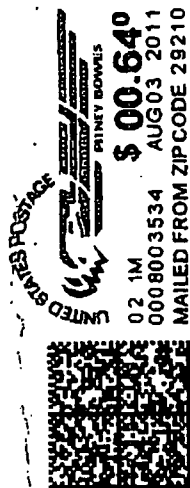
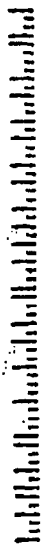
BRCL
WALLFOORD

CCDS

AUG 11 2011

MAIL ROOM

2307243333



02 1M
0008003534
\$00.64⁰
AUG03 2011
MAILED FROM ZIP CODE 29210

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No: 2011-CP-32-2954
	)	
Samuel D. Harmon, #328335,	)	
	)	RETURN
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 4, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the April 2007 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2007-GS-32-1444), Assault with Intent to Kill (2007-GS-32-1443), Murder (2007-GS-32-1442), and Possession of a Weapon During the Commission of a Violent Crime (2007-GS-32-1440). Applicant was represented by Wayne Floyd, Esquire. On May 5-7, 2008, the Applicant proceeded to trial pursuant to which he was found guilty as charged. The Honorable R. Ferrell Cothran sentenced the Applicant to confinement for a period of ten (10) years for Assault with Intent to Kill, five (5) years for Possession of a Weapon, a term of life for Murder, and a consecutive term of fifteen (15) years for Assault and Battery with Intent to Kill.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by Robert M. Dudek, Esquire. The South Carolina Court of

Appeals affirmed Applicant's conviction and sentence. State v. Harmon, Op. No. 2011-UP-080 (Ct. App. filed February 24, 2011). Applicant filed a Petition for Rehearing on March 11, 2011. The South Carolina Court of Appeals entered an Order Denying the Petition for Rehearing on April 21, 2011. The remittitur was issued on May 27, 2011.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from Applicant's direct appeal proceedings. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to prepare and investigate
 - b. Failure to interview and call witnesses
 - c. Failure to present viable defense
2. Ineffective Assistance of Appellate Counsel

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where

the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

April 5, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2011-CP-32-2954
	)	
SAMUEL D. HARMON, #328335,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

Jennifer L. Dowd, Esquire
Post Office Box 1000
Chapin, SC 29036

DATED this 5th day of April, 2012.



 Lena Pelishenko, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE vs.
Samuel D. Harmon
AKA: _____
Race: B Sex: M Age: 19
DOB: 5/30/88 SS#: _____
Address: 1136 Chadford Rd.
City, State, Zip: Irmo, SC 29063
DL# 10041619 SID# _____

INDICTMENT/CASE# 07-GS-32-1440
A/W#: JD51362
Date of Offense: 7/15/06
S.C. Code §: 16-23-240
CDR Code #: 549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Harmon of a Weapon During Course of Violent Crime
in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 549

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

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: To Munch
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

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

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Beth Covrigg

Clerk of Court Deputy Clerk

PRESIDING JUDGE

Judge Code: 2 1 1 1 4 1 9

Sentence Date: May 7, 08

Court Reporter: Katherine Richardson

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

VERDICT FORM

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
State of South Carolina) INDICTMENT NO.: 2007-GS-32-1440
vs.)
Samuel Harmon)

JURY VERDICT:

1. We, the Jury, unanimously find the Defendant, Samuel Harmon:

☒ Guilty of Possession of a Firearm During the Commission of a Violent Crime

OR

☐ Not Guilty of Possession of a Firearm During the Commission of a Violent Crime

I certify that this is the unanimous decision of the jury.

Michael T. Robinson
Foreperson

5/8/08
Date

Page 1 of 1

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

ARREST WARRANT

J-051362

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonTHE STATE
against

SAMUEL D HARMON

Address: 1136 CHADFORD RD

IRMO, SC 29063

Phone: SSN:

Sex: M Race: B Height: 0-0 Weight: 0

DL State: SC DL#: 100416119

DOB: 05/30/1988 Agency ORI#: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: RUSSELL, E

Offense: POSS FIREARM OR KNIFE

Offense Code

Code/Ordinance Sec.: 16-23-490

This warrant is CERTIFIED FOR SERVICE
in the COUNTY/ MUNICIPALITY OFThe accused is to be arrested and brought
before me to be dealt with according to
law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered
to defendant SAMUEL D HARMON on

07-16-2006 at 11:00 AM

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me the affiant JM RICHARDSON who
being duly sworn deposes and says that defendant SAMUEL D HARMON
did within this county and state on 07/15/2006 violate the criminal laws of the
State of South Carolina (or ordinance of)
in the following particulars:
DESCRIPTION OF OFFENSE: POSS FIREARM OR KNIFE

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

ON THE 15 DAY OF JULY 2006, THE DEFENDANT SAMUEL HARMON, WITH MALICE AND AFORETHOUGHT
WHILE AT 4414 AUGUSTA ROAD IN THE LEXINGTON COUNTY AREA OF S.C. DID PRODUCE A RIFLE AND
WITHOUT CAUSE OR LEGAL JUSTIFICATION, SHOOT THE VICTIM DENISE BOYKIN IN THE HEAD AND
TORSO. THE VICTIM DIED AS A RESULT OF HER INJURIES. A CO-DEFENDANT AND WITNESS HAVE
RENDERED SWORN WRITTEN STATEMENTS TO PROVE SAME.

Signature of Affiant

L.C.S.D.

Affiant's

Information

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

521 GIBSON RD

LEXINGTON, SC 29072

803-785-2400

A TRUE COPY

Let Co. C.C.C.P. G.S. & E.C.

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/15/2006 defendant SAMUEL D HARMON
did violate the criminal laws of the State of South Carolina (or ordinance of) as set forth below:

DESCRIPTION OF OFFENSE:

16-23-490 POSS FIREARM OR KNIFE

POSSESSION OF FIREARM OR KNIFE DURI

OF, OR ATTEMPT TO COMMIT, VIOLENT C

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

Sworn to and subscribed before me

on 07/15/2006

(L.S.)

Signature of Issuing Judge

Judge code: 058 Issuing Court: Magistrate

Issuing Judge

BRIAN WESLEY JEFFCOAT

205 EAST MAIN STREET

LEXINGTON, SC 29073

803-951-2595

ORIGINAL COURT COPY

ORIGINAL COURT COPY

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____ (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2006 JUL 24 P 12:01

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
INDICTMENT FOR
Possession of Firearm or Knife during Commission of
Violent Crime
§16-23-490

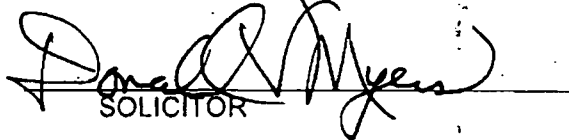
At a Court of General Sessions, convened on April 30, 2007, the Grand Jurors of Lexington County present upon their oath:

That Samuel D. Harmon did in Lexington County on or about July 15, 2006, possess a firearm, or visibly display what appeared to be a firearm, during the commission of a violent crime, to wit: the defendant possessed and fired a rifle at and into a vehicle occupied by four individuals striking and killing, Denise Boykin, striking Raymond Brown, and committing the violent crimes of Murder and Assault and Battery with Intent to Kill, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

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


SOLICITOR

WITNESSES

LCSD
Russell, Eric
Eric Russell

DOCKET NO. 2001-GS-32-1440

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

Samuel Harmon

A-2006-32-01884 4/30/2007 12:39 PM

ARREST WARRANT NUMBER

J051362

AGENCY OF GRAND JURY
TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 4-30-07

VERDICT

Indictment for

Possession of Firearm or Knife during
Commission of Violent Crime
§16-23-490

CDR# 0549

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
Samuel Harmon
AKA:
Race: B Sex: M Age: 19
DOB: 5-30-88 SS#:
Address: Chadborn Kri
City, State, Zip: Armo, SC 290103
DL# 1D0416119 SID#

INDICTMENT/CASE#: 07-GS-32-1442
AW#: Re: J051303 & J051393
Date of Offense: 7-15-06
S.C. Code §: 16-3-10
CDR Code #: 116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § of the S.C. Code of Laws, bearing CDR Code # 116

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

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment

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

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 1 4 14

Sentence Date: May 7, 08

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

VERDICT FORM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
State of South Carolina	)	INDICTMENT NO.: 2007-GS-32-1442
	)	
vs.	)	
	)	
<u>Samuel Harmon</u>	)	

JURY VERDICT:

1. We, the Jury, unanimously find the Defendant, Samuel Harmon:

☒ Guilty of Murder

OR

☐ Not Guilty of Murder

I certify that this is the unanimous decision of the jury.

Michael J. Robinson
Foreperson

5/7/08
Date

Page 1 of 1

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

FILED

2006 JUL 24 P 12:01

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

CODEFENDANTS

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

WITNESSES

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

Name: _____ Address: _____

Telephone: _____

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

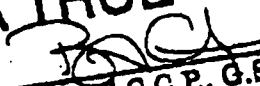
JURORS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

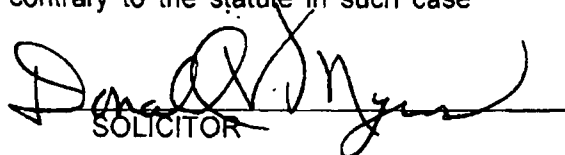
INDICTMENT FOR
Murder
§16-3-10, 20

At a Court of General Sessions, convened on April 30, 2007, the Grand Jurors of Lexington County present upon their oath:

That Samuel D. Harmon did in Lexington County on or about July 15, 2006 willfully, feloniously, and with malice aforethought kill one Denise Boykin by means of shooting the victim with a rifle, and the victim died as a proximate result thereof in Lexington County on or about July 15, 2006., in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE South Carolina

AKA: Samuel Harmon
Race: B Sex: M Age: 19
DOB: 5/30/88 SS#:
Address: Willow Creek
City, State, Zip: Columbia, SC 29212
DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-GS-32-1443
A/W#: 5051384 & 5051395
Date of Offense: 7-15-06
S.C. Code §: 16-3-620
CDR Code #: 7108

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Assault w/ Intent to Kill

In violation of § of the S.C. Code of Laws; bearing CDR Code #

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

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
or a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: To Murther

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine:	\$
14-1-206 (Assessments 107.5%)	\$
14-1-211(A)(1) (Conv. Surcharge)	\$100
14-1-211(A)(2) (DUI Surcharge)	\$100
16-5-2995 (DUI Assessment)	\$12
15-13 (Public Def/Prob)	\$500
13-3, 1B TP (Law Enforce. Funding)	\$25
13-7, 1B TP (Drug Court Surcharge)	\$100
10-21-114(BUI Breath Test Fee)	\$50
16-5-2942(J) (Vehicle Assessment)	\$40/ea
% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment.

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Beth A. Murrin
Clerk of Court/Deputy Clerk
Court Reporter: Katherine Richardson

PRESIDING JUDGE

Judge Code: 2

Sentence Date: May 7, 08

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

WITNESSES

LCSD
Russell, Eric
Eric Russell

A-2006-32-01884

4/30/2007 12:32 PM

ARREST WARRANT NUMBER

RE: J051363; J051393

ACTION OF GRAND JURY
TRUE BILL

Ch. R. R.
Foreman

Foreperson of Grand Jury

Date: 4-30-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007 -GS-32- 1442

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

Samuel Harmon

CDR# 0116

Indictment for

Murder

§16-3-10, 20

DONALD V. MYERS, SOLICITOR

VERDICT FORM

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
)
State of South Carolina) INDICTMENT NO.: 2007-GS-32-1443
)
vs.)
)
Samuel Harmon)

JURY VERDICT:

1. We, the Jury, unanimously find the Defendant, Samuel Harmon:

✓ Guilty of Assault with Intent to Kill

OR

Not Guilty of Assault with Intent to Kill

I certify that this is the unanimous decision of the jury.

Miguel A. Bulmon
Foreperson

5/7/08
Date

Page 1 of 1

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

ARREST WARRANT

J-051384

STATE OF SOUTH CAROLINA
COUNTY OFTHE STATE
against

HARMON SAMUEL

Address: WILLOW CREEK LN

COLUMBIA, SC 29212

Phone: SSN:

Sex: M Race: B Height: 6-0 Weight: 185

DL State: DL#:

DOB: 05/30/1988 Agency ORI#: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: RUSSELL, E

Offense: ASSAULT W/I TO KILL

Offense Code

Code/Ordinance Sec.: 16-3-620

This warrant is CERTIFIED FOR SERVICE
in the COUNTY/ MUNICIPALITY OFThe accused is to be arrested and brought
before me to be dealt with according to
law.

Signature of Judge

Date:

RETURN
A copy of this arrest warrant was delivered
to defendant HARMON SAMUEL, H
on 072206 11/17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF

AFFIDAVIT

Personally appeared before me the affiant JM RICHARDSON who
being duly sworn, deposes and says that defendant HARMON SAMUEL
did within this county and state on 07/15/2006 violate the criminal laws of the
State of South Carolina (or ordinance of)
in the following particulars:
DESCRIPTION OF OFFENSE: ASSAULT W/I TO KILL

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

THAT ON OR ABOUT 07-15-06 THE DEFENDANT SAMUEL HARMON WITH CO-DEFENDANTS DID WITH MALICE
AFORETHOUGHT AT 4414 AUGUSTA RD IN LEXINGTON COUNTY S.C. PRESENT AND FIRE A FIREARM AT THE
VICITM RANDY BOYKIN WHO WAS IN AN AUTOMOBILE WITH OTHERS AT THE TIME. SWORN STATEMENTS
FROM THE PARTIES INVOLVED PROVES THE SAME.

Signature of Affiant

L.C.S.D.

Affiant's
Information JM RICHARDSON
521 GIBSON RD
LEXINGTON, SC 29072
803-785-2400STATE OF SOUTH CAROLINA
COUNTY OF

A TRUE COPY

Let. Co. C.C.C.P. S.S. # F.C.

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/15/2006 defendant HARMON SAMUEL
did violate the criminal laws of the State of South Carolina (or ordinance of) as set forth below:

DESCRIPTION OF OFFENSE:

16-3-620 ASSAULT W/I TO KILL
ASSAULT WITH INTENT TO KILL

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

Sworn to and subscribed before me
on 07/17/2006

Issuing Judge

SCOTT D. WHITTLE
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

Signature of Issuing Judge (L.S)

Judge code: 886 Issuing Court: Magistrate

ORIGINAL COURT COPY

ORIGINAL COURT COPY

06059111

By sgt by

Judge

on

Type and Amount

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC.

2006 JUL 26 A 10:50

FILED

ARREST WARRANT
J-051385
STATE OF SOUTH CAROLINA
COUNTY OF _____
THE STATE
against _____
HARMON SAMUEL
Address: WILLOW CREEK LN
COLUMBIA, SC 29212
Phone: _____ SSN: _____
Sex: M Race: B Height: 6-0 Weight: 185
DL State: _____ DL#: _____
DOB: 05/30/1988 Agency ORI#: 3200
Prosecuting Agency: L. C. S. D.
Prosecuting Officer: RUSSELL, E
Offense: ASSAULT W/I TO KILL
Offense Code _____
Code/Ordinance Sec.: 16-3-620
This warrant is CERTIFIED FOR SERVICE
in the _____ COUNTY/ _____ MUNICIPALITY OF _____

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

Signature of Judge (LS)

Date: _____

RETURN
A copy of this arrest warrant was delivered to defendant HARMON SAMUEL on 07/15/2006 at _____

Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO
GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF _____

AFFIDAVIT

Personally appeared before me the affiant JM RICHARDSON who being duly sworn deposes and says that defendant HARMON SAMUEL did within this county and state on 07/15/2006 violate the criminal laws of the State of South Carolina (or ordinance of _____) in the following particulars:
DESCRIPTION OF OFFENSE: ASSAULT W/I TO KILL

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

THAT ON OR ABOUT 07-15-06 THE DEFENDANT SAMUEL HARMON WITH CO-DEFENDANTS DID WITH MALICE AFORETHOUGHT AT 4414 AUGUSTA RD IN LEXINGTON COUNTY S.C. PRESENT AND FIRE A FIREARM AT THE VICITM A 14 YEAR OLD FEMALE WHO WAS IN AN AUTOMOBILE WITH OTHERS AT THE TIME. SWORN STATEMENTS FROM THE PARTIES INVOLVED PROVES THE SAME.

Signature of Affiant

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & P.C.

L.C.S.D.

Affiant's
Information
JM RICHARDSON
521 GIBSON RD
LEXINGTON, SC 29072
803-785-2400

STATE OF SOUTH CAROLINA
COUNTY OF _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that on 07/15/2006 defendant HARMON SAMUEL did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:

DESCRIPTION OF OFFENSE:
16-3-620 ASSAULT W/I TO KILL
ASSAULT WITH INTENT TO KILL

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

Sworn to and subscribed before me
on 07/17/2006

Issuing Judge
SCOTT D. WHITTLE
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

Signature of issuing Judge (LS)
Judge code: 886 Issuing Court: Magistrate

ORIGINAL COURT COPY

06059111

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2006 JUL 26 A 10:50

FILED

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

Judge Beth A. Carrigg
on July 21, 2006

Type and Amount: Bond denied
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____

Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Assault with Intent to Kill

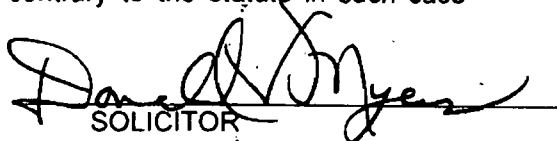
At a Court of General Sessions, convened on April 30, 2007, the Grand Jurors of Lexington County present upon their oath:

That Samuel D. Harmon did in Lexington County on or about July 15, 2006, willfully and with malice aforethought commit an Assault with Intent to Kill in that the defendant fired a rifle numerous times at and into a vehicle occupied by Randy Boykin and Tasha Jones., in violation of the Common Law of the State of South Carolina.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

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


SOLICITOR

DOCKET NO. 2007-GS-32-1443

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

Samuel Harmon

CDR# 0768

Indictment for

Assault with Intent to Kill (No Battery)
§ Common Law

DONALD V. MYERS, SOLICITOR

WITNESSES

LCSD
Russell, Eric
Eric Russell

A-2006-32-01884 4/30/2007 12:53 PM

ARREST WARRANT NUMBER

J051384; J051385

ACTION OF GRAND JURY
TRUE BILL

CR2

Foreman

Foreperson of Grand Jury
Date: 4-30-07

VERDICT

Foreperson of Petit Jury Date:

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	09/22/11
OMCOMITA	RELEASE DATE SCREEN	C051123
SCDC# > 00328335		LOC: BROAD RIVER
HARMON, SAMUEL -	SCDC CLASSIFICATION... VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY... N	
	SEXUAL PREDATOR... NOT APP	
	DNA STATUS..... COMPLETED	
	GPS REQUIREMENT... N	
	PREA DECISION.....	
CURRENT SENTENCE:	CONSECUTIVE SENTENCE ...	
LIFE	CURRENT SENT START DATE: 07/16/2006	
PROJECTED COMPLETION DATES		
MAXOUT DATE 99/99/9999	CURRENT EWC ..	
YOA SIX YEAR DATE:	CURRENT EEC ..	
INITIAL PAROLE DATE: 00/00/0000	NEXT PAROLE HEARING DATE: 00/00/0000	
TOTAL GT DAYS EARNED 000000	LABOR CREW/WORK PROG DATE: 99/99/9999	
TOTAL EARNED WORK CREDITS ... 000000	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS 000000	CATEGORY 4 OR 5 OFFENSE	
TOTAL EXTRA EARNED CREDITS .. 000		
TOTAL SERVICE TIME EARNED ... 000000		
PFKEYS:	5: HISTORY OF DATE CHANGES	
4-6	1 Sess-1 167.7.50.33	SCDC1273 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/22/11

C0239

HARMON, SAMUEL - FBI # 878958MCO SID# SC01708144 SCDC # 328335

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: 248755035

DORM.....: MU0255A

RACE....: B SEX....: M

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: WARD KEEPER

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 23 DATE OF BIRTH...: 5/30/88

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE	START	U/NU	CATEGORY
	YRS	MOS	DYS					
ASSLT & BATT W/INTNT KILL	15	0	0	LEXINGTON	7/16/20	6	U	4
FIREARMS PROVISION	5	0	0	LEXINGTON	7/16/20	6	N	3
ASSAULT W/INT TO KILL	10	0	0	LEXINGTON	7/16/20	6	N	4
MURDER	999	99	999	LEXINGTON	7/16/20	6	U	5

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

7/19/11 TRAFFICKING AND TRADING	OTHER
5/ 9/ 9 TRAFFICKING AND TRADING DROPPED	CHARG
3/12/ 9 DAMAGE, DESTROY, PROP. VALU NOT GUILTY	MAJOR
2/ 4/ 9 REFUSING OR FAILING OBEY	OTHER
8/20/ 8 POSSESSION OF CONTRABAND DROPPED	CHARG

HISTORY OF MOVEMENTS:

6/ 4/ 9	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
6/11/ 8	LEE	INCARCERATED	ADMINISTRATIVE
5/14/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
WARDKEEPER ASSISTANT	02/04/10	0/ 0/ 0		3F5
FOOD SERVICE AIDE	06/09/09	2/ 2/10	INMATE REQUEST	3F5
FOOD SERVICE AIDE	09/04/08	6/ 4/ 9	INSTIT TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
LVL 3 - FULL TIME (NO EWC)	06/12/08	9/ 4/ 8	COMPLETED EDUC PROGRAM

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE Amvel Harmon vs.

AKA: _____
Race: B Sex: M Age: 19
DOB: 5/2/88 SS#: _____
Address: Willow Creek Lane
City, State, Zip: WCU SC 29212
DL# JD041619 SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: DT-GS-32-14414
AW#: JOS1386
Date of Offense: 7/15/06
S.C. Code §: 16-3-1620
CDR Code #: 14

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: ABWIK
in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 14
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 7th Murder
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS

Recipient: _____
Fine: \$ _____
14-1-206 (Assessments 107.5%) \$ _____
14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
56-5-2995 (DUI Assessment) \$12 \$ _____
35-13 (Public Def/Prob) \$500 \$ _____
73-3, 1B TP (Law Enforce. Funding) \$25 \$ _____
33-7, 1B TP (Drug Court Surcharge) \$100 \$ _____
50-21-114(BUI Breath Test Fee) \$50 \$ _____
56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
% to County (if paid in installments) \$ _____
OTAL \$ _____

PTUP

_____ days/hours Public Service Employment

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

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Beth Carrigg
Court Reporter: Katherine Richardson
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code: _____

Sentence Date: May 7, 08

STATE OF SOUTH CAROLINA

COUNTY OF

Lexington

STATE

Samuel D. Harmon

AKA:

Race: B

Sex: M

Age: 19

DOB: 5/30/99

SS#:

Address:

Wadford Rd.

City, State, Zip:

Lexington, SC 29063

DL#:

1004116119

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-GS-32-1440

AW#: JDS1362

Date of Offense: 7/15/06

S.C. Code §: 16-73-2190

CDR Code #: 5419

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Harmon, Samuel D.in violation of § 16-73-2190 of the S.C. Code of Laws, bearing CDR Code # 5419☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7-16-06
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 18 TP (Law Enforce. Funding)

\$33.7, 18 TP (Drug Court Surcharge)

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Beth Carriag

Clerk of Court Deputy Clerk

Court Reporter:

Katherine Richardson

PRESIDING JUDGE

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE South Carolina

AKA: Sanuel Harmon
Race: B Sex: M Age: 19
DOB: 5/30/88 SS#: WILLIAM HARMON
Address: WILLIAM HARMON
City, State, Zip: COLUMBIA SC 29212
DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-GS-32-1443
AW#: 5051384 & 505390
Date of Offense: 7-15-06
S.C. Code §: 16-3-620
CDR Code #: 7108

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Assault w/ Intent to Kill

In violation of § of the S.C. Code of Laws, bearing CDR Code #

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

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, or a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: To Manner

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine:

14-1-206 (Assessments 107.5%)	\$
14-1-211(A)(1) (Conv. Surcharge)	\$100
14-1-211(A)(2) (DUI Surcharge)	\$100
56-5-2995 (DUI Assessment)	\$12
35.13 (Public Def/Prob)	\$500
73.3, 1B TP (Law Enforce. Funding)	\$25
33.7, 1B TP (Drug Court Surcharge)	\$100
50-21-114(BUI Breath Test Fee)	\$50
56-5-2942(J) (Vehicle Assessment)	\$40/ea
% to County (if paid in installments)	\$
OTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Boeth A. Paving
Clerk of Court/Deputy Clerk

Court Reporter: Katherine Richardson

PRESIDING JUDGE

Judge Code: 2

Sentence Date: Aug. 7. 08

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
Samuel Harmon
AKA:
Race: A Sex: M Age: 19
DOB: 5-30-88 SS#:
Address: 1 Hartford Rd
City, State, Zip: Irmo, SC 29063
DL# 1D0416119 SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-GS-32-1442
AW#: Re: J0513.3 + J051393
Date of Offense: 7-15-06
S.C. Code §: 16-3-10
CDR Code #: 116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

in violation of § of the S.C. Code of Laws, bearing CDR Code # 116

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

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 2 1/2 years/months/years or ☐ Under the Youthful Offender Act not to exceed years

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

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 1 1 2 1 1 2 1

Sentence Date: May 7, 08

Court Reporter: Katherine Richardson

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

SAMUEL HARMON, #328335,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-32-2954

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving to amend his Application for Post-Conviction Relief. In general, the Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. The Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

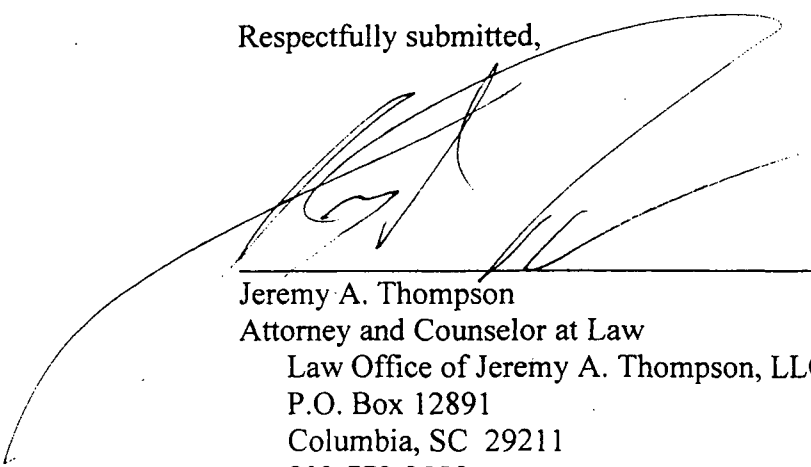
1. Trial counsel was ineffective for failing to object to testimony that the Applicant was a member of a gang;
2. Trial counsel was ineffective for failing to object to portions of the Solicitor's closing argument wherein the Solicitor argued that the Applicant committed the crime because he was a gang member;
3. Trial counsel was ineffective for failing to object to testimony by Investigator Eric Russell during the State's case-in-chief that George Mack identified the Applicant as the shooter on hearsay and Confrontation Clause grounds;
4. Trial counsel was ineffective for eliciting testimony from Investigator Russell that Mack identified the Applicant as the shooter;
5. Trial counsel was ineffective for failing to realize that he could move for a mistrial and/or a directed verdict at the close of the State's case based on the State's opening argument

that all of the Applicant's co-defendants identified the Applicant as the shooter when Mack did not testify at the trial and his statement should have been excluded;

6. Trial counsel was ineffective for failing to object to the improper admission of prior consistent statements by Investigator Russell that Sherman Davis, Brandon Harmon, Alex Haigler, and James Keitt identified the Applicant as the shooter;
7. Trial counsel was ineffective for failing to object to the Solicitor's insertion of himself as a witness during Hope Frick's testimony;
8. Trial counsel was ineffective for failing to move to disqualify the Eleventh Circuit Solicitor's Office following the Solicitor's questioning of Hope Frick regarding the plea agreement that was reached between the Solicitor's Office and Mack;
9. Trial counsel was ineffective for failing to object to the admission of Mack's statement on hearsay and Confrontation Clause grounds;
10. Trial counsel was ineffective for failing to object to portions of Mack's statement referring to the Applicant's neighborhood as a "bad" neighborhood and that "people there all have guns";
11. Trial counsel was ineffective for failing to object to the trial court's charging the jury on the law of accomplice liability;
12. Trial counsel was ineffective for failing to object to the Solicitor's bolstering of the testimony of the Applicant's co-defendants in his closing argument where the Solicitor argued that he would not prosecute the co-defendants for murder since they had given full statements;
13. Trial counsel was ineffective for failing to present testimony that Mack had confessed to an inmate at the Lexington County Detention Center that he fired the assault rifle.

The Applicant asks that the above-referenced allegations be considered in addition to those allegations previously raised in his original Application for Post-Conviction Relief.

Respectfully submitted,



Jeremy A. Thompson
Attorney and Counselor at Law
Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatl@yaho.com
Attorney for the Applicant.

This 13th day of November, 2012.

FILED
2012 NOV 14 A 8:46
JEREMY A. THOMPSON
11/19/12

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

SAMUEL HARMON, #328335,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

) FILED IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT

2012 NOV 14 CASE NO.: 2011-CP-32-2954

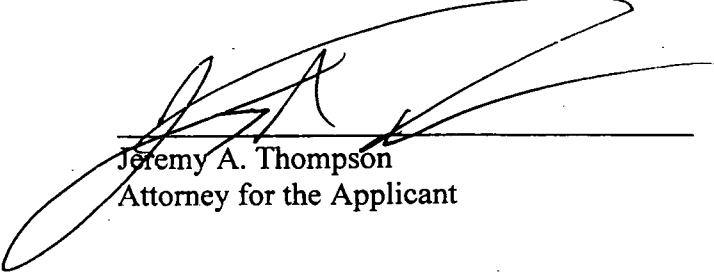
) BETH A. CARRIGG
) CLERK OF COURT
) 11/14/2012

) AMENDED APPLICATION FOR
) POST-CONVICTION RELIEF

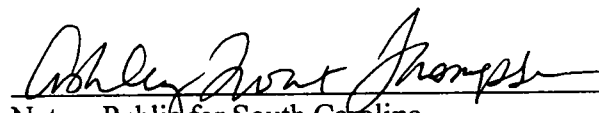
The undersigned hereby certifies that a true copy of the Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 14th day of November, 2012, by hand-delivery to:

Karen Ratigan, Assistant Deputy Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Lexington County Clerk of Court for filing.


Jeremy A. Thompson
Attorney for the Applicant

SWORN TO BEFORE ME this 14th day of
November, 2012.


Notary Public for South Carolina (L.S.)

My Commission Expires: February 2018

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT OF COMMON PLEAS

2011-CP-32-02954

SAMUEL HARMON)

APPLICANT)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

RESPONDENT)

January 31, 2013

Lexington, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

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

JEREMY A. THOMPSON, ESQ.

Attorney for the Applicant

KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL

Attorney for the State

CAROL M. THUEME, RPR

Official Court Reporter

I N D E X

WITNESSES:	PAGE
WAYNE FLOYD	
Direct Examination by Mr. Thompson	10
Cross-Examination by Ms. Ratigan	31
Redirect Examination by Mr. Thompson	35
SAMUEL HARMON	
Direct Examination by Mr. Thompson	38
 CERTIFICATE OF REPORTER	 67

EXHIBITS

Applicant's		ID	EVD
Exhibit No. 1	Sentencing sheet	28	28
Exhibit No. 2	Statement	40	

1 THE COURT: Okay. Call your case, please,
2 ma'am.

3 MS. RATIGAN: Yes, Your Honor. Thank you. May
4 it please the Court.

5 The last case today is Samuel Harmon versus the
6 State of South Carolina. The docket number is
7 2011-CP-32-2954. Mr. Harmon was indicted for assault and
8 battery with intent to kill, assault with intent to kill,
9 murder and possession of a weapon during the commission of
10 a violent crime. He was represented on those charges by
11 Wayne Floyd.

12 On May 5th the case was brought to trial --
13 May 5th of 2008, I should say, the case was brought to
14 trial about before Judge Cothran. The jury found him
15 guilty of the charges as indicted. He received concurrent
16 sentences of ten years for assault with intent to kill,
17 five years for the weapons charge, life imprisonment for
18 murder, and a consecutive sentence of 15 years for assault
19 and battery with intent to kill.

20 He did file an appeal, it was perfected at the
21 Court of Appeals. The court ultimately affirmed his
22 convictions and sentences in February of 2011.

23 The State is ready to proceed today.

24 I would note for Your Honor's information, and
25 just for the record, the murder victim's niece, her

1 mother, sister and other family members are here today.
2 They're here just to observe.

3 THE COURT: Okay. Very good. All right.
4 Counsel.

5 MR. THOMPSON: May it please the Court, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. THOMPSON: For the record, my name is Jeremy
9 Thompson. I am the applicant's current counsel of record.

10 He alleges, generally, that he received
11 ineffective assistance of counsel at his trial in
12 violation of his 6th and 14th Amendment rights as well as
13 the corresponding rights of the South Carolina
14 Constitution. Specifically, we have filed an amended
15 application for post-conviction relief on November 14th of
16 last year alleging 13 specific allegations of ineffective
17 assistance of counsel. I'm going to talk about those in
18 just a second, but we will be withdrawing allegation
19 number 13, the very last one, we're not going forward on
20 that one here today.

21 Additionally, Your Honor, my client -- and I
22 will go over this with him at the appropriate time -- my
23 client has some additional allegations that he provided to
24 me in a letter. I told him that he would be -- that I
25 would place him under oath and allow him to testify to

1 those. I don't believe that Ms. Ratigan has any objection
2 to that. He has provided me with a brief that he wants me
3 to file as an exhibit with the Court at the appropriate
4 time.

5 THE COURT: Any objection, Ms. Ratigan?

6 MS. RATIGAN: No, your Honor.

7 THE COURT: All right. Very good.

8 MR. THOMPSON: Just by way of very brief factual
9 background, Your Honor, I don't know how familiar you are
10 with Lexington and West Columbia, right down on Highway 1,
11 just about ten miles down the road, if that, there are two
12 flea markets, the U.S. Highway 1 Flea Market and the
13 Barnyard Flea Market. This whole incident started at the
14 U.S. Highway 1 Flea Market, which is further away from
15 this courthouse than the Barnyard Flea Market.

16 Three of my client's co-defendants, Brandon
17 Harmon, who is my client's brother, Sherman Davis, and
18 George Mack got involved in an argument with some
19 individuals at that flea market. No punches were thrown,
20 but there were words exchanged. Everybody left, and then
21 my client and the individual he was with by the name of
22 Alex Haigler, also a co-defendant, were contacted to come
23 join them because of this altercation.

24 Another co-defendant by the name of James Keitt,
25 K-E-I-T-T, was picked up by Mr. Brandon Harmon -- I'll try

1 and be clear about which Harmon I'm referring to -- by
2 Brandon Harmon, Sherman Davis and George Mack. They all
3 met up together at the U.S. Highway 1 Flea Market.

4 They didn't see the group of people that they
5 wanted to get involved with there, so they drove down to
6 the Barnyard Flea Market and saw them there. Words were
7 exchanged again there, and the State's allegation -- and
8 they drove in two separate cars, that's important -- the
9 State's allegation is that Mr. Mack, who was driving a
10 Crown Victoria, opened his trunk and pulled out an assault
11 rifle, and that Mr. Keitt then took the assault rifle from
12 Mr. Mack, and that my client then took the assault rifle
13 from Mr. Keitt and fired 24 shots at the vehicles that the
14 others, that the victims were in as they drove away,
15 striking and killing the victim, he struck one victim, and
16 also struck multiple times with bullets there. Everybody
17 flees. All the co-defendants and my client are eventually
18 arrested.

19 My client is charged as a principal. And one of
20 the issues in the case deals with some of the statements
21 that the co-defendants gave against my client. Again,
22 he's indicted as a principal, the others, I believe, they
23 all are allowed to eventually plead to accessory after the
24 fact. My client is convicted, sentenced to life, as
25 Ms. Ratigan referenced earlier.

1 Our allegations, basically, fall into three
2 basic groups. There is a substantial amount of testimony
3 in the record that goes unobjected to, that my client is a
4 member of a gang, specifically a gang called G-Pan, or
5 alternatively, the Gangster Killer Bloods, GKB. None of
6 that was objected to, and we believe that there are
7 references to that in both the testimony and in the
8 Solicitor's closing argument that should have been
9 objected to.

10 There are also, in particular, George Mack --
11 the co-defendants, Brandon Harmon, Sherman Davis, James
12 Keitt and Alex Haigler all did testify against my client,
13 all did identify him as the shooter. George Mack is the
14 fifth co-defendant. He did not --

15 THE COURT: Slow down for a second, one second.

16 You said how many people identified your client
17 as the shooter?

18 MR. THOMPSON: Four co-defendants did. Four
19 co-defendants did.

20 There is also one individual who initially
21 identified Brandon Harmon as the shooter and then changed
22 his identification to my client based on his testimony
23 because the cops didn't like his first identification.

24 And the fifth co-defendant, George Mack, also
25 gave a statement identifying my client as the shooter. He

1 did not testify at trial, but the substance of his
2 statement was allowed to come in through multiple --
3 through one witness on multiple occasions.

4 We believe that Mr. Floyd was ineffective for
5 failing to object to that as well as introduction of prior
6 consistent statements from the other co-defendants who
7 testified, that the detective testified that he
8 interviewed them as well, and they all identified my
9 client.

10 And, finally, Your Honor, there is an issue that
11 comes up with trying to, with -- Mr. Floyd tries to
12 introduce evidence that Mr. Mack did plead guilty to
13 accessory after the fact, and was already sentenced for it
14 at the time of the trial. And Solicitor Myers, then, in
15 his cross-examination of the clerk's office witness,
16 Ms. Hope Frick, introduced, you know, basically starts
17 questioning her about, you know, I can't prosecute him.
18 He's charged for murder, but I can't prosecute him if he's
19 not indicted. What can I do? I can't do anything, it
20 says, "without negotiations or recommendations." I can't
21 do anything, I can't do anything, I can't do anything.
22 And he follows up with that in that -- in other respects
23 in his closing arguments.

24 We believe that Mr. Floyd was ineffective for
25 failing to object to Mr. Myers, Solicitor Myers, becoming

1 a witness, essentially, in the case, a violation of
2 confrontation clause rights and improperly bolstering his
3 own witness' testimony at closing argument.

4 So with all that background in mind, Your Honor,
5 I would like to call Mr. Wayne Floyd as the applicant's
6 first witness.

7 THE COURT: Okay. Thank you, sir.

8 WAYNE FLOYD, after being duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Mr. Floyd, how you doing this afternoon?

13 A Good. How about you, sir?

14 Q I'm doing good. I promise I'll to try and get you
15 out of here as quickly as I can.

16 A Thank you.

17 Q Let me ask you this: How long have you been
18 practicing law in South Carolina?

19 A Thirty-five years.

20 Q And how much of that has been devoted to criminal
21 defense?

22 A The majority of it, I'd say, for the last 30 years.

23 Q And how did you come to represent Mr. Samuel Harmon
24 in this case?

25 A I was appointed.

1 Q And was he in jail or out on bond when you were
2 representing him?

3 A He was in jail the entire time.

4 Q The entire time?

5 How many times would you say you met with
6 Mr. Harmon at the jail prior to his trial?

7 A It's hard to remember, five to ten, I guess,
8 something in that range.

9 Q Did you have a good relationship with him? Did you
10 have any trouble communicating with him?

11 A No. He was a pleasant young man.

12 Q Now, what was your client alleged to have done in
13 this case?

14 A Well, he was alleged to have been the trigger man in
15 a shooting at the Barnyard Flea Market.

16 Q And how many co-defendants did he have?

17 A Four or five, off the top of my head.

18 Q And did they all identify Mr. Samuel Harmon -- again,
19 because his brother is -- I'm trying to differentiate
20 between the two -- but they all identified Mr. Samuel
21 Harmon as the shooter in this case?

22 A Yeah. And they all got plea deals.

23 Q Now, in preparation for the trial, was there -- did
24 you receive evidence that people were alleging that your
25 client was in a gang?

1 A Yes.

2 Q Do you remember which gang that was?

3 A Not off the top of my head.

4 Q And going into the trial, what was going to be your
5 defense?

6 A Well, that Samuel was not the shooter.

7 Q And did he, in fact, ultimately testify to that at
8 the trial?

9 A Yes, he did.

10 Q Now, going into the trial, and I know it's been --
11 we're getting close to five years now since the trial, so
12 I know it can be hard to remember exactly what your
13 strategy was at the time. But I want to kind of group --
14 I might be bouncing around the record a little bit because
15 I want to try and keep it clear with the groups of issues,
16 the gang references, the statements, that sort of thing.
17 So I'm going to start with the gang references.

18 Did you want the jury to know that Mr. Samuel
19 Harmon was a gang member?

20 A No.

21 Q Did you consider -- and if the record reflects that
22 you didn't -- I should probably rephrase that -- but did
23 you consider moving in limine to limit any introduction of
24 gang evidence in this case?

25 A I don't think I did that.

1 Q And if the record reflects you did not make a
2 motion --

3 A Yeah.

4 Q -- you don't disagree with that?

5 A No, I don't.

6 Q And do you have any -- if you didn't want that
7 evidence to come in, is there any reason why you didn't do
8 that?

9 A Well, I thought it was going to come out. We tried
10 to attack it a different way by talking about the group he
11 was in, what it really was about, that it wasn't a gang.
12 But, yeah, I mean, if I could have kept it out and I
13 didn't, then I guess that would be ineffective.

14 Q And you didn't make -- and, again, if the record
15 reflects that you didn't, you wouldn't disagree with
16 that -- you did not object to any point in time to any
17 reference coming in that he's a member of a gang?

18 A No.

19 Q If you don't do that, you don't disagree with that,
20 that's what the record is?

21 A No.

22 Q And still is -- and obviously, I know you're coming
23 at this from the defense aspect of it, but is there any
24 relevance to him being in a gang in this case? I mean,
25 what do you think that evidence shows?

1 Wait. Let me rephrase that.

2 Was there any evidence this was a gang hit, that
3 this was a gang argument, these were rival gangs getting
4 into an argument?

5 A Well, I wouldn't say as much as a gang, just guys
6 from different areas, you know.

7 Q So is the evidence of the gang, then, since it's not
8 a gang-related homicide, would the evidence that he is in
9 a gang be anything other than bad-character evidence?

10 A I think you could argue that, yes.

11 MR. THOMPSON: And, Your Honor, I'm not going to
12 go down each one of these. I just want to read out for
13 the record the specific incidents where testimony was
14 introduced about Mr. Harmon being in a gang.

15 Sherman Davis testified to it at page 51, lines
16 5 through 12. Jamar Porcher testified to it at page 178,
17 lines 9 through 25. Richard Scooter Geiger -- and these
18 first three are State's witnesses -- testified to it at
19 page 244, lines 3 through 25.

20 Mr. Samuel Harmon was asked about it on
21 cross-examination by the Solicitor at page 460, lines 14
22 through 21. And when George Mack's statement was
23 introduced through Eric Russell's testimony later on at
24 the trial, it's also referenced at page 491, lines 3
25 through 7, and page 491, lines 5 through 7, and each time

1 there is reference being made that Mr. Samuel Harmon is a
2 gang member, is a member of a gang, either a member of
3 G-Pan or the Gangster Killer Bloods.

4 BY MR. THOMPSON:

5 Q And, again, if the record reflects you did not object
6 to those references, you don't have any strategic reason
7 for not objecting to that?

8 A No.

9 Q And did any gang expert testify at the trial, to your
10 recollection?

11 A No, they didn't.

12 Q And I am going to ask you to flip to page --

13 MR. THOMPSON: I apologize, Your Honor. I'm
14 trying to get to the exact page.

15 BY MR. THOMPSON:

16 Q Page 524, lines 2 through 5.

17 And this is the Solicitor's closing argument.
18 And I'll just read that out for the record: "I submit to
19 you, it's malicious, it's mean and it's a total disregard
20 for human life because that's what he did. He doesn't
21 care about the law, not him, he's G-Pan."

22 Did you consider objecting to the Solicitor's
23 closing argument at that point in time and arguing that
24 it's impermissible to argue that simply because he's in a
25 gang, he committed this offense?

1 A I didn't object at the time.

2 Q And did you consider making any objections -- did you
3 have any strategic reason for not making an objection?

4 A No.

5 Q He also references gangs at page 520, lines 6 through
6 10 -- and this is kind of just recanting testimony: "What
7 did Sherman and what did Brandon say, you know, they were
8 first ones out there, number one, out there. They're out
9 there with George Mack, Sherman, and the defendant's
10 brother, Brandon, said Scooter comes up and accuses" --

11 THE COURT: Just do me a favor. Instead of
12 reading it into the record, just state the page and the
13 line numbers. I think that's going to be more than
14 sufficient to protect you. You don't need to read it in
15 the record.

16 BY MR. THOMPSON:

17 Q And the other reference is page 532, line 24 through
18 page 533, line 3 where he also references Mr. Harmon being
19 in a gang.

20 If you did not object on either of those
21 occasions -- and the record reflects that you did not --
22 you don't have any strategic reason for not objecting to
23 the gang references there, either, do you?

24 A No, I have no strategic reason.

25 Q All right. I'm going to switch gears a little bit

1 and move towards, in particular, the statements given by
2 the co-defendants and George Mack's statement.

3 Did you want -- let me ask you this: Did you
4 want -- if your case was going to be based on Mr. Harmon
5 not being the shooter, would it have been to your defense
6 to limit the number of individuals who said that he was?

7 A Yeah, I think you could say that.

8 Q And when you proceeded to trial, did you believe that
9 all of the co-defendants would be testifying against
10 Mr. Harmon?

11 A Yes, I did.

12 Q Were you surprised when Mr. Mack, George Mack, was
13 not called to testify against Mr. Harmon?

14 A Yeah.

15 Q And on page 39, line 21 through page 40, line 1 and
16 then page 40, lines 18 through 22, Ms. Garrick --

17 THE COURT: Hang on, hang on, hang on.

18 MR. THOMPSON: Sorry. I apologize.

19 THE COURT: What lines in 39, please, sir?

20 MR. THOMPSON: Page 39, line 21.

21 THE COURT: Okay.

22 MR. THOMPSON: Through page 40, line 1.

23 THE WITNESS: Mr. Thompson, page numbers, are
24 you going by the --

25 BY MR. THOMPSON:

1 Q I'm going by the transcript page numbers, not the
2 record on appeal page numbers.

3 A Okay.

4 MR. THOMPSON: And the second reference, Your
5 Honor, is page 40, lines 18 through 22. There,
6 Solicitor Garrick is talking about the statements that
7 Mr. Mack made to police.

8 BY MR. THOMPSON:

9 Q I understand at that point in time, you thought that
10 Mr. Mack would be testifying at trial, so I presume you --
11 did you think at that point in time anything would be
12 objectionable there?

13 A No. Mine starts at page 46. But, no, if I didn't
14 object. I still thought he would be testifying, though.

15 Q Did it ever occur to you that if he did not testify
16 and that -- did it ever occur to you to move during the
17 course of the trial that once he did not testify, that you
18 could move for a mistrial based on them introducing what
19 Mack said, if he didn't actually testify at trial, at the
20 close of their case?

21 A No. I guess I should have.

22 Q And flipping later in the case to where Eric Russell
23 actually did testify regarding Mr. Mack's statements,
24 Mr. Russell does not come forward in his direct testimony
25 on -- in the State's case-in-chief and say, George Mack

1 told me that Mr. Harmon was the shooter, but he certainly
2 infers it.

3 MR. THOMPSON: And, Your Honor, specifically,
4 I'm referring to page 397, line 23 through page 398,
5 line 3.

6 BY MR. THOMPSON:

7 Q Okay. It says: "Through that interview with
8 Mr. Mack, we got the idea that Sammy Harmon had been the
9 shooter."

10 Did you consider, at that point, objecting on
11 confrontation clause and hearsay grounds to that testimony
12 being introduced because you could not cross-examine
13 Mr. Mack because he had not testified to that point?

14 A Where are you referring to, Mr. Thompson?

15 Q In particular -- well, first, page 397, line 23
16 carrying over to page 398, line 6, and, specifically, 398,
17 lines 2 through 6.

18 A Yeah, I should have objected.

19 Q Should have objected there?

20 A Uh-huh.

21 Q And, again, page 398, lines 17 through 21, where it's
22 actually the question asked by the Solicitor: "Did you
23 tell him that you had information from another source that
24 Sammy Harmon was the shooter?"

25 Should you have objected there as well on the

1 same grounds?

2 A Yes, I should have.

3 Q And on page 400, line 22 through page 401, line 6,
4 where they're talking about the interview, he says:

5 "After the interview with him, Sammy Harmon was to be the
6 shooter."

7 So, again, should you have objected there as
8 well?

9 A Yes, I should have.

10 Q And, then, again, page 405, lines 19 through 21, your
11 very first question to Detective Russell was that George
12 Mack was the one who first gave Mr. Harmon's name as the
13 shooter.

14 If you had been objecting throughout the course
15 of that sequence to keeping that evidence out, would you
16 have asked that question?

17 A No, no.

18 Q And later in the case, the full statement given by
19 Mr. Mack gets introduced and, specifically, that begins on
20 page 489. And you, at that point in time, when they say
21 they're going to offer that into evidence, right at the
22 top of page 489, you say "just subject to our earlier
23 objection."

24 At that -- obviously, then, you felt it was
25 objectionable, so do you have any explanation as to why

1 you didn't object earlier?

2 A Well, at that time, I'm not sure where we were in the
3 trial at that time. Are we referring there to the
4 objection I made -- did this colloquy occur after --

5 Q The stipulation discussion?

6 A After the stipulation discussion?

7 Q Yes. And so you're trying at that point to try and
8 reference back to that earlier discussion?

9 A Yes.

10 Q But that's because you did not believe the statement
11 was admissible?

12 A That's correct.

13 Q And so if you felt it wasn't admissible there, you
14 don't have any reason why -- I don't mean to belabor the
15 point, but you don't have any reason why you didn't object
16 to it earlier?

17 A No, no.

18 Q Now, did you follow this case after it went up on
19 appeal? Are you aware of how the Court of Appeals ruled
20 in connection with the appeal?

21 A Not exactly. I know they affirmed it, but I -- I
22 don't know exactly.

23 Q And I want to talk a little bit about that
24 stipulation.

25 What happened with that stipulation, to the best

1 of your recollection?

2 A Well, I tried to get into evidence the record of --
3 since they didn't call Mr. Mack to testify, I tried to get
4 into evidence the record of his plea to show that he had
5 gotten the same deal that everybody else got, which was
6 basically a plea to accessory after the fact of murder for
7 seven years, I believe was the plea.

8 The Court first went along with it, and then the
9 Solicitor objected saying that if we got that in, then
10 they should be allowed to put in the substance of
11 Mr. Mack's statement to the police, which we objected to.
12 My understanding by the way it ended up, was in order to
13 get the plea thing, the plea deal in, we had to go along
14 with the statement coming in.

15 MR. THOMPSON: And, Your Honor, that colloquy
16 occurs on pages 467 through 478.

17 THE COURT: Okay.

18 BY MR. THOMPSON:

19 Q Are you aware that the issue relating to George
20 Mack's statement being introduced was raised on appeal and
21 was rejected by the Court of Appeals on the ground that
22 you stipulated to it, that you weren't forced to stipulate
23 to it?

24 A No, I wasn't aware of that.

25 Q And if you don't specifically recall, I understand,

1 but the record reflects that what happened was the Judge
2 says, you can agree to this stipulation, but I -- you
3 know, I can research it more if you want me to. And then
4 you say, no, we'll just go ahead and accept the
5 stipulation.

6 Does that accurately reflect your recollection
7 of what happened?

8 A If that's what the record says, I accept it.

9 MR. THOMPSON: And that's, specifically, Your
10 Honor, page 476, lines 12 -- starting on line 12 and then
11 goes through page 477, line 8.

12 BY MR. THOMPSON:

13 Q If the Court of Appeals held that your stipulation at
14 that point waived that issue for appeal, do you believe
15 that it would have been beneficial to, instead of
16 stipulating, to contend that your evidence should come in
17 and the statement should not?

18 A Yes.

19 Q And I'll ask you to turn to page 489, lines 11
20 through 14. This is when George Mack's statement was
21 published to the jury, and basically Mr. Mack says that
22 the area where they were all meeting up was a bad
23 neighborhood and everybody had guns there.

24 Independent of whether or not it was a
25 confrontation clause issue and a hearsay issue, did you

1 consider separately objecting to this portion of the
2 record as alleging that your client has bad character
3 because he's in a bad neighborhood with people who have
4 lots of guns?

5 A Well, I didn't. I see I could have objected to that,
6 yeah.

7 Q And do you think that would have been a meritorious
8 objection?

9 A Yeah, I think so.

10 Q And you, in fact, introduced witnesses,
11 good-character witnesses, on behalf of Mr. Harmon, didn't
12 you?

13 A Yes, I did.

14 Q So you were trying to show his good character, so
15 wouldn't you want to keep the bad character evidence to a
16 minimum?

17 A Yeah, I -- it's the kind of question whether it's bad
18 character, but I should have objected to it, but, you
19 know.

20 Q Now, Detective Russell -- and I'm just going to read
21 these out because basically all he's doing at this point
22 is going through and saying each one of the -- "I
23 interviewed each one of the co-defendants, and they each
24 told me that Mr. Samuel Harmon was the shooter," and that
25 basically starts at page 402, line 15 and continues

1 through page 405, line 15.

2 Did you consider objecting to that testimony as
3 evidence of an improper prior consistent statement being
4 introduced as to each one of these co-defendants?

5 A Okay. I'm sorry, I missed -- where were you asking
6 me about, what page?

7 Q Page 402.

8 A 402?

9 Q Yes, sir.

10 A And the line again, please?

11 Q It starts on line 15 and goes through page 403, in
12 particular lines 3 through 6, this is where he's talking
13 about James Keitt.

14 A Uh-huh.

15 Q And he says that he, in fact, give you a statement --
16 he did -- he indicated who the shooter was, and he
17 indicated Sammy Harmon was the shooter?

18 A Okay.

19 Q Did you consider objecting at that point to the
20 introduction of a prior consistent statement as improper
21 hearsay?

22 A No, because I didn't.

23 Q And he -- Detective Russell does the same thing with
24 Brandon Harmon, Sherman Davis and Alex Haigler on the next
25 three pages, or so. And if the record reflects that you

1 did not object --

2 A No.

3 Q -- you don't disagree with that?

4 A No, I had no strategic reason not to.

5 Q Now, I want to shift gears one last time on the
6 Solicitor's involvement in the case.

7 Do you recall calling Hope Frick as a witness in
8 this case?

9 A Yes, sir.

10 Q Why did you call her as a witness?

11 A That was to get in the evidence of the plea of
12 Mr. Mack, who they didn't call.

13 Q And page 483 to page 484, do you recall
14 Solicitor Myers cross-examining her about his inability to
15 make prosecuting decisions as to Mr. Mack?

16 A Yes.

17 Q And, specifically, that he couldn't control what
18 cases were indicted?

19 A I don't remember the specific things he said, but,
20 yes.

21 Q And on page 484, specifically, he's asking her that
22 there were no negotiations in the plea. I don't mean to
23 belabor the point, but that the plea was without
24 negotiations or recommendations. And line 17, "so he
25 didn't have anything to do with the sentencing?" And she

1 says, "No, sir."

2 Do you recall that?

3 A Yes.

4 Q Did you consider objecting to that line of
5 questioning on the grounds that Solicitor Myers was making
6 himself a witness in the case?

7 A I didn't object to it.

8 Q And did you consider moving for a mistrial and trying
9 to disqualify, at a minimum, Solicitor Myers from
10 testifying and from prosecuting the case any further?

11 A No, I didn't make such a motion.

12 Q Do you believe that Mr. Myers was making himself a
13 witness in this cross-examination?

14 A Yeah. It's more apparent looking at it, but, yes.

15 Q And did you -- on page 479 and 480, you introduced
16 evidence of Mr. Mack's conviction?

17 A Yes.

18 Q Do you recall introducing the sentencing sheet?

19 A Yes. Well, I mean, I can't recall specifically the
20 sheet but, you know, I certainly put in the testimony as
21 to what his sentence was.

22 MR. THOMPSON: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. THOMPSON:

25 Q Do you recognize that document?

1 A What appears to be a sentencing sheet of George Mack.

2 MR. THOMPSON: Your Honor, I would like to admit
3 this as Applicant's 1.

4 MS. RATIGAN: I have no objection to that, Your
5 Honor.

6 THE COURT: Admitted without objection.

7 (WHEREUPON, Applicant's Exhibit No. 1 was marked
8 for identification and received into evidence.)

9 BY MR. THOMPSON:

10 Q Who signed that document for the State?

11 A Donald Myers.

12 Q So did you consider further making an objection based
13 on his introduction of himself as a witness that he needed
14 to be cross-examined because he was the one who had
15 negotiated that plea with Mr. Mack?

16 A No, I didn't.

17 Q In retrospect, do you believe you should have?

18 A Yeah. I think that could have been an effective
19 approach.

20 Q Now, turning to his closing argument, lines --
21 page 530, lines 17 through 24.

22 A Yes.

23 Q Did you consider objecting on the same grounds as
24 earlier, that he says he can't do anything about George
25 Mack because "I can't do anything about the indictments"?

1 A I didn't object. I should have.

2 Q And independently of that issue, Solicitor Myers
3 arguing that I'm going to prosecute five people and give
4 them full for a murder -- I guess full statements is what
5 he was talking to, murder -- did you consider objecting
6 that he was bolstering his own witnesses -- and he was
7 referring to the co-defendants here -- that he's
8 bolstering their testimony because of his prosecuting
9 decisions, because they had given statements they
10 shouldn't be prosecuted for murder?

11 A No, I didn't object to it.

12 Q Do you think that would have been a good objection to
13 make?

14 A Yeah, I think it would have been a good objection.

15 Q And, finally, one last issue.

16 Do you recall the trial court -- and I'm
17 referring to page 501, line 22 going over to page 502,
18 line 17 -- and he's talking -- the Judge, at this point,
19 is talking about charging accomplice liability to the
20 jury.

21 A Five-0?

22 Q 501, line 22.

23 A Actually, for some reason, mine is missing 5 -- 495
24 to 503, Mr. Thompson. Okay.

25 Q Did you consider objecting to the charge of

1 accomplice liability being given -- or the fact that all
2 of the co-defendants were alleged to be accessories after
3 the fact, not accomplices, and so accomplice liability was
4 not warranted on the facts of the case?

5 A If I didn't object to it, I should have.

6 Q Thank you.

7 Now, just in, I guess, in general, did --
8 obviously it was Mr. Harmon's decision to go to trial in
9 this case?

10 A Yes. The only offer that we ever received was a plea
11 for 30 years for murder.

12 Q For murder? And Mr. Harmon rejected that offer?

13 A Yes.

14 Q Do you believe that there was absolutely no chance
15 you could have won this case at trial?

16 A Well, we talked about it. We knew the odds were very
17 slim that we could win, with everybody, including his
18 brother, testifying against him. But the only option
19 Sammy had was to plead to murder for 30 years, and so we
20 went forward with it.

21 Q And given the -- your defense that he was not the
22 shooter, do you believe that your defense would have been
23 assisted by eliminating testimony that he was in a gang?

24 A Yeah, that would have been beneficial.

25 Q Do you believe it would have been --

1 A I think that would have been more effective than our
2 testimony that it wasn't really a gang.

3 Q That it was a music group that he was a member of?

4 A Uh-huh.

5 Q Do you believe that your defense would have been
6 assisted had you been able to keep the testimony regarding
7 George Mack's identification out of the jury's view?

8 A Well, anybody -- any detrimental testimony that we
9 could have somehow eliminated would certainly be
10 beneficial.

11 Q Especially when the State had argued you're going to
12 hear George Mack picked him out, and if they couldn't have
13 introduced that testimony, that would have been a problem,
14 wouldn't it?

15 A Well, potentially, yeah.

16 MR. THOMPSON: Beg the Court's indulgence.

17 No further questions of this witness, Your
18 Honor.

19 THE COURT: Cross-examination.

20 MS. RATIGAN: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. RATIGAN:

25 Q A few quick questions and we'll get you on your way,

1 Mr. Floyd.

2 A Thank you.

3 Q Correct me if I'm wrong, but four co-defendants
4 testified at trial that Sammy was the shooter, correct?

5 A That's correct.

6 Q Okay. And there were four or five other people that
7 couldn't point to him and say he was the shooter, but that
8 they identified an African-American gentleman with a low
9 haircut who was not present at the original confrontation.
10 Does that sound accurate?

11 A That sounds accurate.

12 Q So you have the direct evidence and you also had kind
13 of the circumstantial, would that be fair to say?

14 A That's correct.

15 Q Okay. And I believe you testified on direct that you
16 believed the gang references, the way you were going to
17 attack it was to talk about it in the defense case; is
18 that correct?

19 A That's correct. I wasn't -- you know, I didn't think
20 about being able to keep it out completely.

21 Q Right.

22 A So we were going to talk about that it really wasn't
23 a gang.

24 Q Okay. And you did ask Mr. Harmon during the defense
25 case to explain what G-Pan was, that it wasn't a gang?

1 A Right. Because it was always his contention that it
2 wasn't a gang.

3 Q Now, with the four co-defendants testifying and
4 identifying Mr. Harmon, was there any actual prejudice in
5 George Mack's statement coming in later in the case?

6 A Well, I think it would have been better if it had
7 only come in through his testimony where I could have
8 cross-examined him, as we were able to cross-examine the
9 other people who testified against him, to kind of
10 emphasize the deals that they had gotten and the basis for
11 their testimony.

12 Q But his statement was basically cumulative to what
13 had already come out, though. Would that be fair to say?

14 A I don't remember there being anything different.

15 Q And I believe you explained to the judge at the time
16 that it was a strategic decision to try and put in George
17 Mack's sentencing sheet simply to show that everyone else
18 had gotten deals. That was the trial strategy decision?

19 A That's correct. That happened.

20 Q And you testified a couple of minutes ago that you
21 should have objected to the State's request to charge
22 accomplice liability. What would you have argued to try
23 and prevent that charge?

24 A Well, I think I could have argued that since they
25 were all allowed to plead to accessory after the fact,

1 that was the State's, I guess, acceptance of the fact that
2 they had nothing to do with the shooting itself, and that,
3 therefore, it would've just been the sole act of the
4 defendant since the others were not charged with it.

5 Q And did you not make that argument because you didn't
6 think it would be successful or did you just not think of
7 it?

8 A I guess I just didn't think of it at the time.

9 Q And the last question is, the kind of back and forth
10 between Solicitor Myers and the Clerk of the Court towards
11 the end of trial, do you believe that Mr. Myers' questions
12 of that clerk affected the outcome of the trial?

13 A Well, that's hard to say. If the jury believed the
14 questioning, I think they were certainly given the wrong
15 impression of the power of the Solicitor's office and the
16 process, and they may have been given the wrong impression
17 that it was some type of independent, unbiased decision
18 that these other people were not charged with the shooting
19 because they could have been, in any event, you know, even
20 though they didn't pull the trigger.

21 So, yes, it -- I can't say it did affect it, but
22 it may have.

23 Q But this back and forth between Ms. Frick and
24 Solicitor Myers, that happened after the close of the
25 State's case and after the close of your case that was --

1 well, actually, that was during the cross-examination of
2 Ms. Frick in part of your case?

3 A Right.

4 Q So all that other information about these folks
5 pleading to accessory, that had already come out at that
6 point, hadn't it?

7 A Yes.

8 MS. RATIGAN: That's all I have, Your Honor.

9 THE COURT: Redirect.

10 MR. THOMPSON: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. THOMPSON:

13 Q Ms. Ratigan asked you about testimony that the other,
14 I guess, individuals on the other side of the case had
15 given regarding Mr. Sam Harmon being the shooter. That
16 testimony was a lot weaker than the testimony -- a lot
17 less certain than the testimony given by the
18 co-defendants, wasn't it?

19 A Sure, yes, sir.

20 Q And, in fact, Jamar Porcher picked out Brandon Harmon
21 as the shooter first. That's what he testified to.

22 You don't disagree if that's what the record
23 reflects?

24 A Right, yeah.

25 Q And Trey Brown testified that the -- or at least gave

1 a statement that the individual who put the gun down on
2 the ground, but Trey picked it back up and started firing,
3 right?

4 A Yeah. There was some inconsistencies in the
5 eye-witness testimony.

6 Q And Marco Harper, who was the individual who was just
7 driving by the flea market when he heard the shots ring
8 out, testified that the individual put the gun in the
9 trunk of the Crown Vic and then got in the Crown Vic,
10 right? Do you remember that testimony?

11 A Not specifically. But I do remember there were
12 several inconsistencies in the testimony, and we tried to
13 bring that out, yes.

14 Q So it's -- and Mr. Sam Harmon did not get in the
15 Crown Vic, he got in the other vehicle, correct?

16 A Oh, you know, my thought would be that had they not
17 had the co-defendants testifying against Sammy, they could
18 not have convicted him just on the other testimony, yes,
19 sir.

20 Q Okay. And going to the other co-defendant,
21 Ms. Ratigan asked you is George Mack's statement
22 cumulative to the other co-defendants' statements.

23 But in terms of defending a trial or even
24 prosecuting a case, if you're on the prosecution side --
25 and I know this sounds a bit rhetorical -- but is having

1 one witness -- is having two witnesses who identified the
2 shooter better than having one?

3 A Well, generally.

4 Q Is having three better than two?

5 A Generally.

6 Q So if you could have kept a fifth identification out,
7 would you have wanted to do that? Would that have made
8 the case better than having five come in?

9 A Well, sure, yeah.

10 Q And you testified that it was a trial strategy
11 decision to allow George Mack's statement in, but that's
12 only because you didn't consider at that point in time
13 continuing an objection, you didn't consider arguing that
14 the statement should not come in, and that I should be
15 allowed to introduce George Mack's records?

16 A Well, maybe I misread it, but I thought that was my
17 option.

18 Q And I don't mean to -- well, I don't mean any
19 disrespect by this, but the Court of Appeals found that
20 you were not forced into that agreement?

21 A I understand that. That's the way I -- I felt that
22 was my option.

23 Q So you felt you had no option, but if legally
24 speaking you did have an option, would you have taken that
25 option?

1 A Yes.

2 MR. THOMPSON: Beg the Court's indulgence.

3 (Pause.)

4 MR. THOMPSON: No further questions.

5 THE COURT: Anything further?

6 MS. RATIGAN: None, Your Honor.

7 THE WITNESS: Your Honor, the lawyers said they
8 didn't object to my leaving after my testimony.

9 THE COURT: I was going to ask them.

10 Very good. You're excused.

11 Thank you, sir.

12 THE WITNESS: Thank you, Judge.

13 MS. RATIGAN: Thank you, Your Honor.

14 MR. THOMPSON: Thank you, Your Honor.

15 We would call Samuel Harmon.

16 THE COURT: Come around, please, sir.

17 SAMUEL HARMON, after being duly sworn, testified
18 as follows:

19 THE COURT: Have a seat, please, sir.

20 DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q How are you doing this afternoon, Mr. Harmon?

23 A I'm doing good. And you, sir?

24 Q I'm all right.

25 I'm not going to keep you up there too long.

1 All right?

2 A All right.

3 Q I have addressed with Mr. Floyd, I believe, the
4 allegations that I raised in our amended application for
5 post-conviction relief. Is there anything relating to
6 those allegations that you believe -- is there anything
7 else that you would like to add about those allegations?

8 A Yes, there's a few I would like to --

9 THE COURT: I need you to speak louder, please.

10 THE WITNESS: I said, yes, there are a few more.

11 THE COURT: Okay.

12 THE WITNESS: If possible, I'd like to add it in
13 as an exhibit, though.

14 MR. THOMPSON: I'm sorry. I --

15 THE COURT: Sure. Would you hand him that
16 exhibit so he can use that?

17 Any objection to him having that as an exhibit?

18 MS. RATIGAN: No. I probably need a copy of it
19 at some point, but I guess I could get that tomorrow when
20 I come back.

21 THE COURT: Well, we can stop and get you a copy
22 right now if you feel like you need one to cross-examine
23 him with it.

24 MS. RATIGAN: No. I'll just need one for
25 purposes of order preparation and down the road.

1 THE COURT: Okay. Right.

2 BY MR. THOMPSON:

3 Q Is this the statement?

4 A Yes, it is.

5 Q These are the issues you wanted to raise?

6 A Yes.

7 MR. THOMPSON: I'd like to admit this as
8 Applicant's 2.

9 THE COURT: That's just going to be a pleading.
10 I'm going to accept it as a pleading instead of an
11 exhibit.

12 (WHEREUPON, Applicant's Exhibit No. 2 was marked
13 for identification only.)

14 BY MR. THOMPSON:

15 Q And so you want the Judge to consider those
16 allegations in addition to --

17 A Yes, I would. I hope that he will.

18 Q Is there anything in reference to the amended
19 application that I filed on your behalf that you think
20 that I did not cover?

21 A No, sir, I didn't.

22 Q This -- do you understand that what you are asking
23 for relief here, is you're asking for a new trial; is that
24 right?

25 A Yes, sir.

1 Q You realize this Judge can't cut your sentence or do
2 anything like that?

3 A Yes, sir.

4 Q You're going to go back to square one, and you're
5 asking for a new trial? Is that what you want?

6 A Yes, sir, that's correct.

7 Q And you essentially got the maximum, life, so you got
8 the maximum sentence you could receive, but you know
9 you're facing that again if you win this case?

10 A Yes, sir, life and 15 years.

11 Q Is there anything else that -- this is barring some
12 extraordinary circumstances, this is the one and only PCR
13 hearing that you are going to have. So do you believe
14 there's anything that you believe that I've left out or
15 that you've left out in relation to the presentation of
16 your case here today?

17 A No, sir. As of now, I think we did a pretty good
18 job.

19 MR. THOMPSON: Thank you. I have no further
20 questions of this witness, Your Honor.

21 MS. RATIGAN: I have no questions.

22 THE COURT: Thank you, sir. You may step down.
23 Any other witnesses?

24 MR. THOMPSON: No further witnesses, your Honor,
25 just brief argument.

1 THE COURT: Do you want to call any witnesses?

2 MS. RATIGAN: Your Honor, we have no witnesses
3 to call. We rest on the record, and I can either make
4 argument after Mr. Thompson or if you prefer, this is all
5 kind of page cites and legal arguments. I can either make
6 the argument today or I can type up a quick memo and get
7 it to you by tomorrow afternoon.

8 THE COURT: I would rather you make it today.

9 MS. RATIGAN: Okay.

10 THE COURT: You can supplement any cites you
11 want to, if you would.

12 Okay.

13 MR. THOMPSON: I'll start with the gang
14 references, Your Honor.

15 We would argue that there -- and I would note
16 just before I begin this argument so I don't have to
17 mention it every time, that, I believe, with virtually
18 every allegation that I raised, Mr. Floyd agreed with me
19 that he should have made the objection, should have made
20 the argument, but he didn't have a strategic reason for
21 doing so, with perhaps the -- which I'll touch on -- the
22 George Mack statement. But in --

23 I'll begin with the gang references. We believe
24 that there was absolutely no relation to this case that,
25 you know, all they did was just introduce the fact that

1 he's in a gang. There is no allegation that this was a
2 gang retaliation, something that would go towards one of
3 the four or five exceptions under Rule 404(b) as to why
4 you should allow bad character evidence in. And,
5 essentially, all they did was introduce evidence that he's
6 in a gang simply to discredit and to make the jury believe
7 that Mr. Harmon was a bad man, that he's the kind of
8 person that would take an assault rifle out and shoot
9 somebody, shoot an assault rifle 24 times.

10 And Solicitor Myers' closing argument makes that
11 clear where he argues that he has a malicious disregard
12 for human life because he's G-Pan. If there was any doubt
13 that that's what they were trying get that evidence in
14 for, it was removed by the time that Mr. Myers closed.
15 And he also did reference those -- he also did reference
16 the gang multiple times in the closing argument.

17 I would hand up -- and I'll just hand up a whole
18 packet of cases that I'm going to be referring to, Your
19 Honor. And I provided all these, too, to opposing
20 counsel.

21 THE COURT: Very good. Thank you, sir.

22 MR. THOMPSON: The number did not reach this
23 many, but in State versus Day, which is 341 S.C. 410, 535
24 S.E.2d 431, the Supreme Court held that the prosecutor
25 referencing the defendant as an outlaw 23 times during

1 closing argument deprived defendant of due process of law.
2 And that was basically on the same grounds, that this was
3 bad character, that's all he was trying to do was trying
4 to say this is a bad person, and that he could have -- and
5 it was a murder case as well -- he committed this murder
6 because he's got a -- in that case, he's got a tattoo that
7 says "outlaw" on it; he's an outlaw, he's a bad man. The
8 same sort of issue came up here where Solicitor Myers is
9 arguing he's G-Pan, he's in a gang, he killed this poor
10 woman because he's --

11 THE COURT: Let me ask you this. In the scope
12 of things, assuming for the sake of argument that that is
13 objectionable, any reference to a gang membership, how
14 does that equate to the overwhelming evidence based on
15 four out of five co-defendants saying that he was the
16 shooter in this case?

17 MR. THOMPSON: Well, Your Honor, there is -- and
18 I would hand up, and you should have a copy, at least, of
19 the final brief. I have a copy of --

20 THE COURT: Which brief is it, before the Court
21 of Appeals?

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: I've got it.

24 MR. THOMPSON: In the initial brief and in the
25 final brief, the State made that argument, the issue, in

1 particular, with regard to George Mack's statement being
2 introduced, the State argued that there was no error in
3 this case because the overwhelming evidence of guilt
4 proved that even if that statement had come in, that he
5 was not prejudiced. And in the Court of Appeals' opinion,
6 they did not reference that as a ground for affirming.
7 They just found that it was not preserved for appeal. I
8 don't --

9 THE COURT: That notwithstanding, that's more of
10 an appellate procedural posturing --

11 MR. THOMPSON: It is.

12 THE COURT: Hold on, hold on.

13 MR. THOMPSON: I'm sorry. I apologize.

14 THE COURT: It's all right.

15 But, regardless, when you look at it from a PCR
16 standpoint as opposed to appellate review standard, if
17 four out of five co-defendants said this is the guy,
18 that -- does that -- and granted, the gang membership
19 would appear to be prejudicial efforts and probably should
20 have been objected to. And assuming that it is, don't you
21 still have the overwhelming evidence of guilt argument in
22 this case as to overcome the ineffective assistance of
23 counsel grounds?

24 MR. THOMPSON: Oh, there's certainly an argument
25 that could be made that the evidence is overwhelming. We

1 don't believe that it is. Mr. Harmon himself testified he
2 wasn't the shooter. There is no forensic evidence saying,
3 you know, putting his fingerprints on the gun.

4 THE COURT: There were no forensics at all?

5 MR. THOMPSON: No.

6 THE COURT: Okay.

7 MR. THOMPSON: I mean, they had guns. They had
8 shells and casings, and things like that, but there's
9 nothing, fingerprints, or anything like that, tying
10 Mr. Harmon to the gun, specifically.

11 THE COURT: But they have the gun tied to the
12 victim, that's it? All right.

13 MR. THOMPSON: So the only -- I mean, yes, you
14 have four witnesses who pick him out and say he is the
15 shooter, but they all have a vested interest in pointing
16 out the one individual who the State believes is the one
17 who's the shooter. Jamar Porcher testified, who is one of
18 the -- one of the -- on the victim's side of things,
19 testified that he picked out Sammy Harmon as the shooter.

20 I'm sorry. I'm going too fast.

21 That Sammy Harmon -- he picked out Sammy Harmon
22 as the shooter because he first picked out Brandon Harmon.
23 And the police came back to him and said, no, we're not
24 happy with that. You know, we've got more information.
25 Is it Samuel Harmon? And then he picked out Samuel

1 Harmon.

2 THE COURT: That's in the record?

3 MR. THOMPSON: That's in that record. And
4 that's in his cross-examination and in his re-cross
5 examination.

6 Again, and I was trying to reference this with
7 Mr. Floyd's testimony, Trey Brown testified that he gave
8 the statement -- he kind of disclaimed the statement a
9 little bit -- but he testified that the individual with
10 braids -- who's not my client because my client had this
11 short haircut like he has now, I believe -- the individual
12 had braids. He picked up -- put the gun down, picked it
13 back up and started firing. So that would not be my
14 client who's the shooter.

15 Marco Harper testified that someone -- and this
16 gets -- it's -- everybody testifies that, at least on
17 the -- at least the co-defendants testified that my client
18 took the assault rifle, threw it back in the trunk and ran
19 back to the other car and got in Alex Haigler's car and
20 drove off.

21 Marco Harper, who is the State's witness, and I
22 believe it's page -- I want to say it's page 306 where the
23 cross-examination comes out about this, testified very
24 clearly -- yes, it is 306 on to 307 -- that he looks back,
25 hears shots and looks back, sees someone throw a gun in

1 the trunk, close the trunk and get in the Crown Victoria,
2 which is not my client, it's somebody else. So there is
3 certainly reasonable doubt here.

4 My client testified he wasn't the shooter.
5 You've got multiple individuals --

6 THE COURT: This is certainly conflicting
7 evidence.

8 MR. THOMPSON: Right, that there is conflicting
9 evidence.

10 And so if you can exclude one of the five
11 individuals that -- going to Mr. Mack's statement -- if
12 you can exclude one of the five individuals who's ID-ing
13 him, you know, yes, the other four did, but it's still
14 better to have only four than to have five, especially
15 somebody who is not available for cross-examination, as
16 Mr. Floyd testified to. He thought it would have been far
17 better if Mr. Mack would have been able to testify from
18 that witness stand and he be cross-examined. That is the
19 whole point of the confrontation clause.

20 So with regard to, at least, Mr. Mack, we
21 believe that is how it's prejudiced. And, again, I know
22 the inquiries are slightly different, but the Court of
23 Appeals has -- I apologize, I don't have any case right
24 offhand, but I know I can cite a hundred of them --

25 THE COURT: Okay.

1 MR. THOMPSON: -- where the Court of Appeals has
2 held overwhelming evidence even if an issue is preserved,
3 even if it's not preserved, what have you, and they chose
4 not to do so in this case. I think that we can infer from
5 that that they did not believe that the evidence was
6 overwhelming either, and it's --

7 THE COURT: You can't infer that from that
8 opinion. The opinion speaks for itself.

9 MR. THOMPSON: Yes, Your Honor.

10 THE COURT: You can't negligently infer any
11 findings that's not included in it.

12 MR. THOMPSON: That is true.

13 THE COURT: I disagree with that.

14 MR. THOMPSON: But that argument was raised, and
15 they did not adopt it.

16 THE COURT: All right. I agree with that.
17 Okay.

18 MR. THOMPSON: They did not hold that it was not
19 harmless, they did not go that far. I agree with Your
20 Honor about that.

21 THE COURT: Okay.

22 MR. THOMPSON: And so with the conflicting
23 evidence and the conflicting testimony about who was the
24 shooter, this is not as open and shut a case as the State
25 claims that it is. The primary evidence, again, comes

1 from the people who have the best interest possible in
2 making sure that this individual, Mr. Harmon, goes to
3 jail, goes to prison for life to help their own situation
4 out.

5 And so certainly with the gang references, when
6 you've got conflicting evidence on that point, you know,
7 any evidence that makes it more likely that Mr. Harmon is
8 the shooter because he's a bad man, because he's a gang
9 member, we think is incredibly prejudicial, and had those
10 objections been made, we believe that there's a reasonable
11 likelihood that the outcome of the trial would have been
12 different.

13 With regard to Mr. Mack's statement coming in,
14 obviously, Mr. Floyd testified that he should have
15 objected when all those first references came in. I will
16 concede that there is -- that he did not come out and say
17 until Mr. Floyd asked him directly, did George Mack
18 identify -- or George Mack told me that Samuel Harmon was
19 the shooter, but it can be directly inferred from his
20 testimony -- I interviewed George Mack, and we've
21 concluded that Sammy Harmon must be the shooter -- that
22 that's indirect hearsay.

23 I handed three cases up to Your Honor on that
24 point. Wheeler versus State of Delaware. It's 36 A 33rd
25 310, a 2012 case, talking about admission of indirect

1 hearsay. And, then, two cases out of New York in the 2nd
2 Circuit, one's affirming, it's Mitchell versus Hope, 745
3 Federal Supplement 874, that's United States District
4 Court for the Eastern District of New York in 1990. And
5 then on appeal, the same case name, 930 Federal 2nd 1, and
6 that's the Second Circuit Court of Appeals out of 1991.
7 And in that case, Your Honor, a federal writ of habeas
8 corpus was granted because indirect hearsay was admitted
9 without objection. And I --

10 THE COURT: Well, what was the nature of the
11 indirect hearsay that was admitted in that case?

12 MR. THOMPSON: In Wheeler versus State, and this
13 is -- I guess it's page 320 on -- it's page 13 on this
14 one.

15 It says: "The clear inference that the State
16 sought to elicit from Detective Ride was that each witness
17 identified Wheeler, who is the defendant, as the person
18 who shot Davis. This point was emphasized in the State's
19 open and closing arguments to the jury. Accordingly hold
20 that the State violated Wheeler's 6th Amendment right to
21 confrontation when it introduced into evidence the
22 substance of inadmissible hearsay, stating it to an
23 investigating detective."

24 THE COURT: I got you. That's good. Thank you.

25 MR. THOMPSON: It's the same sort of argument

1 for Mitchell. And, basically, that these people are
2 identifying an individual as the shooter who are not there
3 to testify, held to be a confrontation clause violation,
4 known to be a hearsay violation, and we believe those
5 references should have been objected to.

6 And, similarly, had that evidence been kept out
7 of the case-in-chief, then the State would have been stuck
8 with the position at the outset where they told the jury,
9 you're going to hear from George Mack, you're going to
10 hear George Mack identify Samuel Harmon as the shooter.
11 And we believe that it was incumbent upon Mr. Floyd to
12 realize that he could have argued for a mistrial or
13 perhaps even a directed verdict at the close of the
14 State's case for failing to introduce something that's
15 material, that they said they were going to introduce,
16 something prejudicial, as prejudicial as somebody saying,
17 as the -- as this person ID'd the defendant as the
18 shooter, when they didn't introduce that evidence, that he
19 could have made that motion at the close of the State's
20 case because it's clear that evidence wasn't coming in
21 otherwise.

22 Now, when it came to the reply and the whole
23 statement was introduced, that, I think, we can directly
24 relate from the Court of Appeals' opinion. They held that
25 Mr. Floyd, that he was not forced into this stipulation,

1 that's clear from the record. In the record, the judge
2 said, I haven't made my ruling. I can still research, and
3 Mr. Floyd says, no, we'll just stipulate to it. So we
4 believe he was ineffective for failing to object to that
5 statement coming in because it's clearly inadmissible, and
6 if the judge had forced him to agree to the introduction
7 of an inadmissible statement, the issue would have been
8 reversed on appeal we contend.

9 THE COURT: Do you have a copy of that Court of
10 Appeals opinion? I have looked for it through mine, and I
11 do not have it.

12 MS. RATIGAN: It's real -- it's only two pages,
13 so it probably slid in somewhere.

14 THE COURT: I have the one that is denying the
15 motion for petition for rehearing.

16 Thank you.

17 MR. THOMPSON: And turning to Solicitor Myers'
18 cross-examination of Hope Frick in the closing argument,
19 I've handed up State versus Sierra, 337 S.C. 368, 523
20 S.E.2d 187. It's a Court of Appeals decision out of 1999.

21 In that case, the prosecutor cross-examined a
22 cooperating co-defendant -- or it wasn't a cooperating
23 anymore at that point, and said, didn't you tell me,
24 impeach them, impeach the witness with the statement that
25 individual had made to the Solicitor. And in that case,

1 the Court of Appeals held that the Solicitor had made --
2 forgive me, I want to say it to him -- had made himself a
3 witness by introducing himself by saying, didn't you tell
4 me this at the trial.

5 We believe a similar thing, similar violation
6 occurred in this case when Solicitor Myers starts
7 questioning Hope Frick about prosecutorial decisions that
8 are clearly within his purview, and he signed George
9 Mack's -- he signed George Mack's sentencing sheet, so he
10 was clearly the individual who was working and doing the
11 negotiations for George Mack as to what his sentence was.
12 And for him to get up there and say, I have -- you know,
13 and then elicit testimony -- I have no authority over what
14 happens with Mr. Mack -- and Mr. Floyd clearly thought
15 this was a very crucial issue at the trial -- we believe
16 that violated Mr. Harmon's confrontation clause right by
17 making himself a witness because at that point, what the
18 deal Mr. Mack had gotten was a big issue. That's what
19 Mr. Floyd was trying to show. And Solicitor Myers
20 effectively cross-examined Hope Frick and got her to say
21 he had no role in the negotiations whatsoever. So we
22 believe that he introduced and made himself a witness in
23 the case.

24 And State versus Sierra references both the
25 confrontation clause aspect of it in terms of the 6th

1 Amendment violation, but it was re-argued in the closing
2 argument and saying that -- and it says: "Though the
3 witness denied the inconsistent statements, the Solicitor
4 argued her version of the statements as facts to the jury
5 in her closing argument as if her version was supported by
6 evidence. The closing argument standing alone would have
7 been ground for reversal if it had been properly preserved
8 by an objection."

9 It's the same thing here in closing argument.
10 Solicitor Myers says, I have no control over these
11 prosecuting decisions, you know, I -- you heard Hope Frick
12 testify that I have no control over this, again,
13 referencing his questioning of her, his becoming a witness
14 himself of her during her testimony, and we believe that
15 that was objectionable, should have been objected to and
16 it was not by Mr. Floyd.

17 And similarly in that closing argument, just to
18 mention it briefly, he does argue that he can't prosecute
19 somebody for murder if they give a statement saying
20 they're not a shooter, which, again, references his
21 explicit prosecutorial prosecuting ability, and that is,
22 interjecting his role as the solicitor into the closing
23 argument, which is improper bolstering of his own witness'
24 testimony and their credibility by saying they couldn't
25 have been charged with murder because they -- you know,

1 because I made the decision not to charge them with
2 murder, and that means you should believe them.

3 And, finally, I think the one last issue, Your
4 Honor, just touching on the accomplice liability, we
5 believe it should not have been charged. All the
6 co-defendants, I believe, were allowed to plead to
7 accessory after the fact. If they're accessories after
8 the fact, they're not accomplices during the actual event.
9 And certainly the testimony from everybody at the scene in
10 relation to what they allege my client did, they didn't
11 know he was going to do it, they didn't -- they were
12 surprised when he did it, and that he was prosecuted as a
13 principal, not as an accomplice. And if all of the others
14 were not prosecuted as accessories -- or not, I'm sorry,
15 excuse me -- as principals, but accomplices, then,
16 Solicitor Myers' closing argument makes that clear, I
17 can't prosecute them as principals when they told me they
18 weren't the shooter. So we believe the defense counsel
19 could have objected to the accomplice liability charge
20 being given as well.

21 THE COURT: What is the prejudice in that
22 regard?

23 MR. THOMPSON: If he could not have been found
24 guilty as a principal, but -- forgive me.

25 If he could not have been found guilty as an

1 accomplice, but the jury found that because he was there
2 and because he was at the scene and he was participating
3 in this big argument, that the others who did get the gun,
4 got out and shot, that he is an accomplice. He's there
5 and working with them in conjunction with them. They
6 could have found him guilty on an impermissible basis.

7 THE COURT: What was the last thing you said?

8 MR. THOMPSON: On an impermissible basis.

9 THE COURT: Got you.

10 MR. THOMPSON: And that is our argument, Your
11 Honor.

12 THE COURT: Thank you, sir.

13 MS. RATIGAN: Thank you, Your Honor.

14 I'm going to try and go through these in the
15 order in which they are presented, and if I miss anything
16 at the end, either please draw my attention to it or,
17 again, I can submit some kind of memorandum.

18 The State initially would state, there is
19 absolutely overwhelming evidence in this case. Four
20 co-defendants testified at trial, identified Mr. Harmon as
21 the shooter. In addition, there are five other witnesses
22 who testified. Again, as I stated earlier, they could not
23 identify Samuel Harmon as the shooter, but what they
24 could say was, he had a low haircut, when George Mack had
25 braids and Brandon Harmon had twists in his hair, so

1 that -- and Samuel Harmon had a low haircut. They said an
2 African-American with a low haircut was the shooter. And
3 they also stated that the -- and I should back up just a
4 tiny bit.

5 These other testifying folks were present at the
6 initial altercation up on Number 1 before it went to the
7 Barnyard. And they also said the person who did the
8 shooting at the Barnyard wasn't present at the initial
9 altercation. Again, that lines up, circumstantially, to
10 Samuel Harmon.

11 And before I get too much further, I would just
12 note that the facts are laid out because it is a thick
13 transcript, and both of the appellate briefs, I would
14 argue that the State's recitation of facts in the final
15 brief of respondent is very thorough, just for Your
16 Honor's information. So we would argue that there was
17 overwhelming evidence.

18 Now, granted, some of these witnesses gave
19 conflicting stories, but that was all brought out during
20 Mr. Floyd's cross-examination. That doesn't detract from
21 the overwhelming nature of the evidence against
22 Mr. Harmon.

23 About the gang references, I would note that
24 we're pulling some of these things out of context when
25 we're making these references. Page 51, for example, the

1 testimony is actually that somebody at the initial
2 confrontation asks the brother, are you in a gang, and the
3 brother said, that's my brother, that's not me, which is
4 different from saying there is testimony --

5 THE COURT: Well, clearly, Donnie Myers in his
6 closing statement says he's G-Pan, he's --

7 MS. RATIGAN: Sure, but --

8 THE COURT: I read his entire closing statement.

9 MS. RATIGAN: Yes. And I went through and
10 marked it myself. And on page 520, he says they come up
11 and accused the brother of being in a gang, G-Pan, and
12 then Mr. Myers says, he's the one in G-Pan, but then on
13 page 524, all he says is, he's G-Pan. And then on page --

14 THE COURT: I read the entire --

15 MS. RATIGAN: Yeah. So --

16 THE COURT: And the clear import of it is, I'm
17 bad, I'm G-Pan, and that was what it was meant to be.

18 MS. RATIGAN: Yes, Your Honor. But we would
19 simply take issue with the fact that -- of it being
20 characterized that the Solicitor saying, he was in a gang,
21 he was in a gang, he was in a gang, when what he was doing
22 was referencing G-Pan, which Samuel Harmon was able to
23 testify about during his direct, during defense case, to
24 explain, that's not a gang, it's G-Pan Entertainment,
25 which is the group I'm part of. So we would argue that

1 that -- it is an improper characterization -- that they're
2 making an improper characterization of Mr. Myers'
3 testimony -- of his statement.

4 THE COURT: Let me just say, I disagree with
5 that.

6 MS. RATIGAN: Okay.

7 THE COURT: It's -- clearly he's referring to a
8 gang member, to me.

9 MS. RATIGAN: Okay. That's fine, Your Honor.

10 Second issue is about George Mack and
11 actually -- well, all through the second and third. It is
12 about George Mack and his statements and the sentencing
13 sheets and that whole convoluted mess.

14 One of the issues made today was that Mr. Floyd
15 should have moved for a mistrial when this started kind of
16 rolling downhill. We'd argue under cases such as State
17 versus Harris, 340 S.C. 59, that's a 2000 case. To grant
18 a mistrial, as Your Honor knows, you have to show there's
19 error and prejudice. And we would argue that, again, the
20 nature of Mr. Mack's statement was cumulative to what had
21 already been put out numerous times at trial. So we would
22 argue that even if he had thought about going down the
23 mistrial route, it's extremely speculative, given the
24 nature of the case, that he would have gotten the mistrial
25 granted.

1 Let's see. There was another issue about
2 Detective Russell implying during his direct that
3 Mr. Mack -- I'm sorry, that Mr. Mack told him that Harmon
4 was the shooter. Again, that is extremely indirect, cases
5 such as Taproot versus State. That is 338 S.C. 103,
6 that's another 2000 case.

7 It says, "An officer can testify about matters
8 in the course of the investigation about why a government
9 action was undertaken."

10 And we would argue, when you look -- again, this
11 is taken out of context -- when you look at
12 Detective Russell's testimony, he's discussing how he went
13 from not knowing who the shooter was to narrowing it down,
14 narrowing it down, narrowing it down. And the testimony
15 is something along the lines of, "and then I spoke to
16 Mr. Mack, and at that point, I decided I needed to speak
17 to Mr. Harmon."

18 Again, we'd state that that's in the course of
19 the investigation-type of statement, therefore, be
20 acceptable under Taproot.

21 Let's see. And the decision to put in
22 Mr. Mack's sentencing sheet to show that he had gotten a
23 deal, much like all the other co-defendants did, that led
24 to the statement also coming in. But on page 469 and on
25 page 471, Mr. Floyd told the Court this was his trial

1 strategy. It was a strategic decision. He wanted those
2 sentencing sheets in because what he had been arguing all
3 along was everybody else got cut a deal except my guy. So
4 we would argue that putting in the sentencing sheet and,
5 again, the statement, that was part of the trial strategy
6 articulated by Mr. Floyd himself during the trial.

7 Let's see. The next issue had to do with
8 Detective Russell testifying about the co-defendants
9 having identified Mr. Mack -- I'm sorry -- Mr. Harmon as
10 the shooter. We would argue, again, that's another course
11 of the investigation-type of argument. That testimony was
12 on pages 402 to 405. At that point, his co-defendants had
13 already testified. They'd already testified that they had
14 identified Mr. Harmon, so I fail to see how it can be
15 prejudicial when those folks already testified and were
16 subject to cross-examination.

17 The issue about the report -- pardon me -- I
18 mean, it's an unusual issue. I'm not going to say that
19 I've ever seen something like it before. But I think two
20 points need to be made: First, as Solicitor Myers was the
21 one prosecuting the case, when he said, I can't prosecute
22 so and so, I think it means, I, the office. I think if it
23 was Assistant Solicitor Jones, who said, I can't
24 prosecute, that's one thing. But when Mr. Myers is
25 saying, if someone's not indicted, I can't prosecute them;

1 is that correct? I don't think he's inserting himself
2 into the testimony.

3 And, furthermore, on page 484, when he's talking
4 to Ms. Frick, when they're talking about, "I didn't have
5 anything to do with the sentencing," again, that's taken
6 out of context. The testimony is that Mr. Mack, in
7 looking at the sentencing sheet, states that there's no
8 negotiations or recommendations. And then on lines 17 and
9 18, that is when Mr. Myers said, "So we didn't have
10 anything to do with the sentencing." What he's doing is
11 simply directing -- they're just explaining, basically,
12 the sentencing sheet. He's not making a statement that "I
13 didn't have anything to do with it," as much as, you as
14 custodian of records, does the sentencing sheet say
15 there's any recommendations made. So we would argue that
16 is different from the Sierra example that Mr. Thompson has
17 put up.

18 And, again, I think it's extremely speculative
19 that it affected the outcome of the trial. This was on
20 page 484, she was the last -- I take that back -- she was
21 the second to last witness. They called Detective Russell
22 on reply. I believe it's extremely doubtful that
23 Mr. Myers' questions in this regard affected the outcome
24 of the trial.

25 Let's see. Closing argument. I'd argue it's

1 not bolstering. Bolstering is making personal assurances,
2 as Your Honor knows, you can believe John Smith. You
3 know, John Smith doesn't have a reason to lie, he is a
4 good guy, he is doing his civic duty. That's bolstering.

5 In this case, I don't think it rises to
6 bolstering. There's no kind of personal assurances. You
7 can argue things like a witness' credibility that is
8 supported by the record. Case law on that, though --

9 THE COURT: Yes, I already know.

10 MS. RATIGAN: Yes. I feel certain Your Honor
11 already knows that.

12 And the final issue has to do with the
13 accomplice liability charge. I don't even know what to
14 argue, except that the case law is so replete that if the
15 charge reflects it's supported by the facts produced at
16 trial, the judge has to charge it. The fact that these
17 other folks were originally charged with murder and
18 allowed to plead down to accessory, that does not absolve
19 Mr. Harmon of the whole hand of one hand of all,
20 especially when you look at the nature of this. It
21 started with four people getting in an argument with
22 another group, and then they start calling people, we're
23 going to go fight, and they all admit, we went there to
24 fight, and then it escalated. I think it's -- I don't
25 understand the argument that this isn't somehow accomplice

1 liability.

2 I think that's it, all the issues.

3 Do you have any other questions for me, Judge?

4 THE COURT: No, ma'am.

5 MS. RATIGAN: Okay. Thank you.

6 THE COURT: Thank you.

7 Sir, do you have anything in reply?

8 MR. THOMPSON: Just one thing, Your Honor,
9 because I meant to mention this in my argument.

10 Regarding Mr. Floyd's trial strategy -- I put
11 that in air quotes -- regarding the admission of George
12 Mack's statement, he actually objects to it when it comes
13 in. He says, subject to our previous objection. So I
14 don't think his trial strategy was he wanted it in. I
15 don't think he wanted it in. I think he thought he was
16 forced into a bind because he had thought the judge was
17 requiring him to agree that it should come in. And it's
18 clear from the record and the Court of Appeals' opinion
19 that he wasn't. So it's not trial strategy to allow it
20 in.

21 That's it.

22 THE COURT: I thank the attorneys for
23 well-prepared presentations. I will review the
24 information submitted and cases submitted, and I will give
25 you my order.

1 MS. RATIGAN: Thank you, Your Honor.

2 MR. THOMPSON: Thank you, Your Honor.

3 THE COURT: Thank you very much.

4 (The proceedings were concluded.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF LEXINGTON)
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 31st day of
15 January, 2013.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 August 29, 2013
20

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON
STATE VS.
GEORGE V. MACK III
AKA: _____
Race: B Sex: M Age: _____
DOB: 01-19-87 SS#: _____
Address: Meridian Dr.
City, State, Zip: Columbia, SC 29212
DL# 160173645 SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1516
AW#: STRAIGHT INDICT # J051387; J051384;
Date of Offense: 7-15-06 J051390;
S.C. Code §: 16-1-55 J051381;
CDR Code #: 2413 J051392;
J051372

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Accessory After. Class A, B, C crime
in violation of § 16-1-55 of the S.C. Code of Laws, bearing CDR Code # 2413

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor George V. Mack Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 549 DAYS- CREDIT TIME SERVED

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$125

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

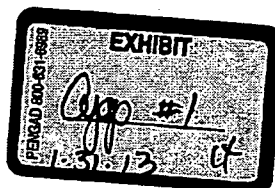
Judge Code: _____

Sentence Date: _____

Court Reporter: _____

Clerk of Court Deputy Clerk

SCCA/217 (9/2006)



A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

ISSUES

(1). Counsel was ineffective for failing to object to the trial judge's instructions to the jury that shifted the burden of proof in violation of the Due Process Clause:

The Trial Judge charged the jury on malice, [Tr.p.544, L.20-25, p.545, L.1-25, p.546, L.1-10]. You'll see the judge failed to properly instruct the jury regarding malice. The Judge merely told the jury "malice is inferred from the use of a deadly weapon", but failed to include the Elmore and Peterson instructions that the jury may "accept or reject" the inference of malice from the use of a deadly weapon, based on their consideration of the evidence and they, the jury could it such weight as they so determine. Therefore, resulting in a "mandatory presumption".

In a criminal trial in this country, it is an elementary principle of due process that every element of the crime must be proven by the prosecution beyond a reasonable doubt, *Sandstrom v. Montana*, 442 U.S. 510, 520 (1979). An instruction that tells a jury to presume any element of a crime without evidence is unconstitutional, for "the Fourteenth Amendment's guarantees prohibit a State from shifting to the defendant the burden of disproving an element of the crime charged", *Id.*, 442 U.S. at 527 (Rehnquist J, concurring). The Supreme Court has also made clear that an instruction that a jury should presume malice from the use of a deadly weapon falls under this constitutional prohibition, *Yates v. Evatt*, 500 U.S. 391, 401-02 (1991). Therefore, this issue is solid *stare decisis* in South Carolina.

In *State v. Elmore*, 308 S.E.2d 781, 784 (1983) *Elmore* had complained of the same infirmities as those that occurred in *Yates*, supra and the South Carolina Supreme Court held:

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference of malice would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive. Id

"We caution the bench, that hereafter only slight deviations from this charge will be tolerated"

Shortly thereafter in *State v. Perterson*, 287 S.C. 244, 335 S.E.2d 800 (1985), the Court held the trial judge should instruct the jury they, the jury are free to "accept or reject" the inference based on their consideration of the evidence presented.

In the instant case a stringent review of the trial judge's



instructions as a whole, the judge merely told the jury "malice is inferred from the use of a deadly weapon" and then went on to give the description of deadly weapons. The charge failed to apprise the jury that the inference of malice from the use of a deadly weapon was simply an evidentiary fact for their consideration, given such weight as they, the jury determine and that the inference could be "accepted or rejected" based on their consideration of the evidence, thus the failure has resulted in the judge's instructions being a "mandatory presumption", that substantially relieved the State of the burden of proving the essential element of malice.

When considering the judge's instructions a reasonable jurist could have interpreted the instructions, that "if" a deadly weapon was used, then it was mandatory and malice was implied.

ABWIK:

It is also conceivable to believe the deceased mandatory malice instructions also played a vital role in the ABWIK conviction as well. There coming directly after the malice instructions on murder the judge went on to charge on ABWIK:

Malice is also an important part of assault and battery with intent to kill. I have explained to you the definition of malice in my definition of murder, [Tr.p.548, L.8-11].

As you can see the jury had to look no further than the deadly weapon to convict for murder and ABWIK, because the judge instructed the jury "malice is inferred from the use of a deadly weapon", and without the "accept or reject" instruction a reasonable jurist clearly could have interpreted this instruction to mean, that if "the State proved there was a deadly weapon used, then it was mandatory, the element of malice was present and the jury had to look no further than the deadly weapon".

Clearly after reviewing the above complained of instruction, the deceased malice instructions on murder are also attributable to the ABWIK conviction.

(2) Counsel was ineffective for failing to object to the trial judge's instructions on express malice that used hypothetical examples of the facts of the case that resulted in an impermissible comment on the facts:

During the trial court's instructions on express malice the judge made the following comment:

For Example, lying in wait for a person or in -- or in any other act of preparation going to show the deed was in the defendant's mind would be expressed malice, [Tr.p.545, L.17-20].

Here counsel should have objected, because the trial judge's instructions not only use hypothetical examples of the facts of the case, but it also violates the prohibition from charging on the facts.

Judicial comments on the facts of a case is prohibited in South Carolina, See S.C. Const. Art. 5, §17, "A trial judge may not instruct the jury regarding what weight should be given such evidence or that certain evidence is or is not entitled to consideration from them. Our Supreme Court said in State v. Hartley, 414 S.E.2d 182 at 183: "a judge shall not charge in respect to matters of fact, but shall declare the law, State v. Bagwell, 23 S.E.2d 244 (1942)(a judge cannot express in his charge, or intimate any opinion as to the weight or sufficiency of testimony without violating the prohibition of the Constitution as to charging upon the facts).

As is seen a judge is to charge on the law, not the facts, and here in the judge's definition of express malice the judge used "hypothetical examples" in his charge, all reflecting the facts of the case.

Here the jury could have interpreted the judge's examples as directing a verdict for the State, as the examples used all reflected the facts of the case.

(3). Counsel was ineffective for failing to object to the prosecution improperly "vouching" for State witnesses during closing summation:

During closing summation the prosecution made the following argument:

But folks, they weren't lying. They were telling the truth.

They told the truth Sunday morning. They told the truth Sunday afternoon. And they told the truth Monday before I even got back from Orangeburg, [Tr.p.530, L.11-16].

As is seen in the above, the prosecution clearly "vouched" for State witnesses in an attempt to "bolster" the State's case against Applicant.

Our Supreme Court in State v. Gilchrist, 565 S.E.2d 281, 285 (S.C.2002), held the prosecution's improper "vouching for State's key witness", where the credibility was crucial, "prejudiced" Gilchrist's defense. A solicitor cannot vouch for the credibility of a witness, either expressly, or by implying his personal opinion of a witness' veracity by indicating information not presented supports the testimony", State v. Schuler, 545 S.E.2d 805, 815 (S.C.2001), More plainly, any statement of personal belief jeopardizes the integrity of the trial process, U.S. v. Harrison, 716 F.2d 1050, 1052 (4th Cir.1983), cert. denied 466 U.S. 972 (1984); also see U.S. v. Loayzo, 107 F.3d 257, 262 (4th Cir.1997).

Our courts have consistently held in accordance with our Fourth Circuit Court of Appeals that "a prosecutor cannot vouch for the veracity of a witness, because the jury must make it's own assessment on the credibility of a witnesses and it is inappropriate for the State to assure the jury a government witness' credibility, State v. Kelly, 540 S.E.2d 851, 861 (S.C.2001); also see State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981).

Clearly counsel should have objected to this line of improper argument. The case was entirely circumstantial and ultimately came down to a swearing match between Applicant and the State's witnesses. The prejudice incurred is easily seen as the Applicant's credibility and the State's witness' credibility was a crucial issue for the jury's determination.

(4). Counsel was ineffective for failing to object to the prosecution's improper closing argument that violated the Golden Rule, and ultimately denied Applicant his right to a fair and impartial jury, and his right to a fair trial.

During closing summation the following statements were made to the jury without objection from counsel:

You don't shoot 23 times from an assault rifle, you don't leave 23 shell casings in a parking lot, you don't do the damage to the vehicle unless you have murder on your mind and malice in your heart and you intend to kill somebody and you just don't care. Folks, that what you do. [Tr.p.524, L.16-21].

And here is something else I want to ask you.

If you were as pure as Ivory Soap, and they say it's 99.4, whatever, and you out in a parking lot and you are laying on the ground and the last fellow you see with this assault rifle is Little James, you going to go to Orangeburg with him? You going to hang out with him, [Tr.p.530, L.1-7].

There's a car full of people folks, and you have got something as menacing as an AK47 assault rifle, and that magazine has 30 rounds and you pull the trigger 24, times, you are going to kill people.

You don't intend to kill a person. You intend to kill some people, [Tr.p.531, L.6-12].

Sammy Harmon was malicious. He was mean. And you know, when you tell a lie, you will slip up. Don't care how good you are, you'll slip up, [Tr.p.532, L.12-14].

Golden Rule arguments are generally improper and may constitute reversible error, State v. Henry, 78 P.3d 403, 410 (Kan.2003). A solicitor's closing summation must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors passions or prejudices, Humphries v. State, 351 S.C. 362, 570 S.E.2d 160, 166 (2002), accord, Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998).

The golden rule argument suggesting to jurors as it does that they place themselves in the shoes of one of the parties, is

generally impermissible because it encourages the jurors to depart from the neutrality and to decide the case on the basis of personal interest and biases rather than on the evidence.

Regardless of the nomenclature used, any argument that importunes to the jurors to place themselves in the shoes of one of the parties is "disallowed", Johnson v. State, 587 S.E.2d at 781 (2003).

Statements such as those were held reversible in State v. McDaniel, 462 S.E.2d 883, 884. In McDaniel the prosecution used the word you or the form of you some 45 times. This was reversible in McDaniel and also reversible error in State v. White, 144 S.E.2d 481. Surely counsel should have objected to this improper line of argument, as the argument here mirrors that of McDaniels and also held impermissible in White, the only difference is the prosecution here used the word some 29 times.

Here the prejudice is easily seen, as the prosecution's statements suggested to the jurors that they depart from neutrality and place themselves in the shoes of Applicant, thus denying Applicant his right to fair and impartial jury and his right to a fair trial.

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3202954**

Samuel D Harmon #328335	State of South Carolina RECEIVED 4/3/13
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant
----------------------	--

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2155	3/29/2013
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **n/a**, and a copy mailed first class or placed in the appropriate attorney's box on **29th day of March 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy Adam Thompson PO Box 12891 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Salley W. Elliott South Carolina Attorney General's Office
PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

LMC

STATE OF SOUTH CAROLINA

FILED

COUNTY OF LEXINGTON

2013 MAR 28 A 11:50 2011-CP-32-2954

Samuel D. Harmon,
S.C.D.C. No. 328335,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 4, 2011. The Respondent made its return on April 5, 2012. An evidentiary hearing into the matter was convened on January 31, 2013, at the Lexington County Courthouse. The Applicant was present at the hearing and represented by Jeremy A. Thompson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing.¹ Also testifying was the Applicant's trial counsel, Wayne Floyd, Esquire. The Court had before it the trial transcript, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the return, the appellate records, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted at

¹ The Applicant briefly took the witness stand to assert he wanted a new trial on his charges.

the April 2007 term of the Lexington County Grand Jury for possession of a weapon during commission of a violent crime (2007-GS-32-1440), murder (2007-GS-32-1442), assault with intent to kill (AWIK) (2007-GS-32-1443), and assault and battery with intent to kill (ABWIK) (2007-GS-32-1444). He was represented by Wayne Floyd, Esquire.

After the State called the case to trial, the Applicant was found guilty. On May 7, 2008, the Applicant was sentenced by the Honorable R. Ferrell Cothran to concurrent terms of five (5) years for possession of a weapon during commission of a violent crime, life imprisonment for murder, and ten (10) years for AWIK. Judge Cothran levied a consecutive fifteen (15) year sentence for ABWIK.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Harmon, Op. No. 2011-UP-080 (S.C. Ct. App. filed February 24, 2011).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to prepare and investigate.
 - b. Failure to interview and call witnesses.
 - c. Failure to present a viable defense.
2. Ineffective assistance of appellate counsel.

In an Amended Application for Post-Conviction Relief filed November 14, 2012, the Applicant made the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failure to object to testimony that the Applicant was a member of a gang.

- b. Failure to object to portions of the Solicitor's closing argument wherein the Solicitor argued that the Applicant committed the crime because he was a gang member.
- c. Failure to object to testimony by Investigator Eric Russell during the State's case-in-chief that George Mack identified the Applicant as the shooter on hearsay and Confrontation Clause grounds.
- d. Elicited testimony from Investigator Russell that Mack identified the Applicant as the shooter.
- e. Failure to realize that he could move for a mistrial and/or a directed verdict at the close of the State's case based on the State's opening argument that all of the Applicant's co-defendants identified the Applicant as the shooter when Mack did not testify at the trial and his statement should have been excluded.
- f. Failure to object to the improper admission of prior consistent statements by Investigator Russell that Sherman Davis, Brandon Harmon, Alex Haigler, and James Keitt identified the Applicant as the shooter.
- g. Failure to object to the Solicitor's insertion of himself as a witness during Hope Frick's testimony.
- h. Failure to move to disqualify the Eleventh Circuit Solicitor's Office following the Solicitor's questioning of Hope Frick regarding the plea agreement that was reached between the Solicitor's Office and Mack.
- i. Failure to object to the admission of Mack's statement on hearsay and Confrontation Clause grounds.
- j. Failure to object to portions of Mack's statement referring to the Applicant's neighborhood as a "bad" neighborhood and that "people there all have guns."
- k. Failure to object to the trial court's charging the jury on the law of accomplice liability.
- l. Failure to object to the Solicitor's bolstering of the testimony of the Applicant's co-defendants in his closing argument where the Solicitor argued that he would not prosecute the co-defendants for murder since they had given full statements.
- m. Failure to present testimony that Mack had confessed to an inmate at the Lexington County Detention Center that he fired the assault rifle.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Trial counsel testified he was appointed in this case and had 5-10 meetings with the Applicant while he was in jail. Trial counsel testified all of the co-defendants identified the Applicant as the shooter. Trial counsel testified the odds were slim that they would win at trial. Trial counsel testified the defense at trial was that the Applicant was not the shooter and the Applicant testified to that effect.

This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court notes, however, that the State presented overwhelming evidence of the Applicant's guilt. Four of the Applicant's co-defendants (including the Applicant's brother) testified at trial and all of them identified the Applicant as the shooter. (Trial transcript, pp.57-58; pp.97-98; pp.125-26; pp.151-54). Three other individuals identified the shooter as someone who was not present at the initial altercation. (Trial transcript, pp.185-86; p.227; pp.263-64). Two more individuals testified the last person they saw holding the assault rifle before the shooting had not been present at the initial altercation. (Trial transcript, p.250; pp.274-75). The Applicant (along with Alex Haigler and James Keitt) were the only members of that group that were not present at the initial altercation. As such, this Court finds that any minor errors made by trial counsel during the trial could not and did not affect the ultimate outcome of the case. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); State v. McFadden, 318 S.C. 404, 416, 458 S.E.2d 61, 68 (Ct. App. 1995) (holding the solicitor's comments did not infect the trial with unfairness to the extent that his conviction was a denial of due process where there was ample evidence of guilt in the record).

A.

Trial counsel testified the discovery materials included comments that the Applicant was in a gang. Trial counsel testified he believed these comments would come out at trial and decided not to file a motion in limine. Trial counsel testified he decided to attack the problem by

arguing the organization mentioned was not a gang. Trial counsel noted the Applicant testified on direct examination that the organization in question was a music group.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to references to a gang. At trial, the Applicant's brother said he told someone he was not in a gang but his brother was. (Trial transcript, p.51). Jamar Porcher stated someone in his group said – at the initial altercation – that someone in the other group was “GKB, and that’s the – that’s the blood gang group.” (Trial transcript, p.178). The Applicant testified he was not in a gang. The Applicant testified he was involved with Gpan but that it was called Gpan Entertainment (and he identified a CD released by Gpan Entertainment). (Trial transcript, p.460; p.463). In the State’s reply, Investigator Russell read George Mack’s statement into evidence, which detailed the initial altercation and argument about “if [the Applicant’s brother] was Gpan and if [another individual] was a blood.” (Trial transcript, p.490). In closing argument, the Solicitor mentioned the above-referenced testimony from the Applicant’s brother. (Trial transcript, p.520). The Solicitor stated “[The Applicant] doesn’t care about the law. Not him. He’s Gpan.” and references the Applicant’s testimony that Gpan is a music group. (Trial transcript, p.524; p.532). This Court finds the limited references to gang activity during the trial did not have any effect on the outcome of that trial and thus trial counsel was not deficient in not objecting or seeking a motion in limine. This Court notes there only one witness who testified the Applicant was in a gang. The other references were to general gang activity that occurred during the initial altercation – an altercation where the Applicant was not present. Further, trial counsel stated he made a strategic decision to combat this issue by arguing Gpan was not a gang and the Applicant was able to explain the nature of Gpan and even identified on re-direct a CD produced by that group. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)

(finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court finds any references to gang activity did not prejudice the outcome of the trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

B.

Trial counsel stated he believed all of the Applicant's co-defendants would testify at trial. Trial counsel testified that is why he did not object when the Solicitor mentioned a statement made by George Mack during its opening argument. (Trial transcript, pp.39-40). Trial counsel testified he did not object when Investigator Russell implied Mack said the Applicant was the shooter. (Trial transcript, pp.397-98; pp.400-01). Trial counsel acknowledged the first thing he asked Russell on cross-examination was to verify Mack had identified the Applicant as the shooter. (Trial transcript, p.405). Trial counsel testified he did not move for a mistrial – because Mack did not end up testifying – but admitted Mack's statements to police were cumulative to statements and testimony presented at trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel mishandled issues related to comments made at trial about George Mack. This Court finds there was no basis for trial counsel to have objected to Russell's testimony. This was not hearsay testimony, it was merely testimony about statements made during the course of the investigation that explain why the investigation – into the Applicant as the shooter – was undertaken. See Caprood v. State, 39 S.C. 103, 111, 525 S.E.2d 514, 518 (2000). This Court also finds there was no error in trial counsel's question to Russell in which he had Russell verify Mack had identified the Applicant as the shooter. This was clearly cumulative testimony. This Court further finds there was no basis for trial counsel to have moved for a mistrial. Based on the cumulative nature

of Mack's statement and the overwhelming evidence of the Applicant's guilt, trial counsel would not have been able to demonstrate any prejudice. See State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000) ("In order to receive a mistrial, the defendant must show error and resulting prejudice.").

C.

Trial counsel testified Mack's statement was admitted at trial. (Trial transcript, pp.189-92). Trial counsel testified he did not object to a portion of the statement because he questioned whether or not it was really evidence of bad character. (Trial transcript, p.489, lines 13-14). Trial counsel testified it was part of his trial strategy to have Mack's statement and sentencing sheets admitted.

This Court finds the Applicant failed to meet his burden of proving trial counsel mishandled issues related to Mack's statement. This Court finds from both the trial transcript and testimony at the PCR hearing that it was clear trial counsel's strategy was two-fold: to argue the Applicant was not the shooter and to highlight that the co-defendants all pled guilty to the lesser charge of accessory after the fact. To this end, trial counsel argued that he should be allowed to enter Mack's sentencing sheets into evidence. (Trial transcript, p.467). After discussion between the judge and parties, all agreed to allow admission of both Mack's sentencing sheets and statement. (Trial transcript, pp.468-77). Trial counsel noted to the trial judge this was a strategic decision. (Trial transcript, p.469; p.471). This Court finds trial counsel did not render deficient performance because this was a valid trial strategy. See Roseboro v. State, 317 S.C. at 294, 454 S.E.2d at 313. This Court further finds the Applicant cannot prove he was prejudiced from this strategic decision because, as noted supra, the

information in Mack's statement was cumulative to the testimony from the other four co-defendants. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.²

D.

Trial counsel noted Investigator Russell testified that the Applicant's co-defendants had identified the Applicant. (Trial transcript, pp.402-05). Trial counsel stated he did not object.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Investigator Russell's testimony that the co-defendants had identified the Applicant. Investigator Russell testified he believed the Applicant was involved with the shooting. (Trial transcript, pp.400-01). Investigator Russell testified he continued to investigate and interviewed the Applicant's co-defendants – who all stated the Applicant was the shooter. (Trial transcript, pp.402-05). This Court finds that, as this was not hearsay testimony, trial counsel was not deficient in failing to object. As noted supra, our Supreme Court has held that statements made for the purpose of explaining why the State's investigation was undertaken do not qualify as hearsay. See Caprood v. State, 39 S.C. at 111, 525 S.E.2d at 518. Further, Investigator Russell's statements in this regard were merely cumulative to the four co-defendants' prior testimony in which they identified the Applicant as the shooter in open court.

E.

Trial counsel testified he did not object when the Solicitor asked the Clerk of Court – Hope Frick – about Mack's sentencing sheets and guilty plea. Trial counsel testified he also did not move for a mistrial. Trial counsel admitted, however, that he wanted Mack's sentencing sheet to be admitted at trial because it was part of his trial strategy to demonstrate that the

² This Court also finds the alleged evidence of bad character was not objectionable. The portion of Mack's statement was "[t]his is a bad neighborhood and people there all have guns." This Court finds there was no reason for trial counsel to object to this portion of Mack's statement under Rule 404, SCRE.

Applicant's co-defendants all received plea deals. Trial counsel further admitted that not moving for a mistrial likely did not change the outcome of the trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected or moved for a mistrial during the Solicitor's direct examination of Hope Frick. As discussed supra, it was determined by the parties that Mack's sentencing sheets would be entered into evidence. (Trial transcript, pp.468-77). Trial counsel called Hope Frick, the supervisor of the criminal division in the Lexington County Clerk of Court's office, to authenticate Mack's sentencing sheet, and note he received a seven-year sentence for a guilty plea to accessory after the fact and that several warrants that had been dismissed. (Trial transcript, pp.478-81). On cross-examination, the Solicitor asked Frick several questions about the indictment process. (Trial transcript, pp.481-83). The Solicitor asked "I can't try anybody unless the Grand Jury indicts them for a crime; can I?" and Frick said "[c]orrect." The Solicitor then asked if Mack was ever indicted for murder and Frick said he had not. (Trial transcript, pp.483-84). Pursuant to the Solicitor's questions about Mack's sentencing sheet, Frick also stated he had been indicted for accessory after the fact and the State had not made recommendations or negotiations. (Trial transcript, p.484). The Solicitor then asked "[s]o we didn't have anything to do with the sentencing" and Frick said no. (Trial transcript, p.484).

Contrary to the Applicant's assertion, this Court does not find the Solicitor effectively made himself a witness during Frick's cross-examination. Rather, as noted supra in Section C of this order, it is clear the parties agreed to have both Mack's sentencing sheet introduced into evidence. Trial counsel stated at the time this was part of his defense strategy. (Trial transcript, p.469; p.471). Again, this Court finds this was a valid strategy. See Roseboro v. State, 317 S.C. at 294, 454 S.E.2d at 313. In any event, this Court finds the Solicitor's comments were not made

from a personal angle. Instead the Solicitor was merely asking if the Solicitor's Office – as a whole – do such things as pursue cases without an indictment or have impact on sentencing in a case without a negotiation or recommendation. As the Solicitor did not make himself a witness in this case, this Court finds the Applicant's reliance on State v. Sierra, 337 S.C. 368, 523 S.E.2d 187 (Ct. App. 1999) is misplaced. Further, trial counsel was not deficient in not moving for a mistrial during Frick's testimony. Based on the overwhelming evidence of the Applicant's guilt, trial counsel would not have been able to demonstrate any prejudice. See State v. Harris, 340 S.C. at 63, 530 S.E.2d at 628.

F.

Trial counsel noted he did not object during the Solicitor's closing argument when he said the Applicant's co-defendants were telling the truth. (Trial transcript, p.530).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the Solicitor's comments. The Solicitor made the following statements about the co-defendants:

But folks, they weren't lying. They were telling the truth.

They told the truth on that Saturday night. They told the truth Sunday morning.
They told the truth Sunday afternoon. And they told the truth Monday

. . .

And I'm going to prosecute five people who have given full – for murder?

(Trial transcript, p.530, lines 11-20). This Court finds the Solicitor's comments did not constitute either bolstering or vouching. The Solicitor did not say he believed these witnesses or that the jury should believe them. See, e.g., Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 285 (2002) ("Improper vouching occurs when the prosecution places the government's

prestige behind a witness by making explicit personal assurances of a witness' veracity. . . ."). Rather, the Solicitor's comments merely referred to the credibility of these four co-defendants/eyewitnesses. See Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) ("A solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences.").

G.

Trial counsel testified he should have objected to the trial judge's charge on accomplice liability because the Applicant's co-defendants all pled guilty to accessory after the fact and the Applicant was on trial for murder.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the jury charge for accomplice liability, or "the hand of one is the hand of all." This Court finds that, given the facts presented at trial, the charge for accomplice liability was appropriate. See State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (finding the law to be charged must be determined from the evidence presented at trial). The South Carolina Supreme Court has stated that under "the hand of one is the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). While the Applicant argues he should not have been charged on accomplice liability because his co-defendants pled guilty to accessory after the fact, this Court finds this argument is unpersuasive because the facts and evidence presented at trial clearly supported a charge of accomplice liability. See State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996) (finding a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and is supported by the evidence).

H.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

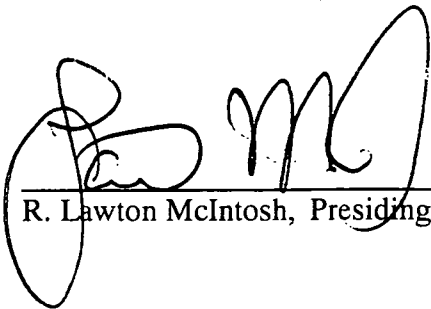
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of March, 2013.



R. Lawton McIntosh, Presiding Judge

Anderson, South Carolina.

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2013 MAR 28 A 11:50

FILED

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

APR 30 2013

R. Lawton McIntosh, Presiding Judge

S.C. SUPREME COURT

11-CP-32-2954

SAMUEL HARMON, #328335,

Petitioner,

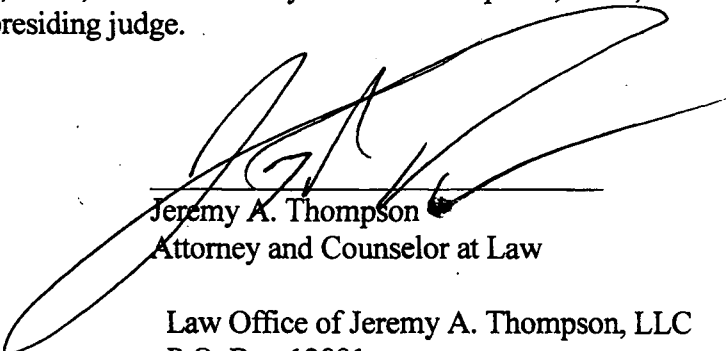
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Samuel Harmon, #328335, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed March 28, 2013, and received by counsel on April 3, 2013, issued by the Honorable R. Lawton McIntosh, presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555 Phone
803-779-2556 Fax
jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 29th day of April, 2013.

Other Counsel of Record:
J. Walter Whitmire, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Presiding Judge

11-CP-32-2954

RECEIVED

APR 30 2013

S.C. SUPREME COURT

SAMUEL HARMON, #328335,

Petitioner,

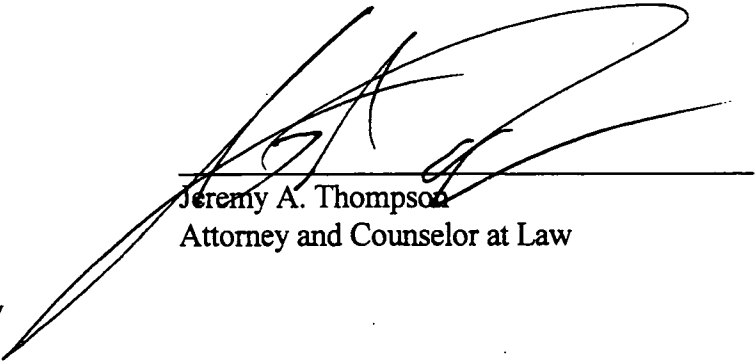
v.

STATE OF SOUTH CAROLINA,

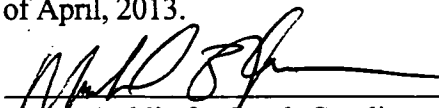
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, J. Walter Whitmire, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 29th day of April, 2013.


Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 29th day
of April, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: 7/10/2022