

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Spartanburg County
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-001303

Circuit Court Case No. 2010-CP-42-4181

NATHANIEL TEAMER,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

**APPENDIX
VOLUME 4 of 4**

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Closing arguments

1 with her the whole time. They called her mother. Her
2 mother wasn't even there.

3 This crime occurred around 11:00 p.m., and she's gone
4 from her own admission from 9:00 until 12:00 o'clock to
5 Wal-Mart, Best Buy and everything. She doesn't know.

6 Osia Feaster has a phone conversation saying, yeah, I
7 heard about it. Well, if that was the problem, she says,
8 well, you was with me, that couldn't have happened. She
9 wasn't with him that night. She might have been earlier,
10 later. Obviously he got the car, may have had the car
11 earlier. He had her car that night.

12 They keep talking about the \$5,000 or the \$500 or
13 whatever. Well, obviously, he can go anywhere to put that
14 money away. He could go to [REDACTED] Street and
15 give that money to Osia or whatever. He had plenty of time
16 to do it. They didn't pick him up until later when they
17 saw him driving without his lights at 12:57.

18 And let me ask you something too, ladies and
19 gentlemen. Does this make sense? Here he is driving her
20 vehicle. He's driving without his lights on.

21 He goes on Overbrook Circle, which is his place. He
22 lives at [REDACTED] Circle. And you will have the maps
23 back there in the back. He drives right by his house when
24 the police officer is behind him.

25 He keeps going. The officer turns on his blue lights

Closing arguments

1 to stop him. He keeps going. You heard the siren come on
2 the video. He keeps going. He goes back out on Crescent
3 Avenue and goes down J. B. White Avenue away from his
4 house.

5 The officer had to stop because they have a no-chase
6 policy in the city and calls the BOLO out. He keeps
7 driving. And he's got his lights on and Officer Evett sees
8 him again. That's what makes him think of the BOLO and the
9 type of car it was. And you'll have this map. And he
10 keeps driving away from South Center Street from where he
11 lives. He keeps going and goes all the way to Mount Zion
12 Road and turns his lights off.

13 Every time the police officer got near him or
14 whatever, he turns his lights off trying to stay away from
15 him. He kept running, running away from the police, and he
16 kept running.

17 Mr. Schultz says, well, he's not under the influence.
18 Well, you remember the toxicologist's testimony. The first
19 thing I asked him about was the marijuana, all over
20 marijuana, obviously freshly smoken. He's got the
21 appearance. He's got the actual marijuana before the body
22 processes it through. And he does have that metabolite..

23 And I said this alone, this alone, would affect your
24 judgment to drive a vehicle. Obviously, somebody's crazy
25 at 1:00 o'clock at night driving without your lights on

Closing arguments

1 when there's not any lights out there with them.

2 And what obviously happens is what happened.

3 Mr. Young that has nothing to do with this, absolutely
4 nothing, and you saw what a shape he's in for the rest of
5 his life. It's been 18 months ago. He can't work any
6 more. He can't live the life he had once before.

7 He had marijuana in the car with him, and plus the
8 alcohol along with the marijuana together. I agree if he
9 just had the alcohol alone you wouldn't have him under the
10 influence. But you had the marijuana alone, put him under
11 the influence, and the alcohol just increases those, both
12 of them, the effects of it.

13 Ladies and gentlemen, this is about justice because
14 this happened that night. All of these incidents happened
15 that night. And the man responsible for it is sitting
16 right there at that table. He had two motives, the money
17 that night, as well as pay-back in his mind, that he's been
18 over there earlier that day.

19 He said, well, there couldn't be two Charlie Teamers.
20 I submit to you, ladies and gentlemen, there are. There's
21 the one, I want to submit to you, if you read through the
22 letters, make you think he's a Christian, quoting Bible
23 verses, being a good person, being a good friend.

24 And then there's the other one that goes out and uses
25 the nickname Murda, goes out and does the type of crimes

Closing arguments

1 that he did that night with no disregard for any person,
2 friends or people he don't even know.

3 This case is just like a puzzle. He keeps on talking
4 about the mask, the gun. That's stuff hid away. Just like
5 you take a puzzle of the statute of liberty. You may not
6 have every piece of the puzzle, but you've got the whole
7 puzzle. You've got a majority of the puzzle and you can
8 tell what it is. You may not have a piece here and there,
9 but you have enough of the puzzle to tell what it is, the
10 statute of liberty.

11 And that's what you've got here, ladies and gentlemen.
12 You've got the pieces of the puzzle to show the man that
13 did this that night is sitting right there.

14 The Grays knew it. They told the police that night.
15 He was driving under the influence that night, driving, I
16 mean, to me when you're driving without your lights on and
17 everything else you couldn't ask for more dangerous driving
18 than that, because Ms. Young didn't have a chance to see
19 that night.

20 And, like I said, even from his own lips that you've
21 heard on the tape, and I am going to play it one more time.
22 This man did it, all of these crimes, that night, ladies
23 and gentlemen.

24 And I'm asking you for justice in this case. I am
25 asking you for guilty an all four counts. Hold him

Jury charge

1 responsible for what he did to the Grays, to Donald Martin
2 and all the Grays, and the nine-year-old child.

3 Like I said, truth comes from the mouth of babies.
4 And for what he did to Mr. Young, and because it isn't
5 right, ladies and gentlemen, he is guilty of all of these
6 crimes.

7 THE COURT: Ladies and gentlemen, before I give you --

8 MR. BARNETTE: Your Honor, I was going to play one
9 more thing, Your Honor.

10 THE COURT: Okay.

11 (Whereupon, the C. D. was played for the jury.)

12 MR. BARNETTE: Ladies and gentlemen, we've proven it.
13 Don't let him get away with it. Don't let him get away
14 with what he did that night to these folks. Thank you.

15 THE COURT: Ladies and gentlemen, before I give you
16 the instruction on the law I'm going to let you go back to
17 the jury room, and the clerk is going to take your lunch
18 orders. And then we'll have that being prepared and
19 brought to the jury room while I give you the instruction
20 so that it will be here by lunchtime.

21 So if you will please go back to your jury room and
22 give the clerk your lunch orders, and then we'll bring you
23 back to give you the instruction on the law.

24 (The following takes place outside the presence of the
25 jury.)

Jury charge

1 (Whereupon, a recess was taken.)

2 THE COURT: Bring the jury in, please.

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: All right. Ladies and gentlemen, as you
6 know, you've heard and seen all the evidence in the case.
7 You've also heard the final summations of the lawyers; and
8 therefore it now becomes my duty and obligation to instruct
9 you on the law that's applicable in the case. And then
10 you'll be asked to go back and begin with your
11 deliberations. And through that process you'll examine the
12 evidence, decide the facts, apply the law and arrive at a
13 fair and just decision in the case.

14 It is your exclusive duty to determine what the facts
15 are. And you do that through your own common sense
16 examination and evaluation of all of the testimony and the
17 other evidence received during the trial of this case.

18 You 12 jurors alone will decide what weight, value and
19 effect to give to any particular witness' testimony or
20 other evidence in the case. Your sole objective of course
21 is to simply reach the truth in the matter, and by doing
22 that you will have fulfilled your obligations as jurors,
23 and that is to simply give both the state and the defendant
24 a fair and impartial trial.

25 Now, in this case, as you know, the state has accused

Jury charge

1 the defendant with having committed four separate and
2 distinct criminal offenses, although they are alleged to
3 have arisen out of one particular event or course of events
4 which the state alleges occurred on or about February the
5 2nd and 3rd of 2006.

6 By way of these documents called indictments the state
7 has alleged that the defendant in this case has committed
8 the crimes of burglary in the first degree, of armed
9 robbery, of felony driving under the influence with great
10 bodily injury resulting and with failing to stop when
11 signaled by a law enforcement officer with great bodily
12 injury resulting.

13 Now, as I told you, these indictments are not evidence
14 in the case, and they're not proof of anything. The
15 indictments will be in the jury room, because, Mr. Foreman,
16 it is on the back of each of those indictments that you're
17 going to be asked to indicate the jury's unanimous decision
18 as to that particular charge. But other than serving as
19 the verdict form, the indictments serve no purpose so far
20 as you jurors are concerned. The state has the burden of
21 proving the allegations set forth in those indictments
22 beyond a reasonable doubt.

23 Now, as to each of those indictments and as to the
24 charges contained therein the defendant has entered a plea
25 of not guilty. And, as I told you, that plea of not guilty

Jury charge

1 therefore places upon the state the burden of proving each
2 of the allegations that are set forth in the indictment,
3 the burden of proving each of the essential elements that
4 constitute the crimes that are alleged against the
5 defendant; and therefore the burden is upon the state to
6 establish the defendant's guilt to the satisfaction of you
7 12 jurors beyond a reasonable doubt before any verdict of
8 guilty could be returned as to any of the separate
9 indictments.

10 The burden is never upon a defendant to prove that he
11 is not guilty or to prove that he is innocent because in
12 some cases that might not even be possible. The burden is
13 always upon the state in bringing a charge against another
14 to establish that person's guilt beyond a reasonable doubt.

15 It is a vital, important and cardinal rule of law that
16 every defendant in a criminal trial -- it doesn't matter
17 how serious the offense might be for which that person
18 stands charged -- under the law that person shall always be
19 presumed innocent of that charge.

20 That presumption of innocence remains with any
21 defendant, as it does with this defendant, from the time
22 that he is placed under arrest and throughout the course of
23 the criminal process and even throughout the course of the
24 actual trial.

25 And, as I told you, that presumption of innocence is

Jury charge

1 going to be with Mr. Teamer even as you go back into your
2 jury room to begin with your deliberations in this case.
3 And that presumption of innocence will be with him in your
4 jury room, and it'll remain with him forever unless you 12
5 jurors determine that he's no longer entitled to that
6 presumption of innocence.

7 That is after you've carefully considered all of the
8 evidence in the case, from that evidence you've decided the
9 facts, and after deciding those facts you apply the law, if
10 you 12 jurors unanimously determine that his guilt has been
11 proven beyond a reasonable doubt as to some particular
12 indictment, then the defendant would no longer be entitled
13 to that presumption of innocence, because his guilt would
14 have been proven beyond a reasonable doubt. But it's only
15 if, unless and until you 12 jurors are satisfied of his
16 guilt beyond a reasonable doubt that the presumption of
17 innocence would no longer be applicable.

18 Now, while the state does have the burden of proving a
19 defendant's guilt beyond a reasonable doubt, that doesn't
20 mean that the state has to prove his guilt beyond all doubt
21 or beyond any possible doubt. But it does require that the
22 state prove his guilt beyond a reasonable doubt.

23 The term reasonable doubt should be given its plain
24 and ordinary meaning. A reasonable doubt is the kind of
25 doubt that would cause a reasonable person to hesitate to

Jury charge

1 act upon the information provided.

2 A defendant in a criminal trial is entitled to any
3 reasonable doubt that arises from the evidence or lack of
4 evidence in a case. And if upon any factual issue
5 essential to a finding of a verdict of guilty you have some
6 reasonable doubt as to how that issue should be resolved,
7 it is your duty to resolve that reasonable doubt in favor
8 of the defendant.

9 And therefore if upon your consideration of the whole
10 case you have a reasonable doubt as to the defendant's
11 guilt as to some charge it would be your duty to resolve
12 that reasonable doubt in his favor and to return a verdict
13 of not guilty as to that particular charge.

14 And, on the other hand, if after considering all of
15 the evidence in the case if you have no reasonable doubt as
16 to his guilt as it relates to a particular charge, then of
17 course it would be your corresponding duty to convict the
18 defendant or to find him guilty of any crime that has been
19 proven to your satisfaction beyond a reasonable doubt.

20 Now, the same law that provides that you are the
21 judges of the facts also provides that I am the judge of
22 the law. That simply means that nobody is going to tell
23 you how to arrive at your determination of fact in this
24 case. You do that, as I have stated, through the exercise
25 of good judgment and common sense conscientiously applied

Jury charge

1 to the testimony and evidence received during the trial of
2 the case.

3 You must however under your oath as a juror accept the
4 law as I give it to you as being the law that is applicable
5 in this particular case. In other words, you're not to
6 concern yourself with what you thought the law was before
7 you came to serve as a juror this week or what you think
8 the law ought to be.

9 You must simply under your oath accept the law as I
10 provide it to you as being the law that is applicable in
11 this particular case. And then you simply take that law
12 and you apply it to the facts as you 12 jurors determine
13 those facts to be based upon your own common sense
14 examination of the testimony and other evidence received
15 during the trial of the case.

16 Now, because you are the sole judges of the facts you
17 are therefore necessarily the sole judges of the
18 credibility, that is the believability, of each witness
19 that has testified during the trial of this case. And I'm
20 going to list for you a number of factors that you should
21 take into consideration in your making an assessment as to
22 a particular witness' credibility or believability.

23 And those factors include what was the demeanor of the
24 witness. That is how did the witness appear to you as the
25 witness testified from the witness stand.

Jury charge

1 Was the witness straightforward in responding to
2 questions, or was the witness hesitant or evasive in
3 responding to questions that were asked of that particular
4 witness?

5 Simply put, did the witness appear to you to be
6 telling the truth and to have knowledge of the facts to
7 which that witness has testified?

8 You may also consider whether or not the testimony of
9 a witness is consistent, or is it inconsistent with that
10 witness' own testimony, whether it be testimony or
11 statements given in court or out of court, as well as
12 whether or not the testimony of a witness is consistent, or
13 is it inconsistent with other testimony or other evidence
14 received during the trial of the case?

15 You may also consider how the witness came to know the
16 facts to which that witness has testified. That is what
17 was that particular witness' opportunity and ability to
18 perceive the existence of those facts to which that witness
19 has testified by having previously perceived that fact by
20 sight or touch or hearing, and then what was that witness'
21 ability to be able to come into court and to accurately
22 recollect to you as to what they have previously perceived?

23 You may also consider whether or not a witness is
24 biased or prejudiced or has any interest in the outcome of
25 the case. And by that I simply mean do you find some

Jury charge

1 reason that a particular witness would come into court and
2 would testify one way or another to help or to hurt one
3 side or the other.

4 You may consider any interest that a witness might
5 have in the outcome of the case if you determine that a
6 witness does have such an interest and you find that that
7 interest would bear upon that particular witness'
8 credibility.

9 You may also consider whether or not the testimony of
10 a witness is strengthened, or is it weakened by other
11 testimony or other evidence received during the trial of
12 the case?

13 Now, during the trial of this case you've heard
14 certain testimony that was elicited from one or more
15 witnesses regarding their having been, they having
16 previously been convicted of a criminal offense.

17 Ordinarily evidence of convictions is not admissible
18 during the trial of a case, whether it be from a witness or
19 any other person. But where a witness has been convicted
20 of particular types of offenses, the law provides that
21 where a witness has been convicted of such an offense then
22 evidence of those convictions may be admitted during that
23 witness' testimony. And the purpose of that testimony
24 being allowed is for any impeachment value that such
25 convictions might have.

Jury charge

1 In other words, based upon a witness having a
2 particular type of conviction for a criminal offense, if
3 you think, if you determine in your wisdom and good
4 judgment that a person convicted of that type of an offense
5 is more likely or less likely to be telling the truth when
6 they testify, then you can take that into consideration.
7 So you may consider that evidence as it relates to the
8 credibility issue of a witness. And that is the purpose
9 for which it has been introduced.

10 Now, you as the finders of the fact and you as the
11 judges of the credibility of each witness that has
12 testified are permitted to believe as much or as little of
13 what a witness has testified to as you deem is appropriate.

14 And therefore in your good judgment you may believe
15 everything that a witness testified to. You may choose to
16 believe none of it. You may believe one portion of a
17 witness' testimony and reject some other portion of that
18 same witness' testimony.

19 You may believe one witness as opposed to several, or
20 several as opposed to one. But whatever your good judgment
21 and common sense tells you is the most believable and
22 credible testimony is the testimony you should accept. And
23 you should reject any testimony or other evidence that you
24 find not to be credible or believable. Again, your sole
25 objective is to simply reach the truth in the matter. And

Jury charge

1 by doing that you will have fulfilled your obligations as
2 jurors in the case.

3 Now, in this case, as you know, the defendant is
4 charged with four separate and distinct offenses. So I'm
5 going to instruct you on the law as it relates to each of
6 those separate four offenses.

7 I'll begin with the indictment charging burglary in
8 the first degree, and then I'll instruct you on the armed
9 robbery, felony driving under the influence and failing to
10 stop with great bodily injury resulting.

11 Now, Section 16-11-311 is the section that sets forth
12 the crime of burglary in the first degree. There are two
13 kinds of crimes. You've got statutory crimes and common
14 law crimes. You don't have to worry about the difference
15 between the two. But statutory crimes are set forth in a
16 statute.

17 In other words, the legislature when they meet every
18 year, they might classify a certain type of conduct as
19 criminal conduct. And where they do, if a person is found
20 to have engaged in that conduct in violation of the law,
21 then the legislature also sets forth some type of
22 punishment or penalty for a person having engaged in that
23 conduct or having violated that particular statute.

24 Please understand however that you are never to be
25 concerned with punishment. You don't need to be concerned

Jury charge

1 with any consequence of your decision. Your sole
2 obligation and duty in a case is to determine whether or
3 not a person has been proven guilty or not.

4 If there's any punishment to be imposed the Court will
5 make that determination. But you're not to be concerned
6 with that, and that should not enter into your
7 deliberations or your decision.

8 The statute, as I told you, that sets forth burglary
9 in the first degree is Section 16-11-311. And it provides
10 as follows: A person is guilty of burglary in the first
11 degree if that person enters a dwelling without consent and
12 with the intent to commit a crime therein, and one or more
13 of the additional factors must be present in order for it
14 to be first degree, when in effecting entry or while in the
15 dwelling or in immediate flight therefrom the defendant is
16 armed with a deadly weapon, or causes physical injury to a
17 person who is not a participant in the crime, or the
18 defendant threatens the use of a dangerous instrument, or
19 the defendant displays what is or what appears to be a
20 knife, pistol, revolver, rifle, shotgun, machine gun or
21 other firearm, or the entering or the remaining occurs in
22 the nighttime.

23 Now, based upon the foregoing statute, before you
24 could return a verdict of guilty as to the crime of
25 burglary in the first degree it would be necessary that the

Jury charge

1 evidence in this case has established to your satisfaction
2 beyond a reasonable doubt the following four elements.

3 Number one, the state has to prove that the defendant
4 entered a dwelling. Entry is an indispensable element in
5 the crime of burglary, and entry is the act of going into
6 the dwelling or any room or structure which is attached or
7 pertinent to that dwelling. It also must be a dwelling.
8 And a dwelling is defined as a building or a structure
9 which is used or normally used for sleeping, living or
10 lodging by any person.

11 Secondly, there must be an entry of a dwelling without
12 consent. Entering without consent means to enter a
13 dwelling without the consent of the owner or person
14 otherwise in lawful possession of the premises; or it's to
15 enter a dwelling by using deception, artifice, trick or
16 misrepresentation in order to gain consent or to enter the
17 dwelling.

18 Thirdly, there must also be an entry without consent
19 and with the intent to commit a crime in the dwelling.
20 There must be an intent to commit a crime, whether or not
21 the crime is actually committed.

22 The mere entering of a dwelling without an intent to
23 commit a crime does not constitute burglary. It is only
24 when there is an entry of a dwelling without consent and
25 with the intent to commit a crime therein that the crime of

Jury charge

1 burglary is complete. And a crime of any grade or severity
2 is sufficient to satisfy this particular element of the
3 crime of burglary.

4 It's also essential that the intent to commit a crime
5 exist at the time of the entry into the dwelling. It's not
6 sufficient that the intent is formed after the entry has
7 been accomplished.

8 On the other hand, where the intent to commit exists
9 at the time of the entering of the dwelling, it is not a
10 defense to a charge of burglary that the intent is later
11 abandoned.

12 An intent means the state of a person's mind which
13 directs his actions towards a specific object or goal. The
14 entry of a dwelling without consent and with the intent to
15 commit a crime therein completes the crime of burglary.

16 Now, in order for it to be a burglary in the first
17 degree an additional fourth element must be established
18 beyond a reasonable doubt; and that is the state must prove
19 that when in effecting entry or while in the dwelling, or
20 in immediate flight therefrom, the defendant was armed with
21 a deadly weapon, or he caused physical injury to a person
22 who was not a participant in the crime, or he threatened
23 the use of a dangerous instrument, or he displayed what was
24 or appeared to be a knife, a pistol, revolver, rifle,
25 shotgun, machine gun or any other firearm, or the entering

Jury charge

1 of a dwelling occurred in the nighttime.

2 Now, in this particular case the state is alleging a
3 burglary. And they allege that it is a burglary in the
4 first degree claiming that the defendant entered in the
5 nighttime, or that he was armed with a deadly weapon, or
6 that he caused physical injury to a person not a
7 participant in the crime, or that he used or threatened the
8 use of a dangerous instrument, or that he displayed what
9 appeared to be a pistol, rifle, revolver, shotgun or other
10 firearm.

11 Now, in order to prove a defendant guilty of burglary
12 in the first degree it is not necessary that the state
13 prove all of those additional factors that I have
14 described. It is however necessary that the state prove at
15 least one of those additional factors in order for it to be
16 a burglary in the first degree.

17 So, again, burglary in the first degree is the
18 entering of a dwelling without consent and with the intent
19 to commit a crime therein. That's burglary. And
20 additionally that the defendant committed the burglary in
21 the nighttime, or was armed with a deadly weapon, or caused
22 physical injury to another person, or threatened to use a
23 dangerous instrument, or displayed what appeared to be a
24 rifle, shotgun, pistol or other firearm.

25 Now, the second indictment I'm going to refer to is

Jury charge

1 the indictment for armed robbery. Armed robbery is also a
2 statutory offense, and that offense is set forth in Section
3 16-11-330.

4 That statute provides that a person who commits
5 robbery while armed with a pistol, dirk, slingshot, metal
6 knuckles, razor or any other deadly weapon, or a person who
7 commits the crime of robbery while alleging either by
8 actions or words that he was armed while using a
9 representation of a deadly weapon or any object which a
10 person present during the commission of a robbery
11 reasonably believed to be a deadly weapon is guilty of the
12 crime of armed robbery.

13 Now, in order for you to understand the crime of armed
14 robbery I'm going to define for you the term larceny and
15 robbery, which are lesser offenses, but they are included
16 in armed robbery. And it must be proven, they must be
17 proven, in order for armed robbery to be proven.

18 Larceny is commonly referred to and known as stealing.
19 And larceny is defined in the law as the taking and the
20 stealing and the carrying away of the personal property of
21 another with the intention of depriving the true owner of
22 use and possession of his property and converting that
23 property to the taker's own use.

24 A robbery is commonly referred to as a larceny by
25 force. And a robbery is defined in the law as the taking

Jury charge

1 and the stealing and the carrying away of the personal
2 property of another having any value whatsoever from the
3 person or from the presence of any such person without his
4 or her consent and with the intent to steal, and by using
5 force or violence or threatening to use force or violence
6 in order to accomplish the theft. Forcing a person to
7 surrender property out of fear and intimidation through the
8 use of force or violence or the threat of the use of force
9 or violence with an intent to steal the property is a
10 robbery under the law.

11 Therefore under this particular statute an armed
12 robbery is defined in either one of -- in either of two
13 ways. One, that a robbery is committed while the
14 perpetrator is actually armed with a pistol, rifle, shotgun
15 or other deadly weapon; or it's a robbery committed while
16 the perpetrator alleges either by actions or by words that
17 he is armed while using a representation of a deadly weapon
18 or some object which a person present during the commission
19 of the robbery reasonably believes to be a deadly weapon.

20 Therefore while it may be proven by direct or
21 circumstantial evidence that the perpetrator of a robbery
22 was actually armed with a deadly weapon under the law, it
23 is not necessary in order to prove the commission of an
24 armed robbery that it be proven that the perpetrator
25 actually was in possession of or displayed an actual deadly

Jury charge

1 weapon so long as it is proven that the perpetrator
2 committed a robbery while alleging by actions or words that
3 he was armed while using a representation of a deadly
4 weapon or some object which some person present at the
5 scene of the robbery reasonably believes to be a deadly
6 weapon.

7 And reasonably believed means a belief that is
8 reasonable under the circumstances then existing. In other
9 words, if a reasonable and prudent person had been acting
10 under the same or similar circumstances that person would
11 have entertained the same belief. That is that person
12 would have believed the object used by the perpetrator was,
13 in fact, a deadly weapon.

14 The next indictment that I'll instruct you on the law
15 as to is the indictment for felony driving under the
16 influence. That is also a statutory offense. And that
17 offense is set forth in Section 56-5-2945.

18 That section of law provides that a person shall be
19 deemed guilty of felony driving under the influence where
20 it is proven that a person drives a vehicle within this
21 state while that person is under the influence of alcohol,
22 or under the influence of some other drug, or is under the
23 influence of the combined substances alcohol and any other
24 drug or other substances which cause impairment to the
25 extent that that person's faculties to drive are materially

Jury charge

1 and appreciably impaired; and further in addition to the
2 person having to be proven to have been driving while under
3 the influence of some type of an intoxicating substance,
4 further it must be established that when driving the
5 vehicle while under the influence that the defendant did
6 some act which is forbidden by law or neglected some duty
7 which was imposed by law in the operation of that motor
8 vehicle and that that forbidden act or neglect of duty
9 proximately caused great bodily injury or death to some
10 other person.

11 Therefore under this statute before you could find the
12 defendant to be guilty of felony driving under the
13 influence it would be necessary that the state has proven
14 to your satisfaction beyond a reasonable doubt four
15 essential elements.

16 First, that the defendant was the driver of a motor
17 vehicle in this county on the date as alleged; that at the
18 time the defendant was found to be driving a motor vehicle
19 in this county that he was under the influence of alcohol
20 or some other drug or a combination of alcohol and some
21 other drug to the extent that the defendant's faculties and
22 ability to drive that motor vehicle were materially and
23 appreciably impaired; fourthly, excuse me, thirdly, that
24 the defendant in the driving of his motor vehicle while
25 under the influence did some act forbidden by law or

Jury charge

1 neglected some duty imposed by law in the operation of that
2 motor vehicle; and, lastly, that the forbidden act or
3 neglect of the duty proximately caused great bodily injury
4 to a person other than himself.

5 Now, in order to be deemed under the influence within
6 the meaning of the statute it's not necessary that it be
7 proven that the defendant was in a helpless condition or
8 that he was drunk or even that he was intoxicated.

9 On the other hand, proof that the defendant at some
10 time prior to his arrest had consumed some quantity of
11 alcohol or had ingested some quantity of some other type of
12 drug, or both, is not sufficient in and of itself to prove
13 that the defendant was under the influence within the
14 meaning of the statute.

15 A person is deemed to be under the influence within
16 the meaning of the statute when he has consumed or ingested
17 a sufficient amount of some intoxicating substance or
18 substances which cause impairment to the extent that the
19 defendant's mental and physical faculties and his ability
20 to drive the motor vehicle were materially and appreciably
21 impaired.

22 In other words, a person is under the influence when a
23 person has consumed such a quantity of intoxicating
24 substances which cause him to lose normal mental and
25 physical faculties and which prevents him from exercising

Jury charge

1 reasonable care in the operation of his motor vehicle like
2 that which would have been exercised by a person of
3 ordinary reason and prudence if that person had been
4 operating that vehicle under the same or similar
5 circumstances as shown by the evidence in this case.

6 A person who is found beyond a reasonable doubt to
7 have driven a motor vehicle while his mental and physical
8 faculties necessary for the operation of a motor vehicle
9 are materially and appreciably impaired by the consumption
10 of intoxicating substances is deemed to be under the
11 influence.

12 And, as I've stated, it must also be shown that the
13 defendant did commit some act which was forbidden by law or
14 he neglected some duty imposed by law in the operation of
15 that motor vehicle.

16 In that regard you are instructed that in the
17 operation of a motor vehicle, motor vehicle drivers must
18 comply with all statutory rules, requirements and
19 regulations and also any other duties imposed by law.

20 You are instructed that a motor vehicle operator is
21 always under an obligation to maintain his vehicle under
22 proper control, to maintain a proper lookout for other
23 vehicles which are lawfully upon the roadway and to
24 exercise reasonable and due care in the operation of that
25 motor vehicle.

Jury charge

1 In addition, the driver of a motor vehicle must obey
2 all traffic regulations. That is the driver of a motor
3 vehicle must ensure that his vehicle is driven in a proper
4 lane of traffic, that he must yield properly to the right
5 of way of other vehicles where they have the right of way,
6 that a motor vehicle operator may not drive a vehicle too
7 fast for the conditions then existing, that a motor vehicle
8 driver must not drive his vehicle in a reckless manner, and
9 that in the nighttime a motor vehicle must be operated with
10 headlamps.

11 Now, as I've stated, the state has to prove that the
12 defendant committed some act which was forbidden by law or
13 he neglected some duty imposed by law in the operation of
14 that motor vehicle while he was under the influence of some
15 intoxicating substance, and the act forbidden by law or the
16 neglect of the duty imposed by law, if you find that that
17 has been proven beyond a reasonable doubt, must have
18 proximately caused great bodily injury to another person.

19 Proximate cause means the direct cause without which
20 that injury would not have occurred. And great bodily
21 injury is defined as an injury which creates a substantial
22 risk of death or which causes serious permanent
23 disfigurement or which results in an extended loss or
24 impairment of the function of a bodily member or organ.

25 And the final indictment charges the defendant with

Jury charge

1 failing to stop when signaled by a law enforcement officer.
2 And failing to stop is also a statutory offense, and that
3 is set forth in 56-5-750 of the code of laws.

4 And that statute provides that in the absence of any
5 mitigation circumstances it is unlawful for a motor vehicle
6 driver while driving on a road, street or highway of this
7 state to fail to stop when signaled by a law enforcement
8 vehicle by means of a siren or flashing light.

9 And where a person violates this particular section in
10 failing to stop and where it is further shown that in
11 violating this section that the defendant commits some act
12 which is forbidden by law or neglects some duty which is
13 imposed by law in the driving of that motor vehicle and
14 where great bodily injury results, then the defendant may
15 be found guilty of failing to stop with great bodily
16 injury, which is alleged in the indictment.

17 So with regard to this particular indictment before a
18 defendant could be, before the defendant could be, found
19 guilty of a violation of that section it would be necessary
20 that the state has proven to your satisfaction beyond a
21 reasonable doubt that he was driving a motor vehicle, that
22 he was signaled to stop by a law enforcement vehicle using
23 a blue light or siren or both, that the defendant did not
24 stop and there is an absence of mitigating circumstances.

25 Now, mitigating circumstances are those circumstances

Jury charge

1 which in fairness and mercy may be considered as
2 extenuating or reducing the degree of moral culpability of
3 an individual and give rise to a reasonable justification
4 for not stopping.

5 In determining whether or not there are mitigating
6 circumstances which would justify the defendant's failure
7 to stop for any blue light or siren or both you may
8 consider the circumstances as established by the evidence
9 in this particular case.

10 An official signal requiring the motorist to stop may
11 be by a siren or flashing lights. Both may be given, but
12 both are not required so long as one has been established
13 beyond a reasonable doubt.

14 Further, you are instructed that any attempt to
15 increase the speed of a vehicle or in any other manner
16 avoid the pursuing law enforcement vehicle when signaled by
17 a siren or a flashing light may be considered as evidence
18 of a failure to stop for a law enforcement vehicle.

19 However, any inference which might reasonably be drawn
20 from the proof of such other facts or circumstances are
21 merely evidentiary facts which may be taken into
22 consideration by you 12 jurors along with all the other
23 evidence in the case and may be given such weight as you
24 determine they should receive, if any.

25 And, as I've stated, in order for the defendant to be

Jury charge

1 found guilty of the offense that is alleged in this
2 indictment, failing to stop resulting in great bodily
3 injury, the state must also have proven the additional
4 elements of him committing an act forbidden by law or
5 neglecting a duty imposed by law as I have previously
6 instructed you, and that forbidden act or that neglected
7 duty if proven must have proximately caused great bodily
8 injury. Proximate caution and great bodily injury have
9 also previously been defined for you.

10 One thing I did neglect to tell you. Now, with regard
11 to the offense of driving under the influence, Section
12 56-5-2950 is referred to as the implied consent law.

13 It provides that any person who operates a motor
14 vehicle in this state is considered to have given his
15 consent to chemical tests of his breath or blood or urine
16 for the purpose of determining the presence of alcohol or
17 drugs or a combination of substances.

18 Now, where there is evidence of such chemical tests
19 having been administered for the purpose of determining the
20 presence of alcohol in the blood of a person, the amount of
21 alcohol in the person's blood at the time of the alleged
22 violation as shown by a chemical analysis of the person's
23 breath or any other bodily fluid may give rise to the
24 following inferences or even presumption.

25 Number one, if there was at the time five

Jury charge

1 one-hundredths of one percent or less of alcohol in the
2 person's blood it is conclusively presumed that that person
3 was not under the influence of alcohol.

4 If there is five one-hundredths of one percent but
5 less than eight one-hundredths of one percent of alcohol in
6 the person's blood, then that fact does not give rise to
7 any inference or any presumption. But it may be considered
8 along with any other competent evidence in the case in your
9 determination as to whether or not the defendant was under
10 the influence.

11 If there was at the time eight one-hundredths of one
12 percent or more of the alcohol in the person's blood it may
13 be inferred that the person was under the influence of
14 alcohol.

15 So while this particular statute does provide that a
16 person whose chemical test results from an analysis shows
17 that there was less than five one-hundredths of one percent
18 of alcohol in the person's blood conclusively establishes
19 that he was not under the influence of alcohol. However,
20 that evidence of alcohol content in the blood may be
21 considered with any other evidence that is relevant to the
22 issue of whether or not the defendant was under the
23 influence.

24 Now, further in this case the defendant has raised
25 what is referred to in the law as the defense of alibi.

Jury charge

1 And an alibi means that the defendant was at another
2 specified place at the time that any crime alleged to have
3 been committed by him was committed and therefore it was
4 not possible for the defendant to have committed the crime
5 he is accused of committing because he was not present at
6 the scene where that crime was committed.

7 Now, while a defendant may present evidence of an
8 alibi, there is no burden on the defendant to prove an
9 alibi by any standard. The burden is on the state to prove
10 beyond a reasonable doubt that the defendant was actually
11 present at the place where the crime was committed and that
12 the defendant actually committed the crime and therefore he
13 was not somewhere else.

14 In other words, because the state has the burden of
15 proving the defendant's guilt beyond a reasonable doubt,
16 such a burden would necessarily require that the state
17 prove that it was this defendant who committed that crime
18 and that he was, in fact, not somewhere else.

19 Now, I further instruct you, and I emphasize to you,
20 that the fact that a defendant in the trial of a criminal
21 case does not take the witness stand and testify during the
22 trial is not a factor which may be considered by you in any
23 way during your deliberations or in your determination as
24 to whether or not his guilt has been proven beyond a
25 reasonable doubt.

Jury charge

1 As I have stated, the burden is upon the state to
2 establish the defendant's guilt beyond a reasonable doubt.
3 The burden is never upon a defendant to prove that he is
4 not guilty or to prove that he is innocent.

5 And therefore where a defendant in a criminal trial
6 does not take the witness stand and testify during the
7 trial of the case, that fact may not be considered in any
8 way whatsoever by the jury in your deliberations or in your
9 determination as to whether his guilt has been proven. You
10 may not allow that fact to influence you in any way
11 whatsoever, nor may that fact even be discussed while you
12 are engaged in your deliberations.

13 Now, Mr. Foreman, ladies and gentlemen of the jury, I
14 am not in any way concerned with what your decisions are,
15 but you are instructed that your decision, whatever it
16 might, be must be unanimous. All 12 must be in agreement.

17 Now, Mr. Foreman, as you go back you're going to have,
18 along with any evidence that has been introduced during the
19 trial of the case, these four indictments. And on the back
20 of each indictment you'll see in the lower left-hand corner
21 the word verdict. And I know you can't see it from there.
22 But in the lower left-hand corner there is the word
23 verdict. There are some lines there. Beneath that word is
24 where you'll indicate the jury's unanimous decision as it
25 relates to that particular indictment.

Jury charge

1 When you have reached that decision, insert it and
2 sign your name as the foreperson indicating that is the
3 jury's unanimous decision.

4 Now, with respect to each of the separate indictments
5 you have two potential verdict forms. If the state has
6 proven each of the essential elements of the crime alleged
7 in the indictment, which includes the defendant being the
8 perpetrator of that particular offense, and they have
9 proven those elements to your satisfaction beyond a
10 reasonable doubt, then your verdict would be guilty. And
11 that would be the form you would insert.

12 If the state has failed to prove any one or more of
13 the essential elements of any of the crimes alleged against
14 the defendant, then in that event your verdict would be not
15 guilty. And you would insert that form in the space
16 provided.

17 Now, as I've told you, you've got four separate
18 indictments, four separate and distinct criminal offenses.
19 You will consider each of those separate offenses in light
20 of the evidence received during the trial and in light of
21 the law that I have provided you.

22 You will determine whether or not the defendant has
23 been proven guilty of any, all or none of these offenses.
24 In your determination as to the verdicts in the case since
25 you will be considering each offense and indictment

Jury charge

1 separately, your verdicts in this case may be the same as
2 it relates to all of the indictments, or it may be
3 different. That will depend upon your determination of
4 fact and then your application of the law to the facts as
5 you determine those to be.

6 But whatever that determination is, Mr. Foreman,
7 simply indicate the jury's unanimous decision on that
8 particular indictment and sign your name as the foreperson.

9 Now, during your deliberations there may come a time
10 where you have some question about evidence or facts. I am
11 never permitted to answer questions that relate to issues
12 of fact or evidence in the case.

13 Everything that is going to be presented in this case
14 and provided to you has been presented. No additional
15 evidence may be received now that you're going to be going
16 back to begin with your deliberations.

17 So even if there was some other document, some other
18 witness, some other piece of evidence that you wonder
19 about, even if it exists you can't have it. So you are not
20 permitted to have any additional evidence received now that
21 you're going back to begin deliberations.

22 If however you have a question about the testimony of
23 a witness or something that came out during the trial and
24 if that question can be answered by your having testimony
25 replayed, if you will identify the witness we can always

Jury charge

1 bring you back into the courtroom to have testimony
2 replayed if that will help you. And we can have it
3 replayed in whole or in part, whatever the jury needs in
4 order to resolve some issue should one arise.

5 We don't have any transcripts available. You can't
6 get a transcript of a witness' testimony. But if you need
7 to have something replayed we can bring you back into the
8 courtroom for that purpose.

9 So I can't answer questions of fact or evidence. If a
10 question can be answered by testimony replayed, we'll bring
11 you back to do that.

12 If during your deliberations you have any question
13 about the law that's applicable, I can always answer those
14 questions. So if at any time during the course of your
15 deliberations you need me to assist you in clarifying the
16 law, provide you with an additional instruction or
17 clarification of an instruction or provide it to you
18 another time, I can do that. So just let me know if that's
19 the case and I'll respond accordingly.

20 I don't know if we have any smokers on the jury. If
21 we do have some smokers and you want to smoke, you can, but
22 you can't smoke in the jury room. You have to go outside
23 to smoke.

24 So if anybody needs to smoke let the bailiff know.
25 They'll take one of those who need to smoke outside. You

Jury charge

1 are instructed however that deliberations must cease if any
2 juror is absent for any authorized purpose. Deliberations
3 may only be engaged in when all 12 jurors are present so
4 that all may participate.

5 And your lunch should be here shortly. And you can do
6 what you will about that. You can stop and eat, or you can
7 eat and deliberate at the same time. That's up to you.
8 I'm not going to tell you how to do that.

9 Now, I will ask you to go to the jury room with the
10 exception of the two alternates. You'll stay in the
11 courtroom with me. The 12 primary jurors will please go
12 back to your jury room.

13 But do not begin deliberations until I send you word
14 to do so. And in that event I'll send the exhibits and the
15 verdict forms that you will have, Mr. Foreman, on which you
16 will indicate the verdicts.

17 So please go to your jury room, but don't begin
18 deliberations until I send you word.

19 (Whereupon, the jury retired to deliberate at
20 12:42 p.m.)

21 (Whereupon, the alternate jurors were excused.)

22 THE COURT: Are there any exceptions taken to the
23 instruction or requests for additions to the instruction by
24 the state?

25 MR. BARNETTE: None from the state, Your Honor.

Verdict

1 THE COURT: From the defendant?

2 MR. SCHULTZ: None from the defense.

3 THE COURT: None?

4 MR. SCHULTZ: None from the defense, Your Honor.

5 THE COURT: Let me ask y'all to verify the exhibits
6 before they go back, please.

7 (Pause.)

8 THE COURT: All right. All of the exhibits are
9 accounted for?

10 MR. BARNETTE: Yes, sir.

11 MR. SCHULTZ: Yes, sir, Your Honor.

12 THE COURT: Take the exhibits back and tell the jury
13 they can begin deliberations, and I will send them the
14 verdict forms in just a minute.

15 We will be at ease while the jury is deliberating.

16 (Whereupon, the exhibits were submitted to the jury at
17 12:53 p.m.)

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. The jury has reached a
20 decision in Mr. Teamer's case. Are we ready to receive it?

21 MR. BARNETTE: The state is ready, Your Honor.

22 MR. SCHULTZ: The defense is ready, Your Honor.

23 THE COURT: All right. Bring them in, please.

24 (Whereupon, the jury returned to the courtroom at
25 3:40 p.m. to report its verdict.)

Verdict

1 THE COURT: Mr. Foreman, have you and your fellow
2 jurors reached a unanimous decision as to each of the
3 separate indictments?

4 THE FOREMAN: Yes, sir, Your Honor, we have.

5 THE COURT: Have you indicated those decisions on the
6 back of the indictment as requested?

7 THE FOREMAN: Yes, sir, Your Honor, we have.

8 THE COURT: Did you sign your name as the foreperson?

9 THE FOREMAN: Yes, sir, Your Honor, I have.

10 THE COURT: If you will, please hand those verdict
11 forms up by way of the bailiff.

12 All right. You may publish the verdicts.

13 THE CLERK: State of South Carolina, County of
14 Spartanburg, State of South Carolina vs. Nathaniel Charles
15 Teamer, Indictment No. 2006-GS-42-1719, burglary first
16 degree, we, the jury, find for the defendant, guilty,
17 signed as foreperson, Reginald Ward, 9/12/07.

18 On Indictment No. 2006-GS-42-1720 for armed robbery,
19 State vs. Nathaniel Charles Teamer, the jury finds not
20 guilty, signed by the foreperson, Reginald Ward, 9/12/07.

21 Indictment No. 2006-GS-42-1732, indictment for D. U.
22 I., felony driving under the influence great bodily injury,
23 verdict is guilty, signed by Reginald Ward, dated 9/12/07.

24 Indictment No. 06-GS-42-1733, indictment for count
25 one, failure to stop when signaled by a law enforcement

Verdict

1 officer with great bodily injury, the jury finds him
2 guilty. Signed by the foreperson, Reginald Ward, 9/12/07.

3 Ladies and gentlemen of the jury, is this your
4 verdicts and still your verdicts? If so, please raise your
5 right hand.

6 (Whereupon, all jurors responded in the affirmative.)

7 THE CLERK: So say you all.

8 THE COURT: Does the defendant wish to have the jury
9 polled?

10 MR. SCHULTZ: Yes, Your Honor, we would.

11 THE COURT: All right. Poll the jury, please, ma'am.

12 THE CLERK: Ladies and gentlemen of the jury, I will
13 be asking you a question. That question is is this your
14 verdict and still your verdict.

15 When I call your name, if you will, please stand and
16 answer yes or no.

17 Juror No. 20, Waylon Davis.

18 THE JUROR: Yes, it is.

19 THE CLERK: Juror No. 155, Reginald Ward.

20 THE JUROR: Yes, it is.

21 THE CLERK: Juror No. 188, Tracy Matheson.

22 THE JUROR: Yes, it is.

23 THE CLERK: Juror No. 23, Elton Dingler.

24 THE JUROR: Yes, it is.

25 THE CLERK: Juror No. 122, Shameka Richards.

Motion

1 THE JUROR: Yes, it is.
2 THE CLERK: Juror No. 43, John Grech.
3 THE JUROR: Yes, it is.
4 THE CLERK: Juror No. 117, Tara Revels.
5 THE JUROR: Yes, it is.
6 THE CLERK: Juror No. 53, Rodney Higgins.
7 THE JUROR: Yes, it is.
8 THE CLERK: Juror No. 198, Tasnim Dalal.
9 THE JUROR: Yes, it is.
10 THE CLERK: Juror 108, Marlin Pitts.
11 THE JUROR: Yes, it is.
12 THE CLERK: Juror No. 91, Robert McMichael.
13 THE JUROR: Yes, it is.
14 THE CLERK: And Juror No. 175, Irene Zimmerman.
15 THE JUROR: Yes, it is.
16 THE CLERK: So say you all.
17 THE COURT: Any other matters to be addressed with the
18 jury present?
19 MR. SCHULTZ: No, Your Honor.
20 (Whereupon, the trial jury was excused.)
21 THE COURT: All right. Any matters to address prior
22 to the imposition of sentence?
23 MR. SCHULTZ: Yes, Your Honor.
24 I would like to renew any motion for a directed
25 verdict and would like to move for a new trial based upon

Sentence

1 all objections noted by the defense.

2 THE COURT: All right. Those motions are each denied.

3 MR. SCHULTZ: That's all I have, Your Honor.

4 MR. BARNETTE: Your Honor, I do have sentencing
5 sheets.

6 THE COURT: All right.

7 MR. BARNETTE: If I understood right, it's guilty on
8 burglary first and felony D. U. I. and failure to stop with
9 great bodily injury.

10 THE COURT: Right.

11 MR. BARNETTE: May we approach for a second, Your
12 Honor?

13 THE COURT: Yes.

14 (Bench conference held off the record.)

15 THE COURT: Mr. Schultz said he didn't need any
16 additional time.

17 MR. BARNETTE: Yes, sir. Okay. May I approach the
18 bench?

19 THE COURT: All right. Anything further on behalf of
20 the state?

21 MR. BARNETTE: Your Honor, I have talked to the
22 victims in the case. They both just wish to see justice
23 served by the Court in this case.

24 I do have his prior record, Your Honor, if you would
25 like to hear it.

Sentence

1 THE COURT: Yeah. Tell me about his record.

2 MR. BARNETTE: Thank you, Your Honor.

3 He's been convicted of possession with intent to
4 distribute marijuana. He received one year suspended to
5 six months and one year's probation. That was on
6 June 27th of 2002.

7 He was convicted of assault with intent to kill. He
8 pled guilty to that on also June 27th of 2000 or 2002. He
9 received a sentence of three years suspended to one year in
10 jail plus five years probation on that.

11 He was convicted of assault and battery of a high and
12 aggravated nature on that, Your Honor. He was sentenced on
13 that June 27th of 2002 and received three years suspended
14 to one year and five years probation on that.

15 He was convicted of another assault and battery of a
16 high and aggravated nature. On that case, Your Honor, he
17 received seven years suspended to five years in jail with
18 five years probation.

19 He was convicted of another assault and battery of a
20 high and aggravated nature, Your Honor. He received seven
21 years suspended to five years, and five years probation on
22 that also.

23 He was convicted of unlawful possession by a pistol of
24 a person under 21 (sic). He received two years suspended
25 to one year, two years probation on that.

Sentence

1 He was also convicted of discharging a firearm into a
2 dwelling. On that he received seven years suspended to
3 five years with five years probation, in this case.

4 I do have the actual copies of the indictments if you
5 would like for me to enter them as a court record, Your
6 Honor. We do have those.

7 THE COURT: That's not necessary.

8 MR. BARNETTE: Thank you, Your Honor.

9 THE COURT: Mr. Teamer, do you agree with what the
10 solicitor has told me about your prior criminal history?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Mr. Schultz.

13 MR. SCHULTZ: Thank you, Your Honor. May it please
14 the Court.

15 Mr. Teamer is 25 years old. During the course of this
16 trial he has some family here, his mother, if she can stand
17 up. I'm not sure if she wishes to say anything now.

18 THE COURT: Let me ask you to come up here and stand
19 next to Mr. Schultz, please.

20 And tell me your name, please, ma'am.

21 MARY TEAMER: Oh, Mary Teamer.

22 THE COURT: All right. Ms. Teamer.

23 MARY TEAMER: Yes.

24 THE COURT: What would you like to tell me?

25 MARY TEAMER: I would like to say that my son, he's a

Sentence

1 good person. And I am sorry he got in trouble. And I
2 plead for your mercy for him.

3 THE COURT: Okay. Thank you, ma'am.

4 MR. SCHULTZ: Your Honor, that's all I have.

5 THE COURT: Mr. Teamer, is there anything you would
6 like to tell me before the sentence is imposed?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. On Indictment 2006-1719,
9 that's the indictment for burglary in the first degree,
10 wherein you have been found guilty by a jury of that
11 offense, the Sentence of the Court is you, Nathaniel
12 Charles Teamer, be confined to the South Carolina
13 Department of Corrections for a period of 30 years.

14 Indictment 2006-1732, felony driving under the
15 influence, wherein you have been found guilty by a jury of
16 that offense, Sentence of the Court is you, Nathaniel
17 Charles Teamer, be confined to the South Carolina
18 Department of Corrections for a period of 15 years.

19 Indictment 2006-1733, failing to stop, great bodily
20 injury resulting, Sentence of the Court is you be confined
21 to South Carolina Department of Corrections for a period of
22 ten years.

23 Mr. Teamer, you have a right to appeal the verdicts of
24 the jury and the Sentence of the Court. You must file any
25 notice of your intention to appeal within ten days of

Sentence

1 today's date.

2 END OF REQUESTED TRANSCRIPT OF RECORD

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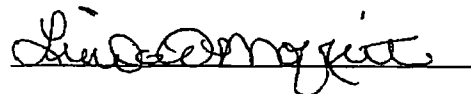
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th, 11th and 12th days of September 2007.

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

February 29, 2008



Linda D. Moffitt
Circuit Court Reporter

Spartanburg County

Spartanburg County Court House
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Spartanburg, SC 29304-3483



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

M. Hope Blackley

Clerk of Court

February 11, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Nathaniel Teamer
#285309
Applicant

7TH JUDICIAL CIRCUIT

CASE # 2010CP424181

VS
Steel
Respondent

CERTIFICATE OF SERVICE

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

Ord. of Application for Post Conviction
Relief

in this action dated 2-8-2013 on 2-11-13

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

Ann Miller
Suzanne White
Nathaniel Teamer
Travis Blanchette / Kevin Thompson

2-11-13
(Date)

Cecilia Seay
(Signature)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Nathaniel Teamer, #285309,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-4181

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

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I. PROCEDURAL HISTORY

A. Post Conviction Relief Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed in Spartanburg County on August 2, 2010. On April 26, 2011, the State submitted a Return. On May 17, 2011, Applicant, through counsel, filed a Motion for Discovery in Post Conviction Relief. A Motion Hearing was held on June 15, 2011 at the Spartanburg County Courthouse in front of the Honorable Roger L. Couch. Applicant was present and represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General. On July 6, 2011, an Order Authorizing Discovery was entered.

On October 8, 2012, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which added the following specific allegations to his original allegation of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to prepare with Applicant by going over the discovery materials and fully discussing trial strategy; failure to investigate the witnesses and evidence put forth by the State.
2. Ineffective assistance of trial counsel for making a motion to sever which allowed the State to stream line the case against Applicant, eliminated defenses and allowed evidence from charges related to the first trial to be used during the trial at issue. Ineffective assistance of counsel for failure

to be prepared to proceed after motion to sever was granted in prior trial and to properly preserve the issue for appellate review.

3. Ineffective assistance of trial counsel for failure to utilize the prior trial testimony of James Young and Christina Hoggle or call them as a witness for the defense.
4. Ineffective assistance of trial counsel regarding the cell phone records, testimony and argument, specifically, but not limited to the following:
 - a. Failure to utilize the discovery materials, call all necessary witnesses, thoroughly cross-examine the State's witness and raise all viable arguments during the pre-trial motion to suppress the evidence located in the Chevy Caprice by law enforcement.
 - b. Failure to effectively utilize the phone records introduced by the State and present the jury with a timeline of the calls and events question.
 - c. Failure to effectively cross-examine the State's witnesses regarding the cell phone records and refute the State's arguments regarding the implications of such records.
 - d. Failure to make contemporaneous objections to the introduction and testimony regarding the cell phones and cell phone records.
5. Ineffective assistance of trial counsel for failure to present a pre-trial motion for suppression of the prior bad act testimony offered by Kelvin McKinney and Dawn Hunter. Ineffective assistance of counsel for making an untimely objection on the basis of prior bad act testimony during the testimony of Dawn Hunter.
6. Ineffective assistance of trial counsel for failure to impeach Kelvin McKinney's testimony regarding Applicant's motive with the statement of the victim, which identifies "Snow" (Kelvin McKinney) not Applicant. Failure to effectively use the video of Kelvin McKinney's statement on cross-examination.
7. Ineffective assistance of trial counsel for failure to utilize testimony and/or evidence to refute Kelvin McKinney's testimony that Applicant confessed to him while located in the detention center.
8. Ineffective assistance of trial counsel for failure to advise Applicant that Dawn Hunter would be called as a witness by the State and discuss the substance of her testimony.

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9. Ineffective assistance of trial counsel for failure to thoroughly cross-examine David Procter regarding the identification of the house where the suspect was picked up from, the streets in question, the sketch of the suspect and the identifying information of the suspect.
10. Ineffective assistance of counsel for failure to object to testimony regarding the drug evidence found in the Chevy Caprice on the grounds of illegal search and seizure, chain of custody or use of an uncharged "bad act."
11. Ineffective assistance of counsel for failure to fully explore the access Carlos Fuller had to the murder weapon and calls made to Carlos Fuller on the phone records introduced at trial.
12. Ineffective assistance of counsel for failure to investigate the DNA evidence, utilize a DNA expert and effectively cross-examine Agent Fields regarding the DNA evidence.
13. Ineffective assistance of counsel for opening the door and/or eliciting testimony regarding Applicant's bad reputation during the testimony of Keith Letmon. Failure to properly review the criminal history of Keith Letmon and make necessary objections and/or arguments when the State utilized his criminal history on cross-examination.
14. Ineffective assistance of counsel for failure to call Mrs. Feaster.
15. Ineffective assistance of counsel for failure to provide the court with a third party guilt instruction.
16. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to pre-trial motions, trial objections, and request to charge the jury on third party guilt.
17. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

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An evidentiary hearing into the matter was held on October 29, 2012 at the Spartanburg County Courthouse in front of the Honorable Brooks P. Goldsmith. Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire, and Jeremy Thompson, Esquire. The State was represented by Suzanne H.

White, Assistant Attorney General. At the beginning of the hearing, counsel added the following amendment, which was not opposed by the State:

1. Trial counsel failed to object to the trial judge's statements to the jury that "your sole objective is to simply reach the truth of the matter" and "simply give both the state and the defendant a fair and impartial trial."

During the hearing, Applicant testified on his own behalf. Applicant's counsel also called Lee Connelly, James Humphries, Elaine Feaster, Teresa Speller, Dr. Robert Bennett and Joshua Shultz, Esquire to the stand. The State called SLED Agent Rhonda Fields. Applicant's counsel introduced twenty-six exhibits. The parties agreed that the trial transcript from State v. Nathaniel Teamer, Docket No.: 2006-GS-42-1719, 1720, 1732 & 1733, would be incorporated in the record and provided to the Court and a map of the area in question would be provided for the Court's reference. Therefore, this Court was provided a copy of the Application, the Respondent's Return, Applicant's Amendment, the records of the Spartanburg County Clerk of Court concerning the subject conviction, the trial transcript, and Applicant's records from the South Carolina Department of Corrections.

At the close of the hearing, the Honorable Brooks P. Goldsmith, took the matter under advisement. Thereafter, the Honorable Brooks P. Goldsmith requested that Applicant's counsel submit a proposed Order, from which this Order follows.

B. General Sessions Procedural History

The Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During the April 2007 term of the Spartanburg County Grand Jury, Applicant was indicted for Murder (Indictment No.: 2007-GS-42-1407), and Assault and Battery with Intent to Kill

(Indictment No.: 2007-GS-42-1408). On January 14-16, 2008, a jury trial was conducted in Spartanburg County in front of the Honorable J. Derham Cole. Applicant was represented by Joshua Schultz, Esquire. The jury returned a verdict of guilty as indicted. The Honorable J. Derham Cole sentenced Applicant to confinement for life for Murder and a term of twenty (20) years consecutive for the Assault and Battery with Intent to Kill.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Robert Dudek, South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Teamer, Op. No. 2010-UP-062 (S.C. Ct. App. filed January 28, 2010). Applicant filed a Petition for Rehearing, which was denied on April 21, 2010. The Court of Appeals withdrew the Opinion issued on January 28, 2010 and substituted it with an Opinion issued on April 21, 2010. Applicant filed a Petition for Writ of Certiorari with the South Carolina Supreme Court, which was denied on May 18, 2010. The Remittitur was issued on May 19, 2010.

II. APPLICABLE LAW

In a PCR action, the "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) (citing Rule 71.1(e), SCRCP).

For Applicant to meet his burden of proof and prevail on his allegations of ineffective assistance of trial counsel, the two-prong test applicable to such a claim must be met. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2065 (1984). The first prong analyzes whether counsel failed to render reasonably effective assistance

under the prevailing professional norms. Id. The second prong places the burden on Applicant to show that but for counsel's deficient performance the outcome would have been different. Id. The second prong is known as the "prejudice" requirement. This requirement is met if counsel's actions or inactions resulted in prejudice to Applicant. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 539 (1995).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearing. This Court has also had the opportunity to observe each witness and pass upon his or her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of the evidentiary hearing witnesses to be credible. Set forth below are the relevant findings of fact and conclusions of law on each issue raised by Applicant as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Trial Counsel

1. Ineffective assistance of trial counsel for failure to prepare with Applicant by going over the discovery materials and fully discussing trial strategy; failure to investigate the witnesses and evidence put forth by the State.

At the evidentiary hearing, Applicant admitted that he reviewed the discovery materials with counsel prior to trial, and trial counsel explained the materials to him. He utilized a private investigator.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court of South Carolina reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts

of the case. *Id.*, at 460, 670 S.E.2d at 649; see *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). This Court finds that trial counsel met with Applicant numerous times, fully reviewed the discovery, and utilized an investigator to interview witnesses and other matters. This Court finds that trial counsel was not deficient for failing to prepare with Applicant by going over the discovery materials and fully discussing trial strategy and failing to investigate the witnesses and evidence put forth by the State. Strickland set the standard for evaluating counsel's performance. The courts do not presume ineffective assistance of counsel from a lack of criminal trial experience. United States v. Pitino, 887 F.2d 42, 48 (4th Cir. 1989); Yohey v. Collins, 985 F.2d 222 (5th Cir. 1993). As the Fifth Circuit Court of Appeals noted:

Whether the defendant has been afforded his right to counsel depends on whether the attorney is reasonably likely to render and does render reasonably effective assistance, not on whether counsel has an extensive background in criminal defense work.

United States v. Lewis, 786 F.2d 1278, 1281 (5th Cir. 1986).

Therefore, this claim must fail under the first prong of the Strickland analysis.

2. Ineffective assistance of trial counsel for making a motion to sever, which allowed the State to stream line the case against Applicant, eliminated defenses and allowed evidence from charges related to the first trial to be used during the trial at issue. Ineffective assistance of counsel for failure to be prepared to proceed after motion to sever was granted in prior trial and to properly preserve the issue for appellate review

At the beginning of Applicant's trial called on September 10, 2007, counsel made a motion to sever the indictments on the basis that the indictments stemmed from three separate incidents. Burglary Transcript p. 11. The trial court held that the murder and burglary charges may not be tried together, but the DUI and traffic offenses could be tried with either charge. Burglary Transcript p. 28. Following the court's ruling, trial counsel

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asked for more time to prepare, and the court granted a continuance until the next morning. Burglary Transcript p. 43.

Throughout the course of his lengthy evidentiary hearing testimony, Applicant repeatedly addressed his allegation that counsel was ineffective for making a motion to sever which allowed the State to stream line the case, eliminated defenses and allowed evidence from charges in first trial to be used against him in at his second trial. Applicant went through the timeline of events and explained that it was detrimental to his defense when the State did not have to reconcile all the events that he supposedly took part in on the night in question. Applicant referenced counsel's closing argument regarding "two Charlies" and explained how the severance impaired that argument. Murder Transcript p. 432. Additionally, Applicant explained that he did not realize that the witnesses and evidence from the DUI and traffic offenses would be used against him in the murder trial. Applicant also addressed counsel's request for a continuance and alleged that counsel was ineffective when he was not prepared to proceed after the motion to sever was granted. Finally, Applicant explained that the severance issue was raised on direct appeal, but counsel failed to obtain a ruling on his argument that the charges stemmed from three separate incidents and should be tried as such, which resulted in limiting the issue was addressed on direct appeal.

Trial counsel testified that he made the motion to sever because he thought it would be prejudicial for all the charges to be tried together. He explained that he believed the prejudice of trying all charges together was greater to the Applicant because the jury could assume that if Applicant committed one of the alleged charges then he committed all of the charges, so he made the strategic decision to make the motion to



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sever.. Counsel also testified that he was fully aware that the State was planning to introduce the Felony DUI and Failure to Stop charges at the murder trial. He testified that he anticipated the State would elect to try the murder first, so he prepared for that possibility which included his scripted opening argument; however, he was also aware that the burglary could be tried first. He recalled that he was fully prepared to proceed to trial on any of the charges, but wanted the continuance to rework his opening argument.

Upon review of the trial transcripts, the appellate records, and the testimony at the evidentiary hearing, this Court finds that trial counsel was not ineffective for requesting and obtaining a severance. This Court is not convinced that Applicant would have received a more favorable outcome if all the charges were tried together. Additionally, this Court finds that trial counsel provided an adequate and reasonable explanation for his continuance request. Furthermore, this Court cannot find that trial counsel was ineffective in his preservation of the issue for appellate review. Clearly, the issue was raised and ruled upon by the Court of Appeals and no prejudice was suffered by how trial counsel preserved the issue. Therefore, this claim must fail.

3. Ineffective assistance of trial counsel for failure to utilize the prior trial testimony of James Young and Christina Hoggie or call them as a witness for the defense.

By way of his amendment and through his testimony at the evidentiary hearing, Applicant alleged that trial counsel was ineffective when he failed to utilize the burglary trial testimony of James Young and Christina Hoggie from his prior trial or call them as a witnesses for the defense. It is well established that a PCR applicant must produce the testimony of a favorable witness or offer the testimony in accordance with the rules of

evidence at the evidentiary hearing to establish prejudice from the witness' failure to testify. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

At the burglary trial, James Young testified that before impact he saw lights coming at him. Burglary Transcript p. 360, Ins. 11-17. He also explained that the car turned into him and he saw blue lights upon impact. Burglary Transcript p. 360, Ins. 11-17. Applicant contrasted this testimony against the officer's testimony in this case and alleged that counsel should have utilized James Young to contradict the officer's testimony.

At the burglary trial, Christina Hoggle testified about booking Applicant when he was arrested on the night in question. Burglary Transcript p. 408. During his testimony, Applicant explained that counsel should have called Ms. Hoggle and asked her about his appearance when he was arrested.

Upon review of both trial transcripts, this Court finds that trial counsel was not ineffective when he failed to call James Young or Christina Hoggle at trial. As indicated above, this Court finds that Applicant has failed to show that either witness was a necessary witness or how their testimony would have impacted the outcome of the trial. Id. Therefore, this claim must fail.

4. Ineffective assistance of trial counsel regarding the cell phone records, testimony and argument. Specifically, as follows: 1) Failure to utilize the discovery materials, call all necessary witnesses, thoroughly cross-examine the State's witness and raise all viable arguments during the pre-trial motion to suppress the evidence located in the Chevy Caprice by law enforcement; 2) Failure to effectively utilize the phone records introduced by the State and present the jury with a timeline of the calls and events in question; 3) Failure to effectively cross-examine the State's witnesses regarding the cell phone records and refute the State's arguments regarding the implications of such records; 4) Failure to make contemporaneous objections to the introduction and testimony regarding the cell phones and cell phone records.

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Due to the complexity of this issue, this Court will address each subpart as listed above. First, Applicant alleged that trial counsel was ineffective when he failed to utilize the discovery materials, call all necessary witnesses, thoroughly cross-examine the State's witness and raise all viable arguments during the pre-trial motion to suppress the evidence located in the Chevy Caprice by law enforcement.

At the beginning of trial, counsel made a motion to suppress the cell phone (864-921- [REDACTED]) located during Investigator Guthro's search of the Chevy Caprice on February 22, 2006 Murder Transcript p. 39. The State called Investigator Guthro and the defense called no witnesses. When called, Investigator Guthro testified that two search warrants were executed on the Chevy Caprice that yielded a Verizon cell phone, a jacket and a red rag. Murder Transcript pp. 44-45. On February 22, 2006, he chose to conduct a search after being informed that the prior searches had been completed. Murder Transcript p. 46. He admitted that the phone he recovered was not in plain view and he did not know the inventory policy. Murder Transcript pp. 47-8. As a result of the search, he obtained a third search warrant that yielded a green leafy substance, camera box, cigarette butts, and other items. Investigator Guthro concluded that his search was necessary because the prior searches were not properly done. After hearing his testimony, the trial court found the evidence admissible since the purpose of the search was "inventory." Murder Transcript p. 62, ln. 10.

Applicant, through discovery, obtained a copy of the Spartanburg City Police Department inventory policy. Applicant's Exhibit #9. Through his testimony and exhibits, Applicant explained how trial counsel should have handled the motion differently. Applicant's Exhibit #8. Trial counsel conceded that he did not obtain a copy

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of the inventory policy, and he testified that that it could have bolstered his suppression argument. He also responded that there was "no reason" he did not ask Investigator Guthro about the documentation that indicated that he was involved in the second search warrant.

This Court has reviewed the pertinent portions of the record, examined the exhibits, heard the testimony and considered State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010), which was submitted by PCR counsel. As a result, this Court finds that trial counsel's performance during the suppression motion did not fall below professional norms. "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertake the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant failed to provide evidence or testimony to prove that if Counsel made any additional objections, called any witnesses, or obtained the inventory policy of the Spartanburg City Public Safety, the outcome of the pre-trial motions and his trial would have been different. Therefore this claim must fail.

Second, Applicant alleged that trial counsel was ineffective in how he utilized and addressed the phone records that were admitted at trial. Applicant understood that counsel was going to make a chart of the phone records to demonstrate inconsistencies to the jury in the State's interpretation of the records and to show how the records aided his defense. In support of his allegation, PCR counsel prepared and admitted a demonstrative chart, which Applicant went through and explained the benefits of having a chart at trial. Applicant's Exhibit #15. Additionally, Applicant referenced David

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Proctor's testimony and explained that counsel should have used the records to question him about his assertion that the victim was talking to the suspect for thirty minutes and that the suspect was picked up five minutes before the shooting. Murder Transcript pp. 109, 113.

In response, counsel testified that he "wished" he would have made a chart that corresponded with the phone records. He also admitted that he did not ask David Proctor about the brevity of the calls reflected on the phone records or about the phone records showing that the suspect might have made a call while in the vehicle. However, Counsel also testified that the testimony regarding thirty minutes of phone calls could refer to the fact that there were several calls over a thirty minute period, rather than thirty minutes of consecutive talking.

This Court has considered the testimony and assertions of Applicant, but does not find ineffective assistance of counsel in this instance. In every trial, counsel may wish they had done something more or differently but wishing is not an admission of deficiency. Furthermore, based upon a complete review of the records pertaining to these allegations, this Court finds trial counsel rendered effective assistance in his handling of the telephone records and corresponding testimony. Therefore, Applicant's claim must fail.

Third, Applicant alleged that trial counsel was ineffective when he failed to make contemporaneous objections to the introduction and testimony regarding the cell phones and cell phone records. Despite making a suppression motion regarding the cell phone belonging to number 864-921- [REDACTED] counsel acknowledged that he did not enter a contemporaneous objection to the introduction of the records for it or any other phone

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records admitted by the State. However, Counsel testified that he believed the phone records would have been admissible independently because the ABWIK victim called that number prior to the shooting. This Court finds that Applicant has failed to establish that had counsel made a contemporaneous objection to the introduction of the phone records after his suppression motion was unsuccessful, the outcome of his trial would have been different. Additionally, the record reflects that counsel attempted to question Investigator Guthro on cross-examination about the searches that yielded the phone in question, but the State's objection was sustained. In sum, Applicant has failed to show how counsel's handling of the introduction of the phone records and corresponding testimony was deficient. Therefore, this claim must fail.

5. Ineffective assistance of trial counsel for failure to present a pre-trial motion for suppression of the prior bad act testimony offered by Kelvin McKinney and Dawn Hunter. Ineffective assistance of counsel for making an untimely objection on the basis of prior bad act testimony during the testimony of Dawn Hunter.

By way of his amendment and through his testimony at the evidentiary hearing, Applicant alleged that trial counsel was ineffective for failing to address prior bad act testimony offered by Kelvin McKinley about a prior shooting. He further alleged that trial counsel was ineffective for making an untimely objection to Dawn Hunter's testimony about seeing Applicant with a gun and failing to address testimony about a prior shooting.

At trial, Kelvin McKinney testified about a shooting that occurred on January 14, 2006 while he was with Applicant and Tony Hunter (victim). McKinney testified that the shots were fired by Applicant. Murder Transcript pp. 237-8.

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When Dawn Hunter took the stand, she explained that she had a child with McKinney and Tony Hunter was her brother. Murder Transcript p. 262. Trial counsel objected when she testified that Applicant inquired about her brother's whereabouts and that she had seen the Applicant with a gun and latex gloves. Murder Transcript pp. 263-4. Counsel argued that her testimony involved a prior bad act and was more prejudicial than probative. Murder Transcript 269. The State responded about the prior shooting and explained they were going into it to establish motive. Murder Transcript pp. 269-71. Trial counsel informed the court that the only bad act he could see was the testimony about the gun. Murder Transcript p. 273, Ins. 1-10. In response, the court stated that whether it was a bad act or not, it was relevant. Murder Transcript p. 272, Ins. 14-17.

Under Rule 404(b), SCRE, evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006), State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing. State v. Beck, 342 S.C. 129, 135-36, 536 S.E.2d 679, 682-83 (2000). Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal. Peeler v. Spartan Radiocasting, 324 S.C. 261, 478 S.E.2d 282, 283 (1996).

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Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Rules 403 and 404(b), SCRE (although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice); State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001). "Unfair prejudice means an undue tendency to suggest decision on an improper basis." State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000). Finally, the determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007), State v. Bell, 302 S.C. 18, 30, 393 S.E.2d 364, 371 (1990).

Here, Applicant alleged that trial counsel should have made a pre-trial motion regarding the admissibility of the testimony about the prior shooting and that counsel untimely raised a motion to another "bad act" during the testimony of Dawn Hunter. In response to trial counsel's motion during the testimony of Dawn Hunter, the State made it clear that they were offering the testimony regarding the prior shooting to establish motive, and Applicant has failed to show how such testimony would not be admissible under this exception. Additionally, counsel entered an objection during the testimony of Dawn Hunter, and the trial court ruled against him. As a result, this Court cannot find any support for Applicant's claim that trial counsel was ineffective for failing to raise a pre-trial motion or in his handling of his motion during the testimony of Dawn Hunter, so this claim must fail.

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6. Ineffective assistance of trial counsel for failure to impeach Kelvin McKinney's testimony regarding Applicant's motive with the statement of the victim, which identifies "Snow" (Kelvin McKinney) not Applicant. Failure to effectively use the video of Kelvin McKinney's statement on cross-examination.

At the evidentiary hearing, Applicant explained the State's theory was that he murdered Tony Hunter since Hunter had implicated him in a prior shooting. Applicant further explained that his primary defense was that Kelvin McKinney was in fact the one with motive to murder Tony Hunter since McKinney was the person implicated in Hunter's statement. As a result, Applicant alleged that trial counsel was ineffective when he failed to ask McKinney about Hunter's statement when McKinney testified about Applicant's motive to murder Hunter. Additionally, Applicant explained that it was his understanding that counsel was going to utilize the entire video of McKinney's interrogation to demonstrate inconsistencies and attack his credibility.

Counsel testified that he did cross-examine McKinney about his motives in hiding from authorities, which required McKinney to acknowledge that Tony Hunter had given a statement about him and tried to find out his "government name." Murder Transcript p. 245-7. Counsel was also able to ask McKinney about several inconsistencies between McKinney's prior video recorded statement and his testimony at trial. Counsel also testified that he pointed out during the cross-examination of Investigator Bryant that the only person directly implicated in Tony Hunter's statement was "Snow," who was identified as McKinney. Murder transcript p. 278-9. As it directly relates to the video recorded statement, trial counsel acknowledged that he should have clearly stated what portions of the video were played on the record or proffered the entire video, but that the jury did see the parts that were inconsistent with McKinney's testimony.

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This Court has reviewed the video, in conjunction with the record, and finds that Applicant's claim boils down to an allegation that counsel should have done better not that counsel was ineffective. Applicant's Exhibit #16. Rule 613(b), SCRE, states:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination. State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982). This Court finds that Counsel properly utilized the video recorded statement of McKinney, so there is no deficient performance.

Additionally, testimony was elicited from Officer Bryant that Hunter's statement only referenced "Snow" (AKA McKinney) not Applicant. Murder Transcript p. 279. Therefore, Applicant's claims must fail under the first prong of the Strickland analysis.

7. Ineffective assistance of trial counsel for failure to utilize testimony and/or evidence to refute Kelvin McKinney's testimony that Applicant confessed to him while located in the detention center.

By way of his amendment and through his testimony, Applicant alleged that trial counsel was ineffective when he failed to utilize witnesses and evidence to refute Kelvin McKinney's testimony that Applicant confessed to him while located in the Spartanburg Detention Center. At trial, Kelvin McKinney recounted meeting up with Applicant in Pod Six at the Spartanburg Detention Center, and Applicant confessing to shooting the

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victims. Murder Transcript p. 241. McKinney explained: "We just in the room talking, and I asked him." Murder Transcript p. 242, ln. 6.

During the evidentiary hearing, Applicant, through testimony and exhibits, explained that Teresa Speller had been subpoenaed from the detention center and it was his understanding that she was going to be utilized to testify about the rotations in Pod Six. Applicant's Exhibits #1, 3-4, 19. He testified that he could have never had the conversation with McKinney as McKinney described because of security measures at the detention center. He also testified that he asked counsel to talk to his roommate (James Humphries) about it.

Teresa Speller and James Humphries were called as part of the Applicant's case. Both testified to their knowledge of the pod rotation and/or the ability for inmates to access each other's rooms for a conversation like the one described by McKinney. Capt. Speller testified that it was possible for inmates from separate pods to have contact and even potentially conversations in each other's cell. Speller testified that at that time, there was one officer to approximately 130-170 inmates and because of rotations, booking, screening, and other reasons, inmates could access another inmate in a separate pod. Additionally, Speller testified that inmates often utilized various systems in ensuring the doors would not lock or fully latch. Though he testified that there was no way the Applicant could have talked with McKinney because of pod rotations, also testified that he had no knowledge of what occurred in McKinney's cell because he was Applicant's roommate.

When trial counsel took the stand, he recalled speaking with Teresa Speller, as well as people in pods four, five, and six, along with reviewing the detention center

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diagram introduced by Applicant. Applicant's Exhibit #4. Counsel also testified that from his own experience in the detention center, he was aware of the ability of the inmates to travel to other pods. Counsel testified that he did not want to call Speller as a witness because he thinks her testimony would have opened the door to many more issues. Counsel testified that he and the Applicant discussed this and the fact that Counsel did not intend to call Speller as a witness. Counsel also testified that he did not speak with Humphries, as he was Applicant's roommate for only a short time. He surmised that the testimony of James Humphries and Teresa Speller was not helpful to Applicant's defense, and this Court agrees. This Court finds Counsel's testimony credible that he contacted Teresa Speller, that he subpoenaed documents from the detention center, and he reviewed the documents received prior to trial. Even though Applicant testified that he believed that counsel was going to utilize the documents and testimony of Teresa Speller and requested that counsel speak with James Humphries, this Court does not find that credible and finds that counsel made an informed strategic decision to not utilize the testimony or evidence presented by Applicant. As a result, counsel did not render ineffective assistance as alleged by Applicant, and this claim must fail under the first prong of the Strickland analysis.

8. Ineffective assistance of trial counsel for failure to advise Applicant that Dawn Hunter would be called as a witness by the State and discuss the substance of her testimony.

This Court finds that this issue falls under issue #1 discussed above.

Therefore, this claim must fail as addressed in issue #1.

9. Ineffective assistance of trial counsel for failure to thoroughly cross-examine David Procter regarding the identification of the house where the suspect was picked up from, the streets in question, the sketch of the suspect and the identifying information of the suspect.

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At the evidentiary hearing, Applicant explained that David Proctor was shown a picture of Feaster's home and identified it as the location where the suspect was picked up. Applicant's Exhibit #5, Murder Transcript pp. 107-9. Applicant alleged that counsel was ineffective when he failed to object or ask Proctor any questions about it on cross-examination. Applicant explained, through incident reports, that Proctor had given various reports and street names to law enforcement and counsel failed to ask him about it. Applicant's Exhibit #20. Additionally, Applicant, through the testimony of Lee Connelly and Daisy Feaster, introduced pictures of several homes located on Breeze Street, which was one of the streets contained in the incident reports, and Applicant alleged that counsel should have utilized those pictures in his cross-examination of Proctor. Applicant's Exhibit #3. When asked, trial counsel testified that he went by the houses himself, but he did not get pictures for trial. Counsel did cross-examine Proctor about giving a statement where he identified Breeze Street as the location he picked up the suspect and was able to elicit testimony where Proctor acknowledged he did not know the name of the street and it could have been Breeze Street or Wofford Street. Murder Transcript p. 119. Counsel also testified that he brought out to the jury during cross-examination of several officers, the fact that Proctor had once identified Wofford Street as the location he picked up the suspect and had also been unsure of where he picked the suspect up. Murder Transcript p. 152; 157.

Applicant also testified about the admission of a sketch of the suspect during the testimony of Proctor and his failure to make an in court identification of Applicant. Applicant's Exhibit #21. Applicant alleged that trial counsel should have contrasted the sketch and description of the suspect in the incident reports against the information about

his appearance when he was arrested that night. Counsel testified that he made a strategic decision to get Proctor off of the witness stand as soon as possible, because he specifically did not want Proctor making an identification of the Applicant from the witness stand.

Upon consideration of the transcript, exhibits, and evidentiary hearing testimony, this Court finds that trial counsel was not ineffective when he failed to address the identification of the house or suspect in the manner Applicant proposed. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not present any testimony showing the Proctor's answers at trial would have been different.

Counsel testified that he conducted an investigation into the matter involving the house identification and chose to not utilize pictures at trial. Additionally, this Court is not convinced that these matters were raised by Applicant to counsel prior to trial, counsel cannot be held accountable for strategies created post hoc. Additionally, Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

As a result, this Court finds that counsel was not ineffective in his handling of these matters at trial, and this claim must fail under the first prong of the Strickland analysis.

10. Ineffective assistance of counsel for failure to object to testimony regarding the drug evidence found in the Chevy Caprice on the grounds of illegal search and seizure, chain of custody or use of an uncharged "bad act."

By way of his amendment and testimony at the evidentiary hearing, Applicant alleged that trial counsel was ineffective when he failed to make a motion or object to the admission of the drug evidence located in the Chevy Caprice. Trial counsel readily admitted that he did not object to the admission of the drug evidence, but testified that he had concluded that it was one of the least of his concerns at the trial

In consideration of the Rule 404(b), SCRE, and pertinent case law analysis contained in the discussion of issue #5 above, this Court finds that Applicant has failed to show how, even if Counsel were deficient for failing to object to the drug evidence, Applicant was prejudiced due to the admission of the marijuana evidence. Despite counsel's admission that he should have made a motion, this Court finds that this claim must fail as this Court does not find that counsel's omission affected the outcome of Applicant's trial.

11. Ineffective assistance of counsel for failure to fully explore the access Carlos Fuller had to the murder weapon and calls made to Carlos Fuller on the phone records introduced at trial.

At the evidentiary hearing, Applicant addressed Amy Hunter's testimony regarding Carlos Fuller's access to her car and the gun used as the murder weapon. Murder Transcript pp. 285-7, 291. Applicant alleged that counsel failed to fully explore the issue. He also alleged that counsel failed to utilize the phone records introduced by the State, which included calls to Carlos Fuller's number.

During the trial, not only did the State question Amy Hunter about the fact that both the Applicant and Carlos Fuller had access to her car and gun, but counsel cross-

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examined Amy Hunter about Carlos Fuller's access to her vehicle, which contained the murder weapon. Murder Transcript p.287; 290-294. Due to counsel's cross-examination, this Court does not agree with Applicant's allegation as it is clear that counsel addressed the issue in question. Additionally, this Court finds that the State questioned Amy Hunter about Fuller's number and the phone records on direct examination. Murder Transcript pp. 288-9. The calls of concern to Applicant were presented to the jury even if counsel failed to specifically address them. Based upon how this issue was addressed in the trial record, counsel did not render ineffective assistance as alleged by Applicant. Therefore, this claim must fail under the first prong of the Strickland analysis.

12. Ineffective assistance of counsel for failure to investigate the DNA evidence, utilize a DNA expert and effectively cross-examine Agent Fields regarding the DNA evidence.

In support of his claim that counsel ineffectively handled the DNA evidence, Applicant called Dr. Robert Bennett as an expert at the evidentiary hearing, with the State objecting to his qualifications. The Court ruled that Dr. Bennett was admitted as an expert in forensic science and DNA analysis, subject to the limitations that an expert "should" have been brought in to assist Counsel in preparing for trial, but not for the mode or method of testing or to question SLED's DNA analysis. In response, the State called Rhonda Fields, SLED Agent, who processed the evidence and testified at trial, and who was qualified as an expert in DNA analysis. Counsel testified that he did not consult with an expert about this case and the office policy was to review the need for an expert on a case by case basis. Counsel testified that it is possible an expert could have helped clarify the report from SLED, but he did not believe that it would have contradicted the analysis or evidence.

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This Court has reviewed the trial record and considered the testimony offered at the evidentiary hearing. This Court finds that while it may have been helpful to utilize an expert for assistance with cross-examination and to testify at trial; this Court finds that counsel's well informed decision not to utilize an expert is reasonable. Additionally, this Court is not convinced that Dr. Bennett's testimony would have aided the jury in reaching a different outcome since Agent Fields directly refuted any concerns with the evidence raised by Dr. Bennett. Therefore, this claim must fail under both prongs of the Strickland analysis.

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13. Ineffective assistance of counsel for opening the door and/or eliciting testimony regarding Applicant's bad reputation during the testimony of Keith Letmon. Failure to properly review the criminal history of Keith Letmon and make necessary objections and/or arguments when the State utilized his criminal history on cross-examination.

At the evidentiary hearing, Applicant explained that Keith Letmon was called as a defense witness at trial to help establish his third party guilt defense. He explained that counsel elicited testimony regarding Applicant's bad reputation from Letmon on direct and failed to object to the State's utilization of Letmon's criminal history on cross-examination. Murder Transcript pp. 414, 416.

When asked about Letmon, trial counsel recalled going to his house in Woodruff to speak with him prior to trial. The record also reflects that counsel proffered the testimony of Letmon before the court found it was admissible for the jury based upon a defense of third party guilt. Upon review of the record, this Court is at a loss to find anything more counsel should have done in regards to Letmon's testimony. Counsel met with Letmon at his home, proffered his testimony and was successful in having his testimony presented to the jury. This Court does not find it prejudicial that Letmon made one reference to the Applicant's "reputation," and this Court finds that his comment was not responsive to counsel's question. Murder Transcript p. 416. As a result, this Court finds that counsel's handling of Letmon's testimony on direct and cross-examination did not fall below professional norms. Therefore, this claim must fail under the first prong of the Strickland analysis.

14. Ineffective assistance of trial counsel for failure to call Mrs. Feaster

Based upon the testimony, exhibits and record presented at the evidentiary hearing, this Court finds that trial counsel was ineffective when he failed to move for a

continuance upon learning that Applicant's alibi witness (Mrs. Feaster) was sick and could not testify. Recently in Walker v. State, 397 S.C. 226, 238, 723 S.E.2d 610, 616 (Ct. App. 2012) the South Carolina Court of Appeals addressed the issue of failure to investigate and utilize an alibi witness and reasoned:

When a PCR applicant alleges trial counsel failed to investigate or present an alibi witness, the PCR court must make two findings to determine if counsel's deficient performance constitutes prejudice under Strickland. First, the court must find as a matter of law whether the witness's testimony meets the legal definition of an alibi. Second, the court must assess the witness's credibility. In making the first finding, the court must consider the entire record to determine what the testimony would have been if it had been presented at trial. The PCR court must consider the testimony as a whole, take it as true and credible, and view it in the light most favorable to the PCR applicant.

At the evidentiary hearing, Mrs. Feaster recalled meeting with a paralegal prior to trial, and testified that she was present for the first two days of trial, but she got sick and was unable to testify on the day she was scheduled to do so. She affirmed that she would have been willing to testify if counsel had requested and obtained a continuance of the trial. When asked, trial counsel recalled Mrs. Feaster's testimony at the burglary trial and that she was sick and unable to testify at the murder trial. Counsel candidly admitted that he failed to make a motion or request a continuance due to her unavailability.

While on the stand, Mrs. Feaster identified the homes reflected in Applicant's Exhibit #2, and she testified that she recognized the homes. She explained that the homes were within five minutes walking distance of her home. She also explained that the pictures depicted the homes similar to how they appeared in 2006.

Although this Court is concerned about Mrs. Feaster's testimony in which she adamantly denies even testifying at the burglary trial, this Court can only assume that Mrs. Feaster was confused about her testimony at the prior burglary trial. Burglary

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Transcript pp. 403-8. In pertinent part, Mrs. Feaster testified that Applicant called her to say he had arrived at her home around 8:00 p.m. because she was inside the home in the tub, and when she got out of the tub, he remained there until she left for the store before 9:00 p.m. Burglary Transcript pp. 404-405. She also testified that Applicant was at her home when she arrived back from the store around 12:00 a.m. Burglary Transcript p. 405. She admitted that she did not know where Applicant was from around 9:00 p.m. to 12:00 a.m. Burglary Transcript pp. 405-6.

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995). Interestingly, the crime at issue in the burglary trial allegedly occurred around 11:00 p.m., whereas the crime at issue in the murder trial allegedly occurred just prior to 8:49 p.m.¹ Counsel failed to ask for a continuance mid-trial to utilize Mrs. Feaster for the murder trial when her testimony established an alibi for the time the crime was allegedly committed.

Pursuant to the requirements set forth in Walker, this Court finds that Mrs. Feaster's testimony at the burglary trial meets the legal definition of an alibi. . Because an alibi is a complete defense to a criminal charge, there is no conception of sound judgment that would permit counsel to choose not to request a continuance to procure the testimony of a witness whom counsel has reason to believe could provide an alibi. Therefore, this Court finds that Applicant must be granted a new trial.

¹¹ The records reflect that the first officer arrived at the scene at 8:49 p.m.

15. Ineffective assistance of counsel for failure to provide the court with a third party guilt instruction.

During the colloquy regarding the jury charge, trial counsel asked if the trial court had a third party guilt instruction in its charge. Murder Transcript p. 420. The trial court responded that it did not. Murder Transcript p. 420. After the charge to the jury, trial counsel stated that he had no objection to the charge as given. Murder Transcript p. 476.

On appeal, appellate counsel argued, pursuant to Anders, that the trial court had erred by refusing to give a jury charge on third party guilt. In that brief, appellate counsel stated that the issue was likely not preserved for appeal. Anders Brief p. The Court of Appeals dismissed the appeal pursuant to Anders. State v. Teamer, Op. No. 2010-UP-062 (S.C. Ct. App. filed January 28, 2010).

At the evidentiary hearing, Applicant alleged that trial counsel was ineffective for failing to provide the trial court with a third party guilt instruction. Trial counsel testified that he has never heard of or seen a third party guilt instruction in a trial, but he was able to present the third party guilt evidence to the jury and the judge presented the reasonable doubt jury instruction. However, Counsel did acknowledge that he did not prepare a proposed instruction to present to the judge.

This Court finds that defense counsel was ineffective for failing to provide the trial court with a proposed instruction on third party guilt. Rule 20(a), SCRCrimP requires that all proposed instructions "must include accurate citation to authorities relied upon." Trial counsel's failure to provide "accurate citation[s]" to any decision pertaining to third party guilt constituted deficient conduct.

Furthermore, an instruction on third party guilt should have been given. "The trial court is required to charge only the current and correct law of South Carolina." State

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v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." Id. (quoting State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)). A charge on third party guilt was warranted because the identity of the perpetrator was an essential issue in the case and because evidence that a third party committed the crime was admitted. Although there is no established third party guilt charge currently in South Carolina, the Supreme Court of Connecticut has held:

[I]f the evidence pointing to a third party's culpability, taken together and considered in the light most favorable to the defendant, establishes a direct connection between the third party and the charged offense, rather than merely raising a bare suspicion that another could have committed the crime, a trial court has a duty to submit an appropriate charge to the jury.

State v. Arroyo, 284 Conn. 597, 610, 935 A.2d 975, 984 (Conn. 2007). Consequently, defense counsel was deficient for failing to request a charge on third party guilt,

This Court finds that defense counsel's deficient performance prejudiced Applicant. While the trial court did give a charge on alibi, the trial court did not give a specific charge to the jury that required the jury to identify the perpetrator of the offense because there was no testimony from a witness identifying Applicant as the shooter. Cf. State v. Simmons, 308 S.C. 80, 417 S.E.2d 92 (1992) (Finding that in single witness identification cases, the trial court should instruct the jury that the burden of proving the identity of the defendant rests with the State). Therefore, the trial court's charge failed to adequately convey the defense of third party guilt to the jury. Since it is ineffective assistance of counsel to request a charge on the defense of alibi when it is warranted, see

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generally Riddle v. State, 308 S.C. 361, 418 S.E.2d 308 (1992); Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995), it is similarly ineffective assistance of counsel to fail to request a charge on third party guilt. See also Arroyo, supra, 284 Conn. at 614-615, 935 A.2d at 9686-987 (Finding the failure to charge the jury on third party guilt was reversible error). . Accordingly, Applicant was prejudiced by his trial attorney's failure to ensure that the jury was instructed on one of his central defenses, and a new trial is warranted.

16. Ineffective assistance of counsel for failure to object to the trial court's statements to the jury that "your sole objective is to simply reach the truth of the matter" and "simply give both the State and the defendant a fair and impartial trial" during the jury instructions.

By way of a verbal amendment at the evidentiary hearing and through his testimony, Applicant alleged that trial counsel rendered ineffective assistance of counsel when he failed to object to the trial court's statements to the jury that "your sole objective is to simply reach the truth of the matter" and "simply give both the State and the defendant a fair and impartial trial" on the basis of impermissible burden shifting, which affected his right to a fair trial. Murder Transcript p. 454. This Court agrees. If counsel had properly objected the question before the appellate court would have been whether the instruction as a whole properly conveyed the law to the jury and whether it was reasonably likely that the jury acted in contravention of the reasonable doubt standard. State v. Aleksey, 343 S.C. 20, 29, 538 S.E.2d 248, 252-3 (Finding reversal not required when the trial court's improper instructions were given in the context of witness credibility and not reasonable doubt). Due to counsel's failure to enter a contemporaneous objection the jury charge was not reviewed by the appellate court.

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In State v. Daniels, Op. No. 27180, S.C. Sup. Ct. filed October 10, 2012 (Davis Adv. Sh. No. 36 at 41)], the South Carolina Supreme Court addressed the usage of similar language contained in the trial court's instructions to the jury. After finding the issue was not properly preserved for appellate review, Justice Pleicones concluded:

[W]e instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

[Davis Adv. Sh. No. 36 at 44.]

In a concurring opinion, Chief Justice Toal strongly warned the judiciary as follows:

Judicial instructions to the jury in a criminal case that "whatever verdict you reach will represent truth and justice for all parties," that "we must see to it that the trial is fair and the verdict is just" and that you and I are "in it together," may seem at first blush to be simply harmless phrases intended to put the jury at ease and portray the judge as a "regular guy." However, the constitutional framework governing criminal trials is a highly technical body of law developed by the United States Supreme Court and by state courts operating under the Supreme Court's guidance. It is inappropriate to jeopardize the constitutionality of a trial by instructing the jury in this way.

It is critical that jurors understand the proper application of the reasonable doubt standard. That standard does not charge the jury with ensuring justice for all of the parties. Justice Pleicones correctly notes that this language could result in jurors substituting concepts of justice or fairness for the State's constitutional duty to prove guilt beyond a reasonable doubt. Thus, I join the Justice Pleicones's admonition to the trial court to restrict his jury instructions to matters of law, and refrain from issuing instructions which run the risk of depriving defendants of their right to a fair trial.

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[Davis Adv. Sh. No. 36 at 52.

Although the Daniels case was not available at the time of trial, this Court finds that trial counsel's failure to object to the charges later found improper in Daniels was deficient conduct. See generally Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008) (Finding defense counsel's failure to object to an unconstitutional jury instruction deficient conduct). Moreover, this Court finds that this failure prejudiced Applicant. While the trial court did provide correct instructions on reasonable doubt, the improper charges "did no more than contradict the [proper] instruction." Francis v. Franklin, 471 U.S. 307, 322 (1985). "Language that merely contradicts and does not explain a constitutionally infirm instruction will not suffice to absolve the infirmity." Id. Stated differently, this Court "has no way of knowing which of the two irreconcilable instructions the jurors applied in reaching their verdict." Id. It is just as likely that the jury decided to give "the State ... a fair and impartial trial," Murder Transcript p. 454, that the jury gave the defendant his constitutional "right to a fair trial." Daniels, *supra*, Davis Adv. Sh. No. 36 at 52. Consequently, this Court concludes that there is a reasonable likelihood that the jury did as it was instructed and relieved the State of its burden of proof. Defense counsel's failure to object to the offending charges constitutes ineffective assistance of counsel. Accordingly, Applicant is entitled to a new trial on this issue.³

³ This Court notes that the Supreme Court did not grant the petitioner in Daniels a new trial. However, the Supreme Court's opinion found that the issue was not preserved for review and did not reach the issue of whether a new trial was warranted based on the inclusion of the improper charges. Furthermore, the concurring opinion, which found the issue preserved, spent most of its opinion arguing that the error was harmless because it found that the evidence against Daniels was overwhelming. Contrastingly, the evidence against Applicant is not overwhelming and there are no preservation issues in this case. Therefore, this Court believes that relief is warranted whereas it was not in Daniels.

17. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to pre-trial motions, trial objections, and request to charge the jury on third party guilt.

This Court finds that the Applicant has failed to offer any testimony or evidence to show that appellate counsel's performance was deficient under prevailing professional norms and that he was prejudiced as a result of such deficient performance. To prevail on his claim of ineffective assistance of appellate counsel, the Applicant must establish that there is a reasonable probability that the result of the proceeding would have been different, the conviction and sentence would have been overturned, if appellate counsel raised the issues alleged by the Applicant. See Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). This Court has reviewed the entire record and finds that Applicant has failed to show that the result of the proceeding would have been different if appellate counsel would have raised all issues preserved by trial counsel. Therefore, this Court does not find that appellate counsel was deficient.

V. CONCLUSION

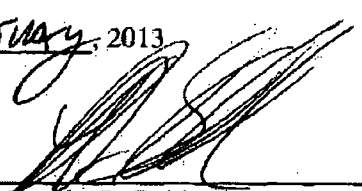
Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

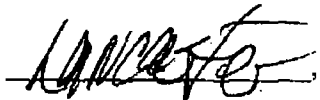
1. That Applicant has met his burden of proof as to his allegation of ineffective assistance of trial counsel in the particular areas addressed above and has failed to meet his burden in those remaining issues as discussed;
2. That Applicant has not met his burden of proof as to his allegation of ineffective assistance of appellate counsel;

3. That the Application for Post Conviction Relief be granted and his convictions be vacated and granted a new trial;
4. That Applicant be released from the custody of South Carolina Department of Corrections and transferred to the custody of Spartanburg County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDERED this 8 day of February, 2013



Honorable Brooks P. Goldsmith
Circuit Court Judge


_____, South Carolina

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M. HORT BLANCHLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Nathaniel Charles Teamer, #285309,	)	2010-CP-42-4081
	)	
Applicant,	)	
	)	MOTION TO ALTER OR AMEND
v.	)	THE ORDER GRANTING RELIEF
	)	PURSUANT TO RULE 59(e)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, by and through undersigned counsel, making its Motion to Alter or Amend, pursuant to Rule 59(e), SCRPC, would respectfully show unto this Court:

1. The matter is before the Court by way of the Applicant's application for post-conviction relief.
2. An evidentiary hearing was convened on October 30, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Suzanne H. White of the South Carolina Attorney General's Office.
3. After the evidentiary hearing, the post-conviction relief court issued an order dated February 8, 2013, and served on February 11, 2013, granting the Applicant's application for post-conviction relief.
4. Respondent moves this Court to reconsider the final order due to the following:
 - a. The State asks this Court reverse its earlier decision and deny post-conviction relief where the Applicant failed to meet the Strickland standards and where Counsel's conduct fell within the realm of reasonable representation, specifically in relation to the following:
 - i. Respondent submits that the Court's finding that Counsel was ineffective for failing to move for a continuance upon learning that Applicant's alibi witness, Mrs. Feaster, was sick and unable to testify.

The South Carolina Court of Appeals has stated that the determination as to counsel's ineffectiveness based upon a failure to call an alibi witness should involve a two prong approach: first, the court must find as a matter of law whether the witness's testimony meets the legal definition of an alibi; and, second, the court must assess the witness's credibility. Walker v. State, 397 S.C. 226, 238, 723 S.E.2d 610, 616 (Ct. App. 2012). The court must consider the entire record in making the first finding, to determine what the testimony would have been if it had been presented at trial. Id.

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)(emphasis added). Mrs. Feaster's testimony at the PCR hearing did not meet the definition of alibi, nor did her testimony at the prior burglary trial. Therefore, trial counsel's failure to present the testimony cannot form the basis of a finding of prejudice under Strickland. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012)(citing Glover, 318 S.C. at 498, 458 S.E.2d at 539-40)).

Mrs. Feaster's testimony at the prior burglary trial included her testimony that she saw the Applicant sometime after 8pm (Burglary Tr. p. 403) and that she left for Wal-Mart at "something till 9 o'clock or 9 o'clock." (Burglary Tr. p. 404-5). She then later testified that Applicant "called sometime after 8," and she left for Wal-Mart "something till 9." (Burglary Tr. p. 405). Finally, Mrs. Feaster testified that she left the home "about 8:30 or 9 o'clock." (Burglary Tr. p. 406).

The incident report indicates that the event took place at approximately 8:45 pm, with the first officer arriving at 8:49 pm. Mrs. Feaster never stated that she knew where Applicant was at 8:45 pm, and even testified at one time that she could have left for Wal-Mart as early as 8:30 pm. Her home was located at [REDACTED] Street, which was less than 2 miles away from the murder scene at Theodosia and Chester St. It is clear that her testimony does not account for Applicant's whereabouts so that it would have been physically impossible for him to have committed the crime.

Furthermore, at the PCR hearing, Mrs. Feaster testified that she was at the murder trial and was subpoenaed by Counsel, but got sick on the day she was supposed to testify and could not testify. Mrs. Feaster testified that she would have testified that she saw the Applicant at 8:00 pm, went to look at TVs with her cousin and then saw the Applicant when she returned home at 11:00 pm.

Additionally, the second prong of the analysis requires the court to assess the witness's credibility. Walker v. State, 397 S.C. 226, 238, 723 S.E.2d 610, 616 (Ct. App. 2012). Respondent submits that with Mrs. Feaster's adamant testimony, even after being shown a transcript, that she did NOT testify at the burglary trial and if her name is shown it "is a lie," her credibility is tenuous.

Therefore, Respondent argues that Counsel was not deficient, nor was Applicant prejudiced, when Counsel failed to move for a continuance during trial, when Mrs. Feaster became ill and unable to testify, as her testimony does not meet the legal definition of an alibi.

- ii. Respondent submits that the Court's findings that Counsel was

ineffective for failing provide the court with a third party guilt jury instruction and the finding that a third party guilt instruction should have been given are based upon the Applicant's failure to meet his burden of proof and an error of law.

Applicant failed to meet his burden of proof in establishing that had Counsel provided the court with a proposed third party guilt instruction, the outcome of his trial would have been different. The argument that the outcome of the trial would have been different had Counsel offered a third party guilt instruction is nothing more than mere speculation, as there was no suggested instruction offered at the hearing, nor was there any evidence or testimony supporting Applicant's argument that a third party guilt instruction would have been given had it been requested. Furthermore, Respondent submits that the case law offered by Applicant is not controlling as it is not only from the State of Connecticut, but was also decided in December 2007, almost one year following the Applicant's trial on these charges. State v. Arroyo, 284 Conn. 597, 609-10, 935 A.2d 975, 984 (2007)

Therefore, Respondent argues that Counsel was not deficient, nor was Applicant prejudiced, when Counsel failed to provide a proposed third party guilt instruction, when there is no evidence that the instruction would have been given by the trial judge.

- iii. Respondent submits that the Court's finding that Counsel was ineffective for failing to object to the trial court's jury charge is based upon an error of law.

Although the Applicant presented the Daniels case to support his argument that Counsel was ineffective for failing to object to the jury charge, the case was not issued until more than five years following

the Applicant's trial on these charges.

The first two statements Applicant argued that Counsel should have objected to were made at the very beginning of the jury charge, prior to an extensive charge related to reasonable doubt and the State's burden of proof. In fact, the words reasonable doubt and phrases indicating that the State had the burden of proof and the defendant had the presumption of innocence, were used more than twenty times following this brief introduction. (Tr. p. 455, lines 20-25; p. 456-458).

On appeal, the appellate court must consider instructions as a whole, and "if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." State v. Daniels, 27180, 2012 WL 4801526 (S.C. Oct. 10, 2012) (citing State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000)).

In particular, as it relates to the jury instruction that was given regarding witness credibility, Aleskey held that reversal was not "required when the trial court's improper instructions were given in the context of witness credibility and not reasonable doubt." Aleksey, 343 S.C. at 29, 538 S.E.2d at 252-53.

The final statement that the Applicant takes issue with was made in reference to witness credibility. (Tr. p. 462, lines 10-12).

"Judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."

Strickland v. Washington, 466 U.S. 668, 669, 104 S. Ct. 2052, 2055, 80 L. Ed. 2d 674 (1984).

Respondent first submits that this case was decided in 2012, which was more than five years following the trial of Applicant on these charges. Therefore, Counsel was acting in a reasonable manner at that time when he did not object to those particular jury charge statements. Furthermore, even if this case had been decided prior to Applicant's trial, Respondent argues that based upon the ruling in Daniels, when reviewed as a whole, the appellate courts would NOT have found it necessary to reverse Applicant's conviction.

5. The State requests a hearing to fully argue the 59(e) motion and address each of the raised issues before this Court.

Respectfully submitted,

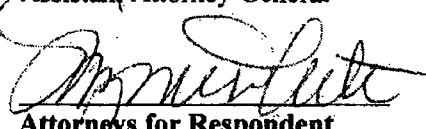
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for Respondent
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 21, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Nathaniel Teamer,

2010-CP-42-4081

)
)
) Applicant,
)
)

v.)

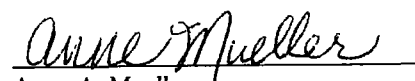
CERTIFICATE OF SERVICE BY MAIL

)
)
) 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 Respondent's Motion to Alter or Amend the Order Granting Relief Pursuant to Rule 59(c) in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
P.O. Box 12725
Columbia, South Carolina 29211


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 21st day of February, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	DOCKET NO.: 2010-CP-42-4181
Nathaniel Teamer, #285309,	)	
Applicant,	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	PURSUANT TO RULE 59(e), SCRCP
Respondent.	)	

COMES NOW Applicant, through his undersigned counsel, and moves before the Honorable Brooks P. Goldsmith to dismiss the State's Motion to Alter or Amend the Order Granting Application for Post Conviction Relief signed on February 8, 2013, which was filed on February 11, 2013. Undersigned counsel received a copy of the State's Motion to Alter or Amend on February 22, 2013 and Jeremy A. Thompson, Esquire, Applicant's counsel of record, received a copy of the Motion on February 25, 2013.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on August 2, 2010. The State submitted a Return on April 26, 2011. An evidentiary hearing was conducted on October 30, 2012 at the Spartanburg County Courthouse in front of the Brooks P. Goldsmith. Applicant was present and was represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General.

Applicant respectfully submits the following grounds in support of the instant Motion:

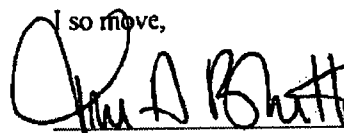
In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific

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SPARTANBURG COUNTY
2013 MAR -4 AM 11:41
J. HOPE BRADLEY

findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. If such is not done, a party may move under Rule 59(e), SCRPC, for the post conviction relief judge to make specific findings of fact and conclusions of law on each issue raised at the evidentiary hearing. Here, the State has made a Motion to Alter or Amend under Rule 59(e), SCRPC, but the State is asking this Court to reconsider, not alter or amend, the Order. Applicant submits that the State has not filed a Motion Pursuant to Rule 59(a), SCRPC, asking for a rehearing, but the State is essentially asking this Court for a rehearing and entry of a new Order under the guise of a Motion to Alter or Amend. Therefore, Applicant submits that the Motion is improper and should be denied.

Furthermore, the State is not asking for an alteration or amendment to the Order, but is asking this Court to rescind the Order and deny Post Conviction Relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (Noting that the proper use of a Rule 59(e) Motion is to preserve issues raised but not ruled upon by the trial court.) Since the State has failed to raise any issues properly raised and not ruled upon by the Court, Applicant requests that the Motion be dismissed.

March 1, 2013
Columbia, SC

I so move,


Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina
(803) 988-0008

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA

2 -----x

3 NATHANIEL TEAMER,

4 Plaintiff,

5 Case No.

6 -against- 2010-DR-42-4049

7 STATE OF SOUTH CAROLINA, 2010-DR-42-4181

8

9 Defendant.

10 -----x

11 April 18, 2013

12 Winnsboro, S.C.

13

14 B E F O R E:

15 HONORABLE BROOKS P. GOLDSMITH

16

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

18 SUZANNE WHITE, Esquire

19 Attorney for the State

20

21 DAVIDA MATHIS, Esquire

22 Attorney for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

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E X H I B I T S

NO.

DESCRIPTION

I.D.

EVD.

NO EXHIBITS MARKED

1 THE COURT: Now, Nathaniel Teamer versus
2 State of South Carolina, 2010-CP-42-4049.

3 THE COURT: Miss White, your motion.

4 MS. WHITE: Thank you, Your Honor.

5 Your Honor, I did make additional copies of
6 your Order granting post conviction relief, the
7 State's motion and applicant's response.

8 Would you like those copies?

9 THE COURT: No, I am fine.

10 MS. WHITE: Okay. Then Your Honor, we will
11 start with the State filed a motion pursuant to
12 Rule 59(e) arguing that the Orders, and I will
13 say Orders at this point because we are going to
14 argue each of them although separately,
15 ~~granting post conviction relief should be~~
16 reconsidered and the rulings and conclusions of
17 law should be altered or amended to reflect
18 current case law that we feel is controlling on
19 these issues. And just to note, Your Honor, just
20 for the record that Ben Aflin (phonetics) from
21 our office is with us, as well as Ashley Wilson.
22 So they are present with me today in the
23 courtroom.

24 In regards to the overall argument, Your
25 Honor, in the standard proposed post conviction

1 relief obviously Strickland holds that there must
2 be deficiency. There also must be prejudice and
3 in looking at each of these issues that ruling
4 must be made on each of them. There must be
5 deficiency and there must be prejudice enough
6 that it would call someone to question the
7 outcome of the trial based on each individual
8 issue.

9 There is no cumulative error in PCR in
10 South Carolina so the issues of whether or not
11 all of these combined caused prejudice can not be
12 looked at, but rather each individual issue. And
13 in reference to -- I am going to start with the
14 2010-4049 case which was the first trial in
15 September 2007 and that was a trial of the
16 charges of Burglary 1st degree, armed robbery,
17 felony DUI and failure to stop. And Your Honor I
18 will note that I might have to stop for an
19 occasional cough because of some things.

20 The first issue that we would submit should
21 be altered or amended in this situation is the
22 finding that counsel was ineffective for failing
23 to ask Erica Grey about her prior conviction of
24 false information to police. In that situation,
25 Your Honor, Erica Grey was a witness who

1 identified Mr. Teamer by voice and also by
2 handwriting. However, her testimony was also
3 cumulative. Her brother, Mr. Martin, her mother,
4 and her nine-year old daughter additionally
5 identified Mr. Teamer by voice as the perpetrator
6 of the burglary 1st degree. So in this
7 situation, Your Honor, we feel that counsel with
8 his testimony at the trial or at the hearing
9 stating that he did see there was a charge of
10 filing a false information or giving false
11 information to police in 1994. He did note that
12 it was over ten years, but he also said that on
13 the NCIC report there was no disposition. So at
14 the time he didn't feel that he could ask her
15 ~~about that for impeachment purposes but rather he~~
16 did ask her about the felony conviction for drugs
17 that was on the record.

18 In the grand scheme of the testimony of that
19 trial, the cumulative nature of her testimony in
20 regards to identification, her voice and the fact
21 that she had been impeached by a prior charge,
22 the State would submit that it was err to find
23 that counsel was ineffective for failing to ask
24 her to impeach. While there may have been
25 deficiency the prejudice prong has not been meant

1 and there is not sufficient question as to the
2 outcome of that one issue.

3 In regards to the directed verdict motion
4 on the burglary charge -- and Your Honor I do
5 have several cases. I have given copies to
6 opposing counsel and I don't know if Your Honor
7 would like them one at a time, or in a large
8 group or as I mention them to support?

9 THE COURT: You can give them in a group if
10 you have them in a group.

11 MS. WHITE: I do. And I do have them -- I
12 will take my little sticky notes, but I did have
13 them grouped by paper clip per issue to try and
14 keep them in order a little bit. Here.

15 ~~(Whereupon, documents were handed to the~~
16 ~~Court.)~~

17 MS. WHITE: Referencing the burglary
18 directed verdict Your Honor, State v Pinckney,
19 case number 339 S.C. 346. It is a 2000 case.
20 The State would argue that it is directly on
21 point. The findings in the Order find that
22 counsel was ineffective for failing to make a
23 motion on directed verdict because there was
24 evidence of consent. The ruling for directed
25 verdict it must go to the jury if there is

1 evidence on any evidence that the State
2 produces that can support their charges and in
3 this situation although there may have been
4 evidence of consent, Your Honor, we would argue
5 that it would have been improper to grant a
6 directed verdict because there was also evidence
7 that the consent was given because of trickery,
8 misrepresentation which would go to the weight of
9 the evidence which is a question for the jury.
10 So we would argue that based on that, and I think
11 Pinckney speaks directly to that, that even
12 though there might not have been specific
13 evidence at the time he entered his actions once
14 he enters the house can also show intent to
15 ~~commit a crime, but it also says the Court is~~
16 actually concerned with the existence or non-
17 existence of evidence. Not the weight. And if
18 the State presents any evidence which can
19 reasonably tend to prove the guilt or from which
20 the guilt can be fairly and logically deduced the
21 case must go to the jury.

22 So the State would argue that even if
23 counsel was deficient for failing to make a
24 motion for a directed verdict, the directed
25 verdict would have been denied and the case still

1 would have gone to jury so the outcome would not
2 have been affected and therefore the prejudice
3 prong has not been met.

4 THE COURT: Okay.

5 MS. WHITE: Your Honor, the third issue for
6 this case was that counsel was ineffective for
7 failing to move for a dismissal on the felony DUI
8 charge based upon the failure to record the
9 accident and arrest.

10 The State would also argue that counsel or
11 that the applicant failed to meet his burden in
12 this case.

13 Counsel acknowledged that in his practice
14 today he does handle DUI's and looking back he
15 ~~said he probably should have made a motion.~~

16 However being that the cases -- and I do have the
17 cases City of Rock Hill versus Suchenski, State
18 v Brannon and State v Manning, paper clipped
19 together are there, Your Honor. It shows how the
20 progression of the cases, case law from that
21 time, City of Rock Hill was the only case that
22 had actually been decided at that point. But as
23 they continue to say in the statute there is
24 three exceptions to whether or not a video tape
25 needs to be produced. Two of those exceptions

1 require for an affidavit to be completed. The
2 third exception is for in circumstances that
3 a failure to dismiss is not mandatory and it can
4 be the failure to comply with a video reporting
5 can be excused in circumstances including but not
6 limited to road blocks, traffic accident
7 investigations. And Your Honor we would note
8 that in this case the officer was following the
9 car. Heard sparks. Saw the sparks. Heard the
10 wreck. Arrived on the scene. He testified, and
11 I do have I believe a couple of pages of testimony
12 attached from David Michael Evit (phonetics)
13 testified that when he got there the first
14 vehicle he checked the first gentlemen for
15 injuries. And that's page 337 of the burglary
16 first transcript. That he noticed the guy was
17 injured but not there was not a lot of blood
18 present. He went to the other vehicle. As he
19 drove to the other vehicle he noticed the driver
20 was climbing out of the window of the passenger
21 side. The driver ran. So he called foot pursuit
22 and as he yelled at him he got on the ground. He
23 was immediately cuffed and placed in the back of
24 the car. At that point Your Honor there is no
25 feasible way to have a video. There were no

1 breath tests done. There were no field sobriety
2 tests done.

3 His blood was taken at the hospital. The
4 applicant was actually immediately removed after
5 the accident was investigated to the hospital
6 and was arrested subsequently.

7 So again the State would argue that even if
8 counsel was deficient for failing to make a
9 motion to dismiss for failure to have a video
10 tape, that based on the case law and the
11 statutory law at the time it would not have been
12 an automatic dismissal based upon the fact that
13 this was a traffic investigation, there were
14 injuries, and applicant was immediately arrested
15 following.

16 THE COURT: Okay.

17 MS. WHITE: Finally, Your Honor, on that
18 case and this is the same issue I believe that is
19 in both of the cases is that counsel was
20 ineffective for failing to object to the trial
21 Court's jury charge based upon the State v
22 Daniels case. And Your Honor I have included
23 cases that I believe are directly on point
24 stating that again that finding is based upon an
25 err of law, State v Aleksey, Gilmore v State and

1 Gibson v State. Gibson and Gilmore both
2 represent that counsel can not be found
3 ineffective based on a failure to be clairvoyant.
4 There is no -- in this situation the Daniel's
5 case I believe that was provided, it is not retro
6 active. It is not a - - it was not found
7 unconstitutional. In fact it appears to merely,
8 based on the language from the concurring opinion
9 state that it is a strong suggestion to the trial
10 Court that they not use the language for fear
11 that it can cause confusion.

12 However, it also states that you also have
13 to look at the charge as a whole. And if the
14 charge as a whole with a reasonable doubt
15 instruction and other charges counteract that
16 then that is sufficient. So I think the State v
17 Daniel's case itself notes that that is not an
18 absolute rule or that it is actually something
19 that should be applied retroactively.

20 State v Aleksy in fact particularly says
21 instruction telling the jury that its single
22 objection and that is to seek the truth,
23 did not violate the defendant's due process
24 rights. They said it might be disfavored. It
25 runs the risk of causing problems but based on

1 the fact this is not been found. There is no
2 cases that has been found to find ineffective
3 assistance of counsel or reverse a case based on
4 that jury charge. That counsel can not be found
5 ineffective because there is no prejudice and
6 also because the case referenced by the applicant
7 was more than five years following this trial.
8 And again, counsel can not be found in effective
9 for failing to be clairvoyant or determining
10 what the law might be or might change and again
11 we would still submit that still is not a
12 sufficient, I guess, change in the law. It is
13 not a change of the law at all. It is just
14 merely again the Supreme Court recommending to
15 the trial courts not to use that.

16 And I think Your Honor that is all on those
17 issues for that case.

18 THE COURT: Why don't we let Miss Blanchette
19 address those issues before we move to the next
20 case.

21 MS. WHITE: Certainly Your Honor.

22 MS. BLANCHETTE: Thank you, Your Honor. May
23 it please the Court.

24 Tricia Blanchette here on the behalf of
25 Nathaniel Teamer. Also joining me is Jeremy

1 Thompson. If this Court would not mind there are
2 two issues specifically that Mr. Thompson
3 prepared the proposed Order which was signed. So
4 if he could address those two arguments and I
5 will address all the other arguments.

6 THE COURT: Okay.

7 MS. BLANCHETTE: Your Honor, first in
8 response I just have some general responses for
9 the State's motion that would apply to both
10 cases.

11 As is stated in our written motion here the
12 State has filed a Rule 59 (e) motion. That
13 motion provides and requests that the Court alter
14 or amend the Order. We would submit what the
15 State is actually asking ~~this Court to do is~~
16 reconsider or set aside this Court's judgement
17 and I would like to remind you, with all due
18 respect, that you made your decision
19 approximately 20 days after hearing two full days
20 on these cases. It was made after a full review
21 of the transcripts and based upon a majority of
22 the cases cited in the State's motion. So
23 therefore based upon the State's motion under
24 59(e) I would ask that this Court not second
25 guess or reconsider the judgements that are

1 already in place.

2 We also would submit that a 59(a) would be
3 proper if the State is asking for additional
4 information or a form of a rehearing or for a new
5 judgement in this case and that was not filed.
6 All the issues that I heard the State address so
7 far are issues that are proper for an appeal. It
8 is asking this Court to reconsider or change its
9 decision and we would just ask that you stand by
10 your original decision in this case.

11 Furthermore, you gave the State an
12 opportunity to file objections and concerns after
13 the proposed Order was submitted. In going back
14 to State version Marlin -- I am sorry, Marlin
15 ~~versus State which is one of our leading cases on~~
16 59(e) it actually says in that case that after
17 counsel prepares a proposed Order the opposing
18 counsel should call any omissions or issues to
19 the Court's attention prior to the issuance of
20 the Order. And you gave the State the
21 opportunity to do that and none of these
22 arguments that are being presented today were
23 presented at that time.

24 So I just ask that the Court take all those
25 issues into consideration when looking at both of

1 those motions.

2 THE COURT: All right.

3 MS. BLANCHETTE: Turning specifically to
4 what I like to refer to the burglary, the first
5 case or the 4049 as far as the docket number
6 goes.

7 The first issue the State addressed was
8 Erica Grey and the failure to impeach her. Once
9 again Your Honor you heard all the testimony
10 and it was lengthy testimony. My memory serves
11 me a little bit differently in my notes as to
12 what whether Mr. Schultz said on that issue, but
13 would I defer to the Court on that. And if the
14 transcript is needed I would be happy to look
15 into getting that also. But Erica Grey as it
16 states on page two of the State's motion was an
17 important witness for the State. The State
18 concedes that. So I don't know how she could be
19 merely cumulative. Yes, the letters were
20 introduced through her and the handwriting was
21 identified by her and the State has already
22 acknowledged that. So I will not go into that
23 issue.

24 Two things that aren't mentioned though by
25 the State is she established intent of motive

1 when she explained that Mr. Teamer had seen her
2 counting a tax refund earlier that day and that
3 is on page 121 through 122 of the transcript.
4 She also went into another kind of secondary
5 motive or the issue why her brother Donald would
6 be the focus of this is because Mr. Teamer was
7 supposedly upset with Donald regarding an issue
8 where he had been messing with Iesha (phonetics)
9 who is a younger family member and there was this
10 family court issue. Only Erica Grey testified
11 about that. So the Court has reviewed the
12 transcript and has heard the testimony and the
13 State concedes she is an important witness
14 and it is out position an important witness can
15 not be a cumulative witness. Also the records
16 show that she was not merely cumulative to Mary
17 Grey or to Donald Martin. And upon review of
18 their testimony it is very different from what
19 Erica Grey did. She was the star witness. She
20 wasn't just an important witness.

21 Turning to the second issue regarding the
22 directed verdict motion. I have had the
23 opportunity to review the Dixon case and I was
24 just handed a copy of the Pinckney case and I
25 would like to respond to both of those briefly.

1 In the Pinckney case it is very distinguishable
2 from the instant case. There the suspect knew
3 that the victim was deaf and would give him the
4 opportunity to come in the house and write a
5 note. And so he was able to gain entry along
6 with co-defendants because he knew he would have
7 the moment in time where he could come in the
8 house and write a note to the deaf victim. We
9 would argue that on the facts this is very
10 distinguishable. Here Donald Martin testified on
11 page 185 through 186, he opened the door to the
12 defendant because he was his peoples. That is
13 not an issue of trickery such as was in the
14 Dixon case where the suspect used the ability to
15 come into the house and write a note to the deaf
16 individual to gain access.

17 In my brief review of the Pinckney case I
18 would have to disagree with the State. There it
19 appears that the issue was whether or not the
20 individual had the intent to commit a crime
21 therein. And the case actually says respondent's
22 actions after he entered the house or some
23 evidence of respondent's intent to commit a crime
24 therein. They weren't looking at his actions to
25 determine if entry was consensual, which is the

1 issue here. So we would submit that both
2 Pinckney and Dixon on the facts are
3 distinguishable and are controlling in the
4 instant case.

5 Furthermore on that issue we submit that the
6 Court made a well reasoned decision based upon
7 solid case law and we would ask that the Court
8 not second guess that at this point.

9 Your Honor, I would skip over the DUI
10 issue very briefly because Mr. Thompson is going
11 to respond to that and jump to the Daniel's issue
12 if you don't mind.

13 In reading the Order granting post
14 conviction relief and in preparing the Order for
15 ~~Your Honor, I do not see where that issue was~~
16 granted on a change in the law. Daniels is just
17 merely a clarification of the law that was in
18 place at the time when Mr. Teamer went to
19 trial. Aleksey, which the State has referred to
20 and has provided this Court a copy of was in
21 place at the time that Mr. Teamer went to trial.
22 Aleksey is heavily relied upon in Daniel's. So
23 we would submit that Daniel's isn't the basis of
24 this Courts decision in granting relief on this
25 issue. It is Daniel's and all the cases that

1 came before it such as Aleksey.

2 We would also submit that even in the
3 State's motion they admit that curative
4 instruction was given at a time when reasonable
5 doubt was discussed and credibility. Aleksey
6 says if it just goes to credibility it isn't
7 prejudicial error. But the State concedes in
8 their motion that isn't the case here. It
9 wasn't just given the charge that I would
10 say is prohibited under Daniels wasn't just given
11 in the credibility of the section of the
12 charge but it was also given as the State's
13 indicates in their motion in the reasonable doubt
14 section of the charge.

15 ~~I will turn it over to co-counsel to address~~
16 the DUI issue and I will be happy to rap all this
17 up.

18 THE COURT: All right. Thank you.

19 MR. THOMPSON: If it please the Court, Your
20 Honor.

21 THE COURT: Yes.

22 MR. THOMPSON: Again for the record my name
23 is Jeremy Thompson.

24 I just have a couple of brief responses to
25 the DUI argument. First I would note that the

1 argument presented here today is not presented in
2 59(e) motion. 59(e) motion primarily argues that
3 at the time of the trial the law regarding
4 section 56-5-2953 was unsettled and specifically
5 argues that Suchenski had not been decided
6 as of the time of the trial. On page six of the
7 motion it says several months following the
8 applicant's trial the Supreme Court of South
9 Carolina the dismissed the DUI charge in
10 Suchenski. That is the argument that
11 Suchenski would -- the defense attorney would
12 not have been able to be clairvoyant and
13 understand the change in the law because the case
14 law in existence at the time of the trial the
15 ~~statute was similar but the courts appear to give~~
16 the benefit of the doubt to the officers.
17 That is the motion. That has changed
18 obviously, I presume Miss White realized that
19 she was actually wrong on the timelines.
20 Suchenski was actually decided prior to the trial
21 but we would contend that, you know, she is
22 filing a 59(e) to ask for reconsideration and not
23 even -- until we get here today, not even getting
24 the argument correct as to what she wants to
25 argue.

1 Dealing with the -- so, we would obviously
2 argue for the reason stated in the motion. It
3 should be denied. The motion says Suchenski had
4 not been decided as of the time of the trial and
5 it obviously had been.

6 In terms of whether or not -- I guess
7 whether or not any of the applicable exceptions
8 apply, which I believe is the argument here
9 today, we would submit that the Order is proper.
10 The testimony which is included with the cases
11 that I believe Miss White handed up, basically
12 show that the officer forgot to turn the video
13 camera on. This is not a case of going to
14 investigate a traffic accident or anything like
15 that. ~~The officer had been following Mr. Teamer~~
16 according to his own testimony for a lengthy
17 period of time. Had turned his blue lights on
18 and off. James Boyd testified when the
19 accident occurred he saw blue lights. So the
20 lights are on when he got there. There was
21 no reason that the video camera should not have
22 been activated. Should not have been turned on
23 as soon as those blue lights were activated.
24 There is not an exception under the statute for
25 simply forgetting to turn it on. And that's what

1 we got. So I believe that under any standard
2 prior to Suchenski or after Suchenski after all
3 these other case that the felony DUI charge would
4 have been dismissed in this case and the Order is
5 proper.

6 THE COURT: Thank you.

7 MS. BLANCHETTE: Just to briefly summarize
8 Your Honor.

9 One other issue that has been brought up and
10 I think it may have been argued as to both
11 Orders. The State presented some argument
12 regarding cumulative effect or cumulative
13 prejudice. I don't see where that is in Your
14 Honor's Orders. In both Orders. I believe each
15 ~~issue was decided on its own merit. There were~~
16 no findings as far as I can see regarding
17 cumulative prejudice. But it is true that is
18 an undecided issue in this State. We don't have
19 a clear decision on that in the State of South
20 Carolina at this time.

21 I would also -- there is a case I would like
22 to hand up just based upon the change in some of
23 the arguments today. I have a copy of Cole
24 versus State. That's a PCR case where Mr. Cole
25 was granted relief due to some unreasonable

1 search and seizure issues. In there the South
2 Carolina Supreme Court found that the State's
3 argument that they attempted to raise for the
4 first time in a motion to reconsider regarding
5 standing wasn't proper because you can't raise an
6 issue for the first time or raise an argument for
7 the first time in a motion to reconsider. It
8 sites to a line of cases for that.

9 Once again I went through the timeline how
10 this Court gave the State an opportunity to
11 respond to the proposed Orders and we would say
12 that today is not the proper time to be raising
13 these and most importantly new arguments can not
14 be raised at this time pursuant to Coal. So I
15 would like to had up a copy of that.

16 THE COURT: All right.

17 MS. BLANCHETTE: I do not have a copy for
18 the State. I apologize. I can give her the
19 cite.

20 THE COURT: Thank you, ma'am.

21 MS. BLANCHETTE: And Your Honor, unless you
22 have any questions I don't have anything further
23 on this first case.

24 THE COURT: No questions. Miss White.

25 MS. WHITE: And Your Honor just briefly. In

1 response the State has also included numerous
2 cases in regards to 59(e). The most telling I
3 think is the Elam versus South Carolina DOT when
4 it says it is proper to seek a rule 59 motion,
5 excuse me, 59(e), since they have noted I filed
6 59(e) and not (a). It does note in the case law
7 it is proper to view that 59(e) motion. Not only
8 is it a vehicle to request the trial court to
9 alter or amend, but also a vehicle to seek
10 reconsideration of issues and arguments.

11 It also states that a motion has been
12 viewed as a motion for reconsideration despite
13 the absence of those words in the rule. A party
14 may wish to file a motion when they believe the
15 Court has misunderstood, failed to fully consider
16 or failed to rule on an argument or issue and the
17 party must file it if an issue has been raised
18 but not ruled upon in order to preserve for
19 appeal.

20 So although applicant's argument is that
21 we improperly filed a 59(e) I think the case law
22 is well settled that we filed a proper motion for
23 the Court to reconsider its ruling, alter or
24 amend the Order to reflect that the applicant
25 failed to meet its burden of proof as to those

1 issues.

2 In regards to a -- and I will reference it
3 as a bait and switch argument I guess, since the
4 applicant kind of made that argument that I put
5 one argument in my motion and then suddenly
6 sprung new arguments upon them. I believe the
7 argument is that the applicant failed to meet his
8 burden of proof across the board. Whether or not
9 there is case law to support within the ten days
10 that was found compared to the time that we had
11 to file -- excuse me, to prepare for this hearing
12 does not change the fact that the case law
13 existed at the time and was present.

14 Briefly Your Honor, just to touch based on
15 the issues, I do think that the applicant's
16 counsel may have I misunderstood the State's
17 reference to the Pinckney case not looking at it
18 for basis of the fact of the trickery, more so
19 the fact that the burglary directed verdict,
20 if there is any evidence to support a directed
21 -- the lack of a directed verdict. That is what
22 we are looking at and the fact that it should be
23 sent to the jury.

24 We would also reference the actual jury
25 charge given by the judge in this where he states

1 entering without consent can mean to enter
2 without consent of the owner person or to enter a
3 dwelling by using deception, trickery or
4 misrepresentation and whereas they would argue
5 that is not true I would argue that giving
6 your name and then entering with a shot gun with
7 the intent to rob is by using misrepresentation.
8 And I believe Your Honor again in regards to the
9 Aleksey, the fact is that was the case law at the
10 time and again there is still been no case even
11 no cases continued and draw judges continue to
12 use that jury charge that has been reversed base
13 on that. So, this case would be the first in the
14 State to find that that was a reversible error
15 ~~whether counsel was ineffective for failing to~~
16 object to that.

17 THE COURT: All right.

18 MS. WHITE: At this point Your Honor we will
19 turn to the 2010-4181, Your Honor, the first
20 issue in this one was that the Court found that
21 counsel was ineffective for failing to move for a
22 continuance upon learning that the alibi witness
23 Miss Elaine Feaster was sick and not able to
24 testify.

25 The State would note that obviously Miss

1 Feaster at the PCR hearing noted she was present
2 for the first two days of this trial and became
3 sick mid-trial. There were only three days of
4 the trial. So first for the applicant to meet
5 its burden of proof in establishing prejudice
6 he would not only have to show that counsel had
7 he made a motion for continuance, the continuance
8 motion would have been granted and the fact that
9 a continuance motion mid-trial after two days
10 of testimony and right near the close of the
11 State's case I think the fact that that is when
12 the motion would have been made is highly
13 unlikely to argue that the trial Court would have
14 granted that motion. Specifically, in regards to
15 ~~an alibi the State would reference the Walker v~~
16 State case and I believe I also have -- I just
17 want to make sure I am accurate in referencing
18 which cases -- Walker I think is the one that I
19 got on that one. That is regarding the standard
20 for determining an alibi witness and whether or
21 not counsel was ineffective. Glover v State
22 as well Your Honor. For an alibi -- for someone
23 to qualify as an alibi witness their testimony
24 has to be that it is physically impossible for
25 the applicant to have actually committed the

1 crime. Not that he was somewhere else at the
2 time the crime was committed. Not that he was
3 somewhere else ten minutes before, twenty minutes
4 after. It has to be that it was physically
5 impossible for him to be present to commit the
6 crime.

7 The State argues that based upon that, based
8 upon Miss Feaster's testimony at the burglary
9 trial and her testimony at the PCR hearing it
10 would be an error to find or conclude that her
11 testimony qualified as alibi. She consistently
12 testified that she believed the applicant was
13 there or the applicant was at her house around
14 eight and then she left prior to nine. There was
15 ~~even one point in the testimony that she said she~~
16 left at eight thirty or nine to go look at TV's
17 with her cousin at the Walmart.

18 Now, Your Honor, the crime was committed at
19 approximately eight forty-five. Her home was
20 within one to two miles of the crime scene and
21 the victim claimed that he picked the applicant
22 up at Miss Feaster's home, traveled the one to
23 two miles and was shot. I don't believe the
24 testimony that he was at the home prior to nine,
25 she left at eight thirty or nine, or some time

1 before nine, establishes testimony sufficient to
2 provide them an alibi. And in that point Your
3 Honor, we would argue that based upon the Walker
4 case counsel can not be found ineffective for
5 failing to make a motion for continuance mid-
6 trial to ask for this woman to testify when she
7 could not even qualify as an alibi witness. We
8 would also note that Osta (phonetics) Feaster,
9 the daughter of Miss Feaster who was the
10 girlfriend at the time of the incident of the
11 appellant, she testified that she was with the
12 applicant from eight o'clock until maybe eleven
13 that night. But she also again as they did at
14 the burglary trial testified, as the phone
15 records indicate, she called him from her home
16 phone to his cell phone. The explanation is oh,
17 he was outside of the home at that point,
18 therefore they called each other on the phone.
19 So again, there was no alibi established
20 sufficiently to find that counsel was ineffective
21 based on that point.

22 The second issue in this case, Your Honor,
23 is that counsel was ineffective for failing to
24 provide the Court with a third party guilt charge
25 and we would argue that again, this is a finding

1 that should be reconsidered and amended to
2 represent that the applicant failed to meet its
3 burden of proof as both the Order and the case
4 law establishes there is no established third
5 party guilt charge for a Court to offer during a
6 jury trial.

7 Counsel made the motion and got the third
8 party guilt evidence before the jury. The Court
9 offered the proper -- the law at the time which
10 is the jury charge for reasonable doubt and we
11 would argue at this point any third party guilt
12 instruction, number one, was not provided at the
13 hearing. Any suggestion as to what should have
14 been provided was provided in the Order, but not
15 argued at the hearing.... And at this point the
16 case law that they provided is out of
17 Connecticut. It is not controlling for this
18 State, Your Honor.

19 Furthermore, that is a case again that was
20 decided more than one year after the trial on
21 these charges. And finally Your Honor, I think
22 that the third issue has already been argued. We
23 would rely on our prior argument that is that
24 counsel was again ineffective for failing to
25 object to the trial Court jury instruction. And

1 just one final note, Your Honor, I would note
2 that when you requested proposed Orders and I was
3 asked to provide objections or any statements
4 about that, I did state in writing, copying
5 counsel and Your Honor, that I would not -- I
6 would offer suggestions for wording or factual,
7 but I wanted to reserve my right to file a 59(e)
8 Motion for Reconsideration and did not want this
9 to affect our ability to do that.

10 THE COURT: That is my recollection.

11 MS. WHITE: Thank you, Your Honor. And the
12 State would rest at this time.

13 MS. BLANCHETTE: Thank you, Your Honor.
14 Turning to the second case, I can be pretty brief
15 here because I believe every case she just cited
16 to is in this Court's Order.

17 As to the alibi, the cases relied upon in
18 the Order are Glover and Walker and those are the
19 two cases that the State just argued this Court
20 needs to apply. It has already been done and it
21 has already been signed by Your Honor as well
22 reasoned and accurate and proper Order in this
23 case. So, I don't see how those cases would
24 cause this Court to reconsider his decision when
25 those cases are the basis for the decision that

1 we are in here about today.

2 Just some specifics on the alibi issue. As
3 stated in the written motion on page three.
4 We would dispute the fact that the State
5 concludes that Mrs. Feaster testified at the PCR
6 that she saw the applicant around eight p.m.. My
7 notes actually indicate eight thirty p.m., but we
8 refer to the Court's memory as to her testimony
9 at the PCR hearing.

10 THE COURT: All right.

11 MS. BLANCHETTE: Also the State has cited to
12 her testimony from the other trial where she goes
13 through the timeline in which she saw Mr. Teamer.

14 Regarding the Walker decision. Just going
15 ~~back to the Walker decision very briefly, in the~~
16 decision it says the PCR Court must consider the
17 testimony as a whole. Taken as true and
18 credible and view it in a light most favorable to
19 the PCR applicant. And again the Walker decision
20 is essentially the feature decision on the alibi
21 issue. But Walker is distinguishable from this
22 case because Walker did not get relief because
23 his girlfriend, who was his alibi witness, who
24 the PCR Court found to be the basis for granting
25 relief couldn't even say if they had been broken

1 up or together at that point. When asked
2 directly by the Court at the PCR was he with you
3 that night. She couldn't even say, well, we may
4 have broken up sometime in the spring, so I don't
5 know if we were dating and that isn't the case
6 here. The PCR judge was reversed in Walker
7 because that testimony was weak, if anything.
8 She couldn't even say if they were dating let
9 alone if they together and that is clearly
10 distinguishable from Mrs. Feaster's testimony.
11 Yes, she was confused but this Court found her to
12 be credibility despite that, and I believe that
13 the State is making these arguments today because
14 they know that credibility findings are rarely
15 ~~disturbed on appeal. So, this is their last~~
16 chance to attack the credibility of Mrs.
17 Feaster.

18 Turning to the second argument regarding the
19 third party guilt instruction I again defer to my
20 co-counsel, Mr. Thompson.

21 THE COURT: Mr. Thompson.

22 MR. THOMPSON: Thank you, Your Honor. I
23 will try to be brief with regard to this issue.
24 Basically as I see it the State's argument
25 boils down to three points. No charge was given

1 at the PCR hearing. There is no proof that the
2 charge would have been given I guess because it
3 is an unsettled issue and that Arroyo would not
4 control.

5 With regard to the fact there was no proper
6 charge at the PCR hearing, I have a couple of
7 responses to that. First off, the issue of --
8 the issue whether or not a third party guilt
9 instruction should have been given was covered
10 extensively at the hearing both through the
11 testimony, I believe with Mr. King. I believe he
12 testified that it should have been given.
13 Through the testimony of the defense attorney,
14 plus the closing arguments by the attorneys
15 in the case. You know, if there was a proposed
16 charge this isn't a criminal case. A criminal
17 case which is why defense counsel was ineffective
18 in the case, criminal case you actually got to
19 hand up a proposed charge. That is not a
20 requirement in PCR cases. I don't know of any
21 case where the Supreme Court has held that you
22 have to provide a proposed charge at the time of
23 the hearing in order to meet your burden of
24 proof.

25 We alleged that this should have been

1 given. Your Honor agreed with that and basically
2 found the substance of the charge that should
3 have been given is the same as essentially should
4 have been charged in Arroyo or something similar
5 along those lines. So we don't think there is
6 anything improper there.

7 In terms of whether or not the charge would
8 have been given again that issue was covered in
9 the Order and addressed fully in the Order. Even
10 though I do not have a case that I can hand up
11 that says defense counsel was ineffective for
12 failing to request a third party guilt
13 instruction there is certainly plenty of cases
14 dealing with a defense attorney's failure to
15 ~~request charges on defenses and that is what we~~
16 are talking about here. There is no difference
17 here between requesting a defense of alibi or
18 accident or self defense. It is a defense. He
19 should have requested the charge and this isn't
20 some novel issue that nobody had thought of. He
21 asked about it. The defense attorney asked
22 about it at trial. Asked the trial judge do you
23 have a third party guilt instruction. Judge says
24 no and he just doesn't do anything about it. We
25 are not asking him to be clairvoyant. It should

1 have been given. He should have had something
2 to hand up to the judge when he made that
3 request.

4 Finally, with regard to Arroyo. First off,
5 I would note in the 59(e) motion again Miss White
6 stated here today, Arroyo was quote, almost
7 decided one year following applicant's trial
8 on these charges. It was not. Arroyo was was
9 deciding in December of 2007. Mr. Teamer was
10 tried for murder, the week of January 14th
11 through 16th, 2008. So you Arroyo was in
12 existence even if it had just been a few weeks by
13 the time of trial. So defense counsel probably
14 should have been able to find something pretty
15 easily on that search. ~~Certainly the most~~

16 recent cases come up first, so he should have had
17 no problem finding Arroyo when he was getting
18 ready for the hearing. But in any event, I don't
19 believe that the Order finds that Arroyo was
20 controlling.

21 I think Your Honor understands and knows a
22 decision from the Supreme Court of Connecticut is
23 not binding on a South Carolina judge. I think
24 it finds it persuasive and there is a difference
25 between being persuasive and controlling and for

1 all those reasons we submit the Order is proper
2 and should not be altered or amended.

3 THE COURT: Thank you, Mr. Thompson.

4 MS. BLANCHETTE: Very briefly, Your Honor.

5 THE COURT: Sure.

6 MS. BLANCHETTE: Just jumping back to the
7 alibi issue, I just wanted to also point out and
8 Your Honor has a copy of the Order that was
9 signed, that there also was a finding that Miss
10 Feaster was able to identify the other homes on
11 Brie street that could have possibly been
12 identified by the victim. And that goes into the
13 timeline issue that the State presented
14 because those homes were so close in proximity
15 to hers. ~~So that was another factor on which~~
16 this Court made a decision in this Order.

17 Very briefly, on the Daniel's issue. The
18 last issue. I believe the State's argument is
19 today no other Court has granted relief in PCR on
20 that issue so this Court should not.

21 Your Honor, if that were the case I wouldn't
22 have a job. We need to continually to fight for
23 there to be new cases and new decisions and it is
24 not an argument that the case law doesn't support
25 this Court granting it, is that this Court

1 would be the first and I believe that the case
2 law already cited to in the Order and the case is
3 cited to in the Daniel's decision which this
4 Court rely upon support granting the relief on
5 this issue. So I would just bring that to the
6 Court's attention.

7 Beyond that we have nothing further unless
8 the Court has any questions or anything they like
9 from us.

10 THE COURT: No questions. Thank you, Miss
11 Blanchette.

12 MS. WHITE: Your Honor, if I could just
13 briefly, the State would maybe dispute that there
14 is a finding of credibility from Miss Feaster in
15 the Order. ~~The Order does state that the Court~~

16 finds that she does qualify as an alibi. There
17 is no statement that says she's credible. That
18 was actually removed in the process of amending
19 the Order prior to the final signature and I
20 think, obviously I would be speculating, but I
21 think the fact that she completely denied or as
22 it says was confused about testifying at the
23 prior trial, extremely adamant and in fact
24 questioned the veracity of that transcript
25 accusing of someone of lying and her name was in

1 there does support the finding of no credibility.
2 Again, I think that what the arguments of the
3 applicant's counsel boils down to is a great deal
4 of speculation in requiring this Court to find
5 that counsel should have argued for a charge.
6 The charge would have been granted and therefore
7 the outcome of the trial would have changed had
8 this third party guilt charge been granted and
9 given. I think the testimony -- I think that it
10 is a case that although they would I am sure
11 differ, overwhelming guilt in this situation.
12 Phone records were provided. A sketch was
13 provided which, if Your Honor had seen -- and
14 Your Honor did have it in the record in fact --
15 ~~is almost identical to some photos or a visual of~~
16 the applicant.

17 The victim also took the police to the home
18 in which he picked the applicant up at and there
19 was a DNA match. A cigarette in the car of a
20 victim in which he's stated he never met him
21 before.

22 So, I think in this situation finding that
23 these factors individually would have impacted
24 the outcome of the trial, is failing to meet the
25 prejudice prong. I think it is requiring a great

1 deal of speculation to think that that would have
2 happened, Your Honor.

3 So, we would just ask that you reconsider
4 your decision and amend the Order to reflect that
5 counsel failed, or the applicant failed, to meet
6 his burden on these issue.

7 THE COURT: Thank you, Miss White.

8 MS. BLANCHETTE: May I very briefly, Your
9 Honor.

10 I forgot one request and I am glad she
11 mentioned it about taking that portion out of the
12 Order. We would ask that the State -- the judge,
13 Your Honor, revert back to the original proposed
14 Orders. I would submit that those were much

15 ~~stronger Orders as far as the appeal is~~
16 concerned. As Miss White has indicated, she cut
17 a portion out of there regarding credibility and
18 so with that argument that she made I would ask
19 that this Court, if anything, in reconsidering
20 anything, reconsider signing the original
21 proposed Order before the charges were made by
22 the State. If you can follow all those
23 reconsiders.

24 THE COURT: I think I did.

25 MS. WHITE: And Your Honor, I do have to

1 make one note on that. In the cases that is I
2 passed up regarding 59(e) there are also several
3 cases about jurisdiction. The State would note
4 the applicant failed to make a motion to
5 reconsider that you signed the changed Order.
6 After ten days if there is no motion made on
7 those issues the Court lacks the jurisdiction. So
8 we would just rest on that argument.

9 THE COURT: I understand. All right. I
10 will look over the Order and my notes and the
11 cases that have been handed up today. I hope to
12 get a decision to you in the next ten days. Take
13 it under advisement.

14 Thank you so much.

15 ----- (End of transcript) -----
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25

C E R T I F I C A T E

1
2
3 I, the undersigned Aileen Butler, Official Court
4 Reporter for the Seventh Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record
7 of all the proceedings in the captioned case, in the
8 Circuit Court for Fairfield County, South Carolina, on
9 the 18th day of April, 2013.

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

12 July 6, 2013
13
14

15 Aileen Butler
16
17
18
19
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22
23
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25

Spartanburg County

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Phone (864) 596-2591
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M. Hope Blackley
Clerk of Court

May 1, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Nathaniel Teamer
Applicant # 285309

7TH JUDICIAL CIRCUIT

CASE # 2010 CPCLD 4181

VS
Steve
Respondent

CERTIFICATE OF SERVICE

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

In this action dated 4-24 2013 on

Order

5-1-13

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

Ann Meeler
Suzanne White
Nathaniel Teamer
Tricia Blauvelt Jimmy Thompson

5-1-13

(Date)

Quinn Seay
(Signature)

DM

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Nathaniel Teamer, #285309,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

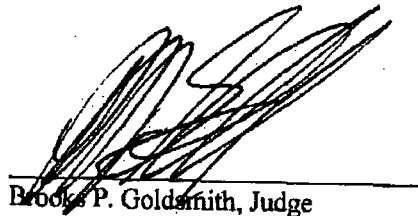
IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-42-4181

ORDER

This matter comes before the Court upon Respondent's Motion to Reconsider the Court's Order, filed February 8, 2013, that granted Applicant's Application for Post Conviction Relief.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion, and therefore, denies Respondent's motion.



Brooks P. Goldsmith, Judge

Chester, South Carolina
April 24, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 APR 30 PM 2:00
M. HUFF BLACKLEY

✓

Spartanburg County

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M. Hope Blackley
Clerk of Court

May 13, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Nathaniel Tramm #25309

Applicant

7TH JUDICIAL CIRCUIT

CASE # 2010CP42 4181

VS
State
Respondent

CERTIFICATE OF SERVICE

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

In this action dated May 6, 2013 on May 13, 2013

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

Agnes Miller,
Shirley White
Nathaniel Tramm
Tricia Blanchette & Jerry Thompson

May 13, 2013
(Date)

Wesley Seay
(Signature)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Nathaniel Teamer, #285309,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-42-4181

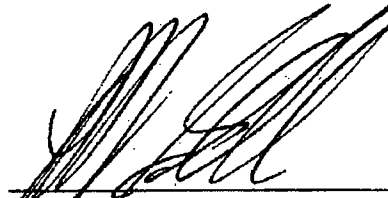
AMENDED ORDER

This matter comes before the Court upon Respondent's Motion to Reconsider the Court's Order, filed February 8, 2013, that granted Applicant's Application for Post Conviction Relief.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion, and therefore, denies Respondent's motion.

IT IS ORDERED, ADJUDGED AND DECREED that the Respondent's Motion to Reconsider the Court's Order is denied.

IT IS SO ORDERED.


Brooks P. Goldsmith, Judge

Winnsboro, South Carolina
May 6, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY 10 PM 12:04
M. HOPE BLACKLEY

✓