

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

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AUG 29 2014

S.C. Supreme Court

ALBERT SANTANIO KELLY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001864

APPENDIX

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1 Q. So he stayed around there all that day?

2 A. Yes.

3 Q. Did Ron leave the house?

4 A. Yes, sir.

5 Q. He went to work?

6 A. Uh-huh.

7 Q. You didn't go to work that day?

8 A. No, I was going to go to work, but I just didn't feel
9 right and -- I mean, I got up. I mean, I got up, I took my
10 shower and got ready for work and everything, but I just
11 didn't feel right, so I called him up and told him I
12 couldn't come to work.

13 Q. Did the defendant ever -- during that day that you
14 spent with him, did he ever ask you to drive him anywhere?

15 A. No.

16 Q. All right. Now, did Ron -- Ron got home that night?

17 A. Yes, sir.

18 Q. And when Ron got home, was he pleased or displeased
19 that Albert Kelly was still there?

20 A. When Ron came home, I was in the kitchen making me
21 something to eat, and he came in there and he asked me what
22 he was doing there, and, you know, "I don't want him here.
23 He's not supposed to be here." I said "okay, Ron, we will
24 leave." I took him home, or whatever.

25 Q. And so did you then offer to drive Albert Kelly away?

- 1 A. Yeah, I told him that I had to take him home.
- 2 Q. Okay. And did you have a car?
- 3 A. No, I was using Ron's car.
- 4 Q. So did you use Ron's car that day?
- 5 A. Yes.
- 6 Q. Where did you take -- did you take Albert Kelly away
- 7 then?
- 8 A. I took him away from the house.
- 9 Q. Where did you take him?
- 10 A. To downtown Greenville.
- 11 Q. Downtown Greenville. Where did he ask you to take him?
- 12 A. He said to a friend's house. He didn't want to go to
- 13 his home. I asked him did he want to go home and he was
- 14 like, no take me to my friend's house.
- 15 Q. And did he tell you where his friend's house was?
- 16 A. No.
- 17 Q. Okay. But he just you -- did he give you directions as
- 18 you drove?
- 19 A. Yes, sir.
- 20 Q. And you ended up where?
- 21 A. In downtown Greenville.
- 22 Q. And you dropped him off in Greenville?
- 23 A. Yes, sir.
- 24 Q. And where did you drop him off?
- 25 A. About a block away from the bus station.

1 Q. Did he ever -- did he say anything to you about that he
2 was going on a trip or anything?

3 A. No, sir.

4 Q. He said he was going to see a friend?

5 A. Yes, sir.

6 Q. Did he give you any indication that you wouldn't see
7 him for awhile?

8 A. No, sir.

9 Q. What did --

10 A. He told me that he will call me tomorrow. He loved me.
11 That was it. Got out of the car and left.

12 Q. So were you expecting him to be gone for a long period
13 of time?

14 A. No, sir.

15 Q. In fact, was he wearing anything of yours?

16 A. Yes.

17 Q. What was he wearing?

18 A. He got my jacket that my boyfriend had bought me.

19 Q. Okay. So you had let him wear that?

20 A. No.

21 Q. He was just using it?

22 A. Yeah, because, see, both of our jackets -- well, both
23 of the jackets belonged to me anyway. I paid for the one
24 brown one, and my boyfriend bought the other one, and they
25 were both in the back seat and he picked it up and took it

1 with him.

2 Q. All right. Now, you didn't get home, back to Ron's
3 house, until real late that night, right?

4 A. About twelve o'clock.

5 Q. After midnight. So what did you do after you dropped
6 Albert Kelly off in Greenville?

7 A. I went to see a friend in Spartanburg.

8 Q. And you talked to the police that night?

9 A. Yes, sir, they came to the house about 1:15.

10 Q. And is that when you found out about what had happened
11 over in Greer?

12 A. That's when I found out.

13 Q. Had you heard about it prior to that?

14 A. No, sir.

15 Q. Did Albert Kelly say anything about it while you were
16 with him?

17 A. No, sir.

18 Q. Now, the next day, on Saturday, February the 28th, did
19 you hear from the defendant?

20 A. Yes, sir, he called me at work.

21 Q. He called you at work?

22 A. Yes, sir.

23 Q. Did he tell you where he was?

24 A. He told me he was on a bus headed to New York, but it
25 wasn't New York. It was something about the initials.

1 Q. Okay. Explain a little bit what you mean.

2 A. He was trying to clue me in that he wasn't going to New
3 York, but like he was going to -- somewhere that had kind of
4 the same initials, like New Jersey, or New Mexico, or New
5 Hampshire, something like that.

6 Q. Okay. But he wouldn't tell you exactly where he was
7 going?

8 A. No.

9 Q. Did he say anything about his -- about where he was
10 physically?

11 A. He just said he was on a bus headed to New York.

12 Q. On a bus?

13 A. Yes, sir.

14 Q. Could you hear any background noise?

15 A. I heard vehicles. I was at work and it sounded like he
16 was just outside on the pay phone. I could hear vehicles
17 driving by him and stuff.

18 Q. All right. Now, did he say anything -- did he say
19 anything about what his appearance was at that time?

20 A. He said he had on an afro wig.

21 Q. Did you -- now, by this time when you had this
22 conversation with him, he was -- are you aware of the fact
23 that he was wanted by the Greer Police Department?

24 A. Yes, sir, I read the -- as a matter of fact, I read the
25 paper to him. He knew too, because I read the paper to him.

1 Q. Okay. Did he sound like he was surprised when you said
2 that, or did he --

3 A. He just told me I didn't have nothing to do with it.
4 And, you know, I basically cussed him out, because I told
5 him "you got me involved in this. They are ready to arrest
6 me for this."

7 Q. Okay. And so when you told him about the murder, he
8 didn't -- he didn't ask any questions, like tell me details,
9 it sounded like he already knew was aware of what happened?

10 A. I just read him what was on the paper and that was it.

11 Q. Please answer any questions that defense has.

12 CROSS EXAMINATION BY MR. SULLIVAN:

13 Q. I believe you gave a statement on 2-28-04. Do you
14 recognize that?

15 A. Yes, sir. It's my statement.

16 Q. Okay. There is two pages?

17 A. Yes, sir.

18 Q. And you mentioned in your testimony that Albert said
19 something about giving him some money to hold?

20 A. Yes, sir.

21 Q. I believe your statement said that "he showed up at my
22 house about six a.m.. He told Ron Rice and I about a man
23 that had stole money out of an ATM, and that the man gave
24 him \$50,000"?

25 A. That's what he told me.

1 Q. That's ridiculous, wasn't it?

2 A. You got to understand how he is too. He's a compulsive
3 liar.

4 Q. So you didn't believe he had \$50,000?

5 A. No, I didn't believe him about that.

6 Q. Okay. And y'all left that day about 6 --

7 A. -- 30 that evening.

8 Q. And you got home at 12:30?

9 A. About twelve o'clock.

10 Q. Had you ever been with Albert or to Atlanta?

11 A. No.

12 Q. Did you go with him to Atlanta that night?

13 A. No.

14 Q. You had time to?

15 A. Well, I might have, but I didn't.

16 Q. And then when you -- after he called you the next day,
17 you asked him why he had done it, and he said he didn't do
18 it, didn't have anything to do with it, isn't that correct?

19 A. That's what he told me.

20 Q. Okay. And you said that the reason why you were home
21 so late that night, 12:30, or so, that you were going to see
22 a friend in Spartanburg?

23 A. Yes, sir.

24 Q. Who would that person be?

25 A. A man.

1 Q. Can you give us a name?

2 A. His name is James White.

3 Q. Where does he live in Spartanburg?

4 A. I'm not exactly sure. I didn't really -- I was just
5 getting to know him.

6 Q. Where did you meet him?

7 A. At the Hot Spot on East Henry.

8 Q. Did you pick up a cell phone to call him?

9 A. No, I didn't have a cell phone at the time.

10 Q. Well, how did he know to meet you at the Hot Spot?

11 A. We had talked on the telephone. He called me.

12 Q. When did he call you?

13 A. At the house.

14 Q. Before you left with Albert?

15 A. Just -- I mean, we had already made arrangements. He
16 comes into the store I was working in. We had already made
17 arrangements.

18 Q. But it's your testimony that you took Albert to
19 Greenville to a place in the bus station?

20 A. About a block away from the bus station.

21 Q. And then you went to meet this man apparently in
22 Spartanburg?

23 A. Yes, sir.

24 Q. And then when you asked Albert after you knew what had
25 happened, why he did it, he told you he had nothing to do.

1 with it and he didn't know anything about it, is that
2 correct?

3 A. That's what he told me.

4 MR. SULLIVAN: Nothing further, Your Honor.

5 MR. MOYER: One more question.

6 REDIRECT EXAMINATION BY MR. MOYER:

7 Q. Was he a married man?

8 A. Yes, sir.

9 Q. Thank you.

10 THE COURT: Thank you, ma'am. You may step down.

11 MR. MOYER: I have nothing further, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, I
13 think this would be a good time for us to break for the
14 evening. The case is not over. We will be able to conclude
15 it in the morning.

16 I'm going to ask, if you would, to please be back
17 in your jury room at nine o'clock and we will be ready to
18 start at that time.

19 Again, let me remind you of the importance of not
20 talking about the case to anyone and not getting any
21 influences from any source, other than what you hear in this
22 courtroom. That's what you have committed to decide this
23 case on, and that, and that alone, so I instruct you not to
24 be discussing the case or getting involved in any other
25 extraneous matters about the case, doing no investigation,

1 but deciding it on what you hear, and hear alone, in this
2 courtroom.

3 Have a good evening and we will look forward to
4 seeing you back in the morning at nine o'clock.

5 (The following takes place outside the presence of
6 the jury panel)

7 THE COURT: Okay. We will be back at nine o'clock
8 in the morning.

9 (Whereupon, proceedings were adjourned to October
10 12, 2005)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ALBERT S. KELLY,) 2004-GS-23-5966
7 Defendant.) 2004-GS-23-2024
8) OCTOBER 12, 2005
9) Greenville, South Carolina

10 (VOLUME III)

11 B E F O R E:

12 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.

13
14 A P P E A R A N C E S:

15 L. MARK MOYER, ASSISTANT SOLICITOR
16 Attorney for the State

17 C. TIMOTHY SULLIVAN, ESQUIRE
18 Attorney for the Defendant

19 Michael R. Watts
20 Circuit Court Reporter
21
22
23
24
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1 (Proceedings, October 12, 2004)

2 (Bench Warrant marked as Court's Exhibit No. 2 for
3 identification)

4 MR. SULLIVAN: If it please the court?

5 THE COURT: Yes, sir.

6 MR. SULLIVAN: I have been instructed from the
7 deputies that we have had no luck in locating Mr. Smith.

8 THE COURT: All right. So there is no other
9 evidence to put in?

10 MR. MOYER: That's correct.

11 MR. SULLIVAN: None from the defense, Your Honor.

12 THE COURT: Okay. Is there anything we need to
13 take care of before the jury comes back and before we begin
14 to argue?

15 MR. SULLIVAN: Judge, I assume I would make --
16 it's the appropriate time for me to make a motion for a
17 directed verdict as I did at the close of the State's case.

18 THE COURT: Again, I believe this is a jury issue
19 as to the conflict. The facts for them to decide, the
20 standard being that if there is any evidence or substantial
21 circumstantial evidence. I believe there is some evidence
22 for a jury to make this decision, so I'll deny your motion.

23 MR. SULLIVAN: Thank you, Your Honor.

24 THE COURT: Okay. Let's bring the jury in.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Good morning, ladies and gentlemen.
3 Thank you very much for being patient with us. I had
4 another matter I had to take care of the first thing this
5 morning. I apologize for keeping you.

6 I understand from the attorneys that all the
7 evidence is now in and we are now at the stage of the trial
8 where the closing statements will be made by the attorneys.
9 As I indicated to you when we started this case on Monday,
10 the closing statements, the comments by the attorney, even
11 the questions the attorney ask are not evidence. The
12 evidence is what you hear from the witness stand and the
13 documents that are presented. But as they make their
14 closing statements to you, I urge you to listen carefully as
15 they bring out points that they feel are important for you
16 in your deliberations that will take place shortly.

17 After the attorneys have an opportunity to address
18 you, then I will charge you on -- give you instructions on
19 what the law is in this case.

20 So if you will listen carefully now as the
21 arguments are made.

22 Mr. Sullivan.

23 MR. SULLIVAN: May it please the court.

24 Mr. Moyer, Ms. Lynch.

25 We have been here awhile. I guess I better

1 re-introduce myself. I'm Tim Sullivan. I represent Mr.
2 Kelly in this matter.

3 If I misspeak -- you heard the case. If I say
4 something that you say that's not the way I heard it, you
5 believe it the way you heard it. It's been a long case.
6 And like yesterday on the stand, I was getting tired and I
7 was referring to the ammunition that Shaun Edwards bought as
8 a .38, and the officer corrected me and says it was a .380,
9 so I may make a mistake. If I do, it's not intentional.
10 I'm not trying to mislead you. I'm not perfect.

11 In this case there are certain things that, like I
12 say when we started, we can agree upon. We know that on the
13 early morning, around one o'clock, snowy night, that
14 Cornelio Lopez was asleep in trailer 51 at Southgate Trailer
15 Park, near and behind Drummond Village; that he was awakened
16 at the noise of a shot; that he looked out his rear window
17 here and saw a person he knew to be Ignacio Delgado lying on
18 the ground. He saw two black males running to the right.
19 We know that for a fact.

20 The question now in this case is which two black
21 males were running from that scene.

22 Here is something else we can agree upon. We know
23 one was Marcus Parks. Marcus Parks has told us he was
24 there. Marcus Parks has confessed and has pled guilty and
25 has been sentenced to 30 years for murder, the low end.

1 High is higher. So we know one of them. No problem.

2 The problem you will get into who was the other
3 one. The State would have you believe it was Albert Kelly.
4 The defense we contend that it was Shaun Edwards.

5 Now, we know on February 26th, the day before,
6 that through various times these three people were together,
7 Marcus and Shaun and Albert. We heard Albert say he had
8 gone down -- Albert lived in Drummond Village over here off
9 of the Donaldson Avenue side. Shaun lived up here. Marcus
10 lived somewhere down here. They all lived -- were
11 neighbors.

12 We know that approximately twelve, or so, in that
13 area, two of the individuals left armed with weapons. We
14 know from the statements and from evidence that Marcus Parks
15 had a .22, which has been introduced. The shooter, there
16 was only one shot, had the Highpoint .380. And we know it
17 was the murder weapon by the forensic evidence. The
18 question is who fired -- who fired that gun.

19 We get down now to time frames. Shaun said he was
20 at home, that he got too drunk; that Marcus and Albert later
21 left to go do something. He said he had gone over to Toni,
22 a neighbor, at a friend's house. She testified that this
23 was about eleven or twelve and stayed 45 minutes. I don't
24 remember her saying he was drunk. He said he ate two
25 hamburgers. He said he had to go home before midnight

1 because he had the only key to the apartment and he had to
2 let his mother in. She testified that she got home, he
3 wasn't there. She went next door to get him and that she
4 was with him the rest of the night from midnight on. She
5 was on the phone with Leon Irby, this type of thing.

6 She also said that sometime after one that Albert
7 Kelly and Marcus came to the apartment. She saw no weapons,
8 no guns, or anything like that. She went to her room. She
9 said she could hear them murmuring and talking. Then she
10 said that at three o'clock she got up and said "it's time
11 for you guys to go home," talking to -- about Albert and
12 Marcus, "you guys go," at three o'clock. That's her time
13 frame and Toni's and Shaun's. Well, we know that doesn't
14 fit. We know that the approximate time of shooting was one
15 o'clock. We know the police were there pretty quick. We
16 know they followed tracks and they were at [REDACTED] the Edwards
17 apartment, by 2:30 in the morning. Now, she is saying --
18 she is trying to protect her son. It's three o'clock in the
19 morning when she ran these boys off. That doesn't fit the
20 time frame. Independent police statement, they were there
21 way before three o'clock. She's trying to protect her son.
22 She knows about the law. She has a record, and I'm not
23 trying to embarrass the lady. She's had a couple of drug
24 convictions, fraudulent check, this type of thing. She
25 knows how the system works.

1 If we get to the time frame -- also if you watch
2 people on the stand. When Shaun Edwards came out and
3 testified, looking back at kind of where we're sitting at, I
4 was -- he winked at her a couple of times.

5 Also that's the first time she had ever given a
6 statement in front of anybody. You heard -- we have alluded
7 to prior sworn testimony. Some of these people have given
8 prior sworn testimony in this matter. She had never given
9 that until she testified the other day.

10 Now, Albert Kelly said he was with those guys. He
11 had gone to get a haircut. Shaun Edwards cut hair that day
12 and made money and he needed a haircut, but they hung out.
13 He heard him talking on the phone, saw some guns, saw the
14 .380, the .22, and a rifle that he was playing with, but we
15 know those weapons were all involved.

16 Another thing to keep in mind. When this was over
17 with, all those weapons were found at Shaun Edwards
18 apartment.

19 Now, Albert said he went home. And his mom, you
20 heard her testify that he came home around eleven, or so,
21 and they watched the news and they watched WGSS. And she
22 stayed up a while and Albert went to bed and she went to
23 bed. She got up later that morning around six and he was
24 gone. She remembered the TV show she watched. She admits
25 that she takes medication. And sometimes people on that

1 kind of medication, they fixate. They become obsessive and
2 compulsive. She remembers the next night under Mr. Moyer's
3 questions the shows she watched the next night. She is on a
4 schedule - a certain night I watch this, and this is time it
5 comes on and this is when I watch it, this is when I watched
6 this show. She testified to that.

7 That's up to you guys to decide, but who do you
8 believe in this case? You have got Ms. Edwards testifying
9 whether Shaun was home; and you have got Joyce Gordon,
10 Albert's mother, saying he was home with me. You have got
11 conflicting testimony. That's y'all's job. I can't tell
12 you what to do it. It's who you believe.

13 We get to the point that some forensics evidence.
14 The testimony was that it had been snowing. We know that
15 because one of the officers even went by the fire department
16 to get a tarp to help cover the scene. There is a blue tarp
17 out there, as y'all recall.

18 Also, if you remember, the bullet casing was not
19 found that night. They had the lights out there and
20 everything. It had been snowed on. The bullet was found
21 next morning by Officer Hendricks when the snow had started
22 melting, but it's fresh snow. So what did they do? When
23 they get out they start the investigation, Officer Justice
24 gets there and Lopez says "they ran this way." Fresh snow.
25 They follow the tracks. It's amazing what only snow we have

1 had in years and they follow the tracks around this
2 abandoned building, old bar or something, I think he said.
3 They went around here, went up to the [REDACTED] and led to
4 Leon Irby's. They went up and knocked on Leon Irby's door
5 and Leon came to his door. They said "we are following
6 tracks in the snow from over here. Has anybody been by?"
7 He said two people came by and invited in. Shaun Edwards
8 and Marcus Parks come by. Now, he couldn't remember when
9 they had come by. It was prior to the police, of course.
10 And Shaun and Marcus admitted they had gone there earlier
11 that night and got two drinks. I think Leon said they were
12 in plastic cups, Brandy and Coke. One of them said they
13 stayed about five minutes. The other one said they stayed
14 about fifteen or twenty and drank these drinks and left with
15 the cups.

16 So we know that two tracks from the scene to Leon
17 Irby's. And we know that Shaun Edwards and Marcus Parks had
18 been to that apartment. We don't know exactly what time,
19 whether it was after the shooting, before the shooting, but
20 in that time frame.

21 And Mr. Irby said "and you can follow the tracks.
22 They go over to [REDACTED]" Officer Justice follows the tracks
23 from the murder scene to [REDACTED] from Leon Irby's, from
24 Irby's to Edwards apartment [REDACTED] went to the rear, went
25 around to the front, knocked on the door and Shaun Edwards

1 was there. Justice identified himself as a police officer
2 and asked him could he come in, is anybody there? Ms.
3 Edwards and Shaun.

4 Shaun was acting funny. He started kind of
5 trotting down the hall and he followed him. He had a .22
6 under the bed. He was trying to cover it up. He knows
7 something is going on. He was trying to hide the gun.

8 They would have you believe from Marcus' testimony
9 that he and Albert went back and never told Shaun what had
10 happened, kept quiet about it, that Marcus had given Shaun
11 the .22 and he went back and put it in his room and then
12 Albert hid the gun underneath the sofa. So then why would
13 Shaun when the police show up trying to hide this .22,
14 unless he knew something was going on at this point that he
15 might get involved in this robbery?

16 When Officer Justice sees this, he secures the
17 scene, calls for backup and they get warrants for that gun.
18 In the meantime Marcus comes. He's not there at the time.
19 This is about by then about two or three in the morning,
20 2:30 or three. Marcus comes up and they are in the midst of
21 their investigation and they take them away and in the
22 process they give statements. We know those are facts. You
23 have got the footprints. We have got a hidden weapon -- two
24 weapons. We have one trying to be hidden from the police.

25 In the meantime, Albert Kelly testified that he

1 was planning to go to Georgia. He had gotten up early that
2 morning and a friend and he was going to go to Georgia. He
3 was not there, so he said that -- this again, your memory,
4 he said "I called a cab." I remember this, as Mr. Moyer
5 said, "you called the Yellow Cab?" And he said "I called a
6 cab." I don't remember. I could be wrong. I don't
7 remember Albert Kelly specifically testifying what type of
8 cab he called. It doesn't matter in a way. It's just we
9 are picking at stuff here. He ends at Donna Wentz's house.
10 He's not a welcomed guest, but he's there. He stays all day
11 and about six o'clock they leave. Donna and Albert leave.
12 She says she took him to Greenville to the bus station and
13 dropped him off and then went to have a -- to meet a guy, a
14 married man, for an affair in Spartanburg. She didn't get
15 home until real late. Albert said she took him to Atlanta
16 and dropped him off and came home. There is time for either
17 one of those things to happen, but it doesn't matter. She
18 left and took him somewhere. Who knows where.

19 Albert ends up in Atlanta. On May 10th he
20 encounters Officer Hunter of the DeKalb Police Department.
21 And Officer Hunter said he was in a high crime area, acting
22 suspiciously. Albert says he was trying to go -- his
23 stepmother just moved and he was trying to get directions.
24 He was confused. But either way, Officer Hunter pulls up
25 and blocks them in. And Albert is in a car that he uses --

1 the guy told him to use this phony ID, instead of getting
2 the real paperwork to him, so he has this ID. They find the
3 pistol under the seat, passenger's seat, a .380. And Albert
4 says "that's mine." At that point the two guys were cuffed.
5 Another officer is there by this time. They were cuffed and
6 put in the car. Officer Hunter comes back and says "this
7 name is not good enough. Something is funny."

8 Now, this is where it's going to get tricky.
9 Officer Hunter says that he had not given him any Miranda
10 Warnings, cuffed him, locked up -- you know, handcuffed him.
11 He's under arrest. No Miranda Warnings. And he says Albert
12 blurts out "let me come clean. My name is Albert Sentenio
13 Kelly. I'm wanted for murder in South Carolina, in Greer,
14 because I shot a man in the back of the head. I have been
15 on the run ever since." We have no audio, video or written
16 statement of these facts presented, Officer Hunter said.

17 Albert says -- again, it's going to be
18 believability. I told him that "I'm Albert Kelly. I'm
19 wanted in Greenville, South Carolina, because they say I
20 shot a man." A key word there. He is saying "that they say
21 I shot a man." Hunter doesn't hear that part.

22 Now, I asked Officer Hunter "didn't it surprise
23 you? Did you say what did you say?" I mean, if I'm out
24 there and somebody blurts out to me I'm wanted for murder, I
25 would say "what did you say?" I have got a partner within

1 ten feet, I would say "Joe, come here a minute. Tell him.
2 Tell us what you just said." Nothing. That's just a pretty
3 strong statement. Nothing in writing. He didn't say "well,
4 how about writing it down for me?"

5 "That's not my job. That's the detective's job."

6 He takes Albert back to the DeKalb Police
7 Department and turns him over to the detectives. Do they
8 get a statement? Here is a guy obviously willing to
9 confess, if you believe Officer Hunter. Do we have a
10 statement? Do we have anything from DeKalb County except
11 Officer Hunter's recollection of that night a year and a
12 half ago as to what he heard. And then we have what Mr.
13 Kelly says he said, "I said I was wanted for murder because
14 they say I shot a man." Hunter said "I didn't hear that
15 part." He could have gotten his partner over here at the
16 scene and had two people as backup to what was actually
17 said. That statement by Mr. Kelly, whether or not that you
18 believe Officer Hunter or Kelly, that's up to you guys.
19 That's a question of fact. You are the judges of the facts.

20 Later in the day Officer Denton and Officer
21 Arterburn come down from Greenville and interviewed Albert
22 Kelly and Albert gives -- they have the Miranda Warnings
23 signed and everything and Albert gives a statement. He says
24 well, obviously they told him what to say. Well, that
25 doesn't make sense, but these guys are trained. The police

1 department in this case did a great job collecting evidence
2 and this type of thing. They are trained in their
3 profession. Confessions aren't always reliable. Do you
4 remember the five kids in Central Park? All five kids
5 confessed. It turned out none of them were involved in it.
6 Five confessions.

7 Now, let's take the confession and what's on the
8 ground. First of all, if you read this -- you will have it
9 in the jury room. He couldn't walk. He said "I finished
10 drinking a fifth of gin, a half pint of Crown Royal, and
11 another two cups of liquor from Leon's house."

12 Now, what's significant about the liquor from
13 Leon's house? They knew that the perpetrators had gone by
14 Leon's. The police knew this. They had to get Albert
15 somehow involved with Leon. Leon said he never saw Albert,
16 he only saw Shaun and Marcus. Did they take their cups back
17 with them? You think they could just drink them. Was there
18 anything left for Albert to drink? They had the drinks at
19 Leon's. That's the first thing they did do.

20 Then in here it talks about that Marcus took the
21 man's wallet and stuffed it down a drain with a broom. I
22 asked Marcus Parks on the stand, "Marcus, did you take the
23 wallet and stuff it down a drain with a broom?"

24 "No. Albert had the man down," and according to
25 Marcus, "we didn't take anything. We ran. Got out of

1 there." So that doesn't make sense. Trying to get a
2 robbery tacked on here.

3 Another thing in this confession. It says that
4 they ran from the scene to his house. Now, we -- this would
5 be from here over to here. This is what this statement
6 says, but we know that didn't happen. It doesn't jive on
7 with what's on the ground. We know that they went from here
8 to around here. So you have got this statement. If you
9 remember the case and what happened, it doesn't jive with
10 the facts that are on the ground.

11 And, again, confessions aren't always reliable.
12 These guys are professionals. They are very good at what
13 they do, but there are things in here that do not match.
14 For example, Shaun Edwards said he never saw the .380. They
15 made a point that Marcus was trying to nod to him about it,
16 kind of warn him that a gun was under that sofa. Well, in
17 his statement Albert said "I asked Shaun to hold the gun for
18 me. He did hold it, but told me to wrap it a black and
19 white Nike hat and put it under the sofa. I unloaded it and
20 said you are going to have to do it." Shaun said "I had no
21 idea the gun was anywhere in my house, a .380 in my house,
22 after Albert left. His statement says that he actually held
23 it and told him where to put it. There is three, four
24 things in here that don't jive with what we know happened.

25 So you have got two statements and that's --

1 again, you judge it. If you look at this statement and
2 remember what's on the ground doesn't match up. No wallet
3 stuffed down the pipe. Didn't go to Albert's house. They
4 went around to Leon Irby's house. Shaun said he never saw
5 the gun, never held it. The statement said he handed it to
6 him, he did hold it. Gave it back and said wrap it up and
7 put it under here. So things in here that do not add up to
8 what we know to be fact.

9 Now, let's get to some real facts. We know there
10 were two people there. We know there was one shooter.
11 Marcus Parks said he was there. He had the .22 and he did
12 not do the shooting. Mr. Moyer asked Ms. Simmons yesterday
13 on the stand on the Hilfiger jacket, the one that Marcus had
14 on, "did you find gunshot residue?"

15 "Found it on the sleeve of Hilfiger jacket." So
16 that even puts Marcus -- he says he was there. It puts him
17 there.

18 And Marcus and Shaun's testimony, they said that
19 Albert borrowed his red and blue Braves jacket to wear.
20 Okay. But we know from Ms. Simmons that she tested that
21 jacket for gunshot residue; inconclusive. We know that
22 gunshot residue was spread out. We know it's spread out
23 enough to get on the Hilfiger jacket. Marcus was within two
24 or three feet of the shot. It's on his jacket. It's got to
25 be on the Braves jacket, if Albert has it on at the scene.

1 Got to. There is no -- there's no particles on any of it.
2 "It's inconclusive. I can't say that this jacket was around
3 the gunshot."

4 We get the hands. There is no gunshot residue on
5 Marcus Parks hands. The only person who has gunshot residue
6 on their hands is Shaun Edwards. Sean Collins, from the
7 Greenville County lab, testified on the stand yesterday.
8 He's a qualified expert. He ran the test and he found
9 residue on the back of his left palm -- left hand and on his
10 right palm.

11 Also we know that two days before this robbery
12 Shaun Edwards went to Wal-Mart and bought ammunition for a
13 .380. He says "I was thinking about buying a .380, so I
14 went and bought ammunition for something that I might buy."
15 Does that make sense? You got to look at the gun. You pick
16 out the gun first and you buy the ammunition that will fit
17 it. We know whose .380 that was. We know all the weapons
18 were found in the Edwards apartment. We know the ammunition
19 was found in the apartment. We know Edwards bought the
20 ammunition for that gun. We know he had gunshot residue.

21 Now, the State is going to talk about this residue
22 could come from all over the place, anywhere. It's almost
23 like it's snowing residue. He could have gotten anywhere.
24 Well, Marcus doesn't have any on him. The Braves jacket
25 doesn't have anything on it. Shaun Edwards has gunshot

1 residue on his hands. He bought bullets for that gun. The
2 gun was found under his sofa.

3 Here is where the mistake was made in this case.
4 The police did a super job until they got to this point.
5 They made the case too quick. They made the charges that
6 day based on Shaun and Marcus. They didn't wait for the
7 evidence. Had they waited for the evidence, they would have
8 seen, hey, this doesn't jive. Shaun Edwards has the gunshot
9 residue. Shaun Edwards bought the bullets. Yeah, the gun
10 was found in Shaun Edwards house. I think we got a
11 situation here, guys, where Marcus Parks and Shaun went down
12 there. Shaun Edwards shot the guy, and they are trying to
13 put it off on Albert. Albert may have known something about
14 it. Albert could have thought about it. Albert may have
15 been charged, should have been charged maybe as an
16 accessory, but he's not. He's charged as the shooter. And
17 in most cases the reason why these two punks would do that,
18 the shooter gets the worst deal.

19 Had they waited and not made the charges that
20 afternoon of the 27th, waited until they got this evidence
21 back, they could have charged them all with conspiracy.
22 They could have made the charge, and then nailed them down
23 to specifics, but they will roll in this case. They did a
24 great job. They elicited a confession, which may or not be
25 true. I don't think. You look at it. Don't go by what I

1 think. Look at to what's on the ground. It doesn't match.
2 They got that out of him. But the physical things involving
3 the tracks from the scene, they go to Irby's to Edwards
4 apartment. All the weapons are found in Edwards apartment.
5 He tried to hide the .22. He's got gunshot residue. The
6 red and blue Braves jacket that he allegedly wore, none. He
7 wasn't there. He was with him earlier. He went home.
8 These two guys went down. A struggle ensued and Shaun
9 Edwards shot Mr. Delgado. That's the forensics. That's
10 undisputable. You can hear all the different stories on the
11 stand up here. And Albert did not make a good witness, but
12 a poor witness does not make a guilty defendant. He's
13 scared. He's nervous. He's not a professional witness.

14 So keeping all that in mind, think about what
15 physically is on the ground and the forensic evidence in
16 this case, you can find that Albert did not shoot this man.
17 He wasn't there. He may be guilty of something, but they
18 haven't charged him with that. They have charged him with
19 robbery, murder, and use of a weapon. Those are the three
20 charges. Either guilty or not guilty of those charges.
21 There is no in between.

22 If you look at the forensics, look at the
23 testimony, look at the experts, and look at what's on the
24 ground the police followed that night, find him not guilty.
25 Thank you.

1 THE COURT: Mr. Moyer.

2 MR. MOYER: May it please the court.

3 When the DeKalb County police officers pulled the
4 defendant, Albert Kelly, over about 3:30 in the morning on
5 May the 10th of 2004, this defendant told that officer,
6 after he had been caught giving a fake name, "I'm going to
7 be honest with you. My name is Albert Sentenio Kelly and
8 I'm wanted out of Greer, South Carolina for murder because I
9 shot a man in the back of the head and I have been running
10 ever since." And that, ladies and gentlemen, is what this
11 case is about. It is about a man who has been running since
12 February the 27th of 2004. He's been running from a crime
13 scene. He's been running from the body of Ignacio Delgado
14 lying in the snow in front of his friend's trailer with a
15 bullet lodged in his spine. He's been running from Drummond
16 Village. He ran to his ex-girlfriend's house. He ran to
17 Atlanta, where he had fake ID's, a pistol, a truck with a
18 fake -- with a stolen South Carolina license plate on it,
19 and he's still running today. He's running from his
20 statement. He's running from the evidence.

21 I'm going to take just a few moments right now,
22 ladies and gentlemen, to just go back over that evidence
23 with you and argue to you that today that running stops,
24 that today his running should end, and you, ladies and
25 gentlemen, should find him guilty, as he's been charged.

1 Now, in a few minutes you are going to be back in
2 that jury room and you are going to start discussing this
3 case. And I would suggest to you that you start, not with
4 the confession, not with the two confessions, that you start
5 not with the two men who were the co-defendants, who stood
6 up in front of you and told you about this defendant's
7 guilty. I would suggest that you start on February the 27th
8 of 2004, at about six o'clock in the morning, when this
9 defendant stood at the home of the door of his
10 ex-girlfriend's house and her roommate, who told this
11 defendant that he should not come to that residence. And he
12 stood there wet from the knees down. He stood there without
13 any luggage. He stood there without any extra clothing. He
14 stood there without any toiletries, at least a toiletry bag.
15 He stood there without any plans. He stood there without
16 telling anyone where he was going. He stood there after
17 running five miles through the snow from this crime scene,
18 without telling anyone that he was even coming there. Why
19 is that, ladies and gentlemen? Why do you run from your
20 residence at 4:30 in the morning in the one of the worst
21 snowstorms that we have had? Why do you run, ladies and
22 gentlemen? You run because you are guilty. You run because
23 you are running away from something. The defendant tried to
24 tell you that he had plans that day to go to Atlanta, and we
25 are going to get to that in a minute. Is that true, or was

1 he running -- was he running from the murder?

2 The defendant tried to offer you several
3 explanations as to why to shift your attention away from his
4 confessions and away from the evidence and try to push the
5 blame very conveniently to this person named Shaundrecus
6 Edwards. And it basically boils down to three points. He
7 tried to tell you -- he gave you an alternative version of
8 what happened. And in addition to that, he brought up some
9 lab testing, that Mr. Sullivan spent a good bit of time
10 talking about. And then finally he brought in an alibi
11 witness. Let me go over those three points very briefly in
12 reverse order.

13 Let's start the alibi witness. I want to say just
14 a couple of words about that; Joyce Gordon, who stood before
15 you. And my comment about that, ladies and gentlemen, that
16 anyone who is desperate enough to kill somebody and is
17 desperate enough to run away and to live in another city and
18 another state for two and a half months is desperate enough
19 to try to get somebody to say what he wants that person to
20 say for them.

21 Also I want you to think back, ladies and
22 gentlemen, to the testimony. You have the right -- you have
23 the responsibility to judge people on the demeanor on the
24 stand, as to their demeanor on the stand. Think about how
25 she testified. Most people when they give testimony it is a

1 question and answer; ask a question, get a brief answer, ask
2 a question, get a brief answer. Do you remember her
3 testimony? There was one question. One question and she
4 was off and running. You, ladies and gentlemen, are the
5 judge of the credibility of the witnesses, and you have to
6 ask yourself does that sound like it was a rehearsed
7 comment? Why didn't she say anything for all those months
8 while her son was on the run and she knew he was being
9 charged with murder? Was it something that this defendant
10 after he was arrested told her to say? You have to make
11 that -- you have to make that choice, ladies and gentlemen.

12 Let me take just a minute to talk about gunshot
13 residue. At the beginning of this case His Honor talked to
14 you, gave you some preliminary instructions about what to
15 expect in the trial. And one thing he said that I remember
16 is that he said, ladies and gentlemen, you are going to
17 realize that this isn't like TV and it's not like the
18 movies. Do you remember when the judge said that? And it's
19 not. You found out it's not, because it's a whole lot more
20 boring. I noticed there were certain times where some of
21 you were having a little trouble keeping your eyes awake
22 when some of the more tedious parts of the case. If this
23 were TV or movies I would be handsome, I would be a whole
24 lot more eloquent, and there would be -- there would be some
25 CSI-type scientific evidence that would come in this case

1 would be over. That's not what it's like in reality. As I
2 told you, most cases, the evidence comes to you through the
3 testimony of witnesses. I told you that's the way this case
4 would be, and I stand by that. The testimony comes from
5 witnesses.

6 What about scientific evidence? It's not going to
7 solve this case. We put up the agent from SLED, Vello
8 Paavel. We talked about the murder weapon. He's able to
9 say that was the weapon that shot -- that was used to kill
10 Ignacio Delgado. It doesn't tell you who used it. He told
11 you it's some evidence of the crime and some helpful
12 evidence to you, but it doesn't solve the case.

13 We could have fingerprints and DNA all over Shaun
14 Edwards house. It wouldn't tell us anything. Why? Because
15 the defendant used his brain. He's going to be over there.
16 He's going to be touching this or that. That's not going to
17 help you.

18 What about this gunshot residue test? We found
19 out from that that it is -- it is a useful piece of
20 information in certain circumstances, but it has its
21 limitations. And let me take just a few moments to show
22 you, ladies and gentlemen, why that gunshot residue test
23 actually contradicts the defendant's story more than it
24 helps him. Why is that? We learned, ladies and gentlemen,
25 first of all, that Marcus Parks, who was with the killer,

1 the shooter when the murder took place, had some gunshot
2 residue on his jacket. Why is that? Because he was -- he
3 was close to him when he shot. But what did he not have?
4 He did not have any gunshot residue on his hands. Why is
5 that? You would think that if the gunshot residue is the
6 depositing on his jacket, wouldn't it be depositing on his
7 hands as well? Well, how much time had gone by? We know
8 for skin that gunshot residue becomes -- it is very
9 unstable. It becomes less and less likely over time that
10 the gunshot residue was still going to be there. In fact,
11 if this had been another hour, they wouldn't even have
12 tested that. They wouldn't even have tested him. So it's
13 gone from his hands, but it's not gone from his jacket.
14 What does that tell us? That tells us that the gunshot
15 residue had dissipated. If it dissipated from his hands,
16 would it not dissipate from the hands of the shooter as
17 well?

18 Think about this. It was inconclusive on the
19 jacket, on the Braves jacket. Well, what does that tell us?
20 We know this gunshot residue can is -- again, it's unstable.
21 One witness talked about it being like table salt. It will
22 rub off. And think about the shooter is on top of Ignacio
23 Delgado. He is rifling through his clothes looking for a
24 wallet. The gunshot residue is going to be wiped off, and
25 it mostly was, because it was inconclusive.

1 Now, what do we know about Shaundrecus Edwards?
2 He had gunshot residue on his hand. Well, how did he have
3 gunshot residue on his hand? Think about that for just a
4 minute. And let's think about where it was. It was on the
5 palm of his right hand. The palm of his right hand.

6 What do we know about how Ignacio Delgado was
7 killed? He was shot by somebody shooting with his right
8 hand. And I'll tell you why we know that. First of all, we
9 know Shaundrecus Edwards is right-handed. If he was the
10 shooter, he would be using his right hand. You would not
11 expect there to be gunshot residue -- it would be much much
12 more likely for it to be on his palm because that's what's
13 gripped around the pistol. It would be more likely for it
14 to be on the back of the hand.

15 Now, when Ignacio Delgado was killed, let's think
16 about where that bullet traveled. That bullet traveled
17 through the back of his jacket, through his jacket again,
18 caught a little bit of his collar and went into his face.
19 What does that tell us about what was going on? And the
20 bullet went across his body and lodged in the spine over
21 here. We know from Marcus Parks testimony that Albert Kelly
22 was on top of him on the ground. He was holding him down.
23 He's rifling through. He had just thrown him to the ground.
24 That jacket was up. His face was turned sidewise on the
25 ground like this and the jacket is up like this. So the

1 bullet is coming from right to left through his coat and
2 going into his face. There is gunshot residue right there,
3 so we know it was close. The shooter had to be on top of
4 him like this, right hand, shooting him. It would be on the
5 back of his hand.

6 So where did that gunshot residue come from? We
7 know again that the gunshot residue transfers. Gunshot
8 residue on someone or something doesn't tell us that the
9 person necessarily shot a gun. It tells us that they came
10 in contact with something from which gunshot residue had
11 been deposited. It can transfer. We know that Shaundrecus
12 Edwards was playing with that rifle all that night. Do you
13 remember how he was trying to -- he was trying to put a clip
14 in it. He was probably planning to use that thing to go out
15 and rob with them when they -- when the three of them were
16 planning to go out and do the robbery. He couldn't get that
17 clip in there. He testified, too, that when the police came
18 by his house, which the evidence will show would have been
19 about 3:30 in the morning, he was at that time still trying
20 to put that clip in the gun. He was playing with the gun.
21 He had gunshot residue on the gun from that rifle. The
22 agent testified that an inanimate object, that gunshot
23 residue can just last for long periods of time.

24 It makes sense, and it has to make sense because
25 of this reason, too, ladies and gentlemen, we know that

1 Shaundrecus Edwards was not at that -- was -- had not left
2 his residence. We have some phone records in this case,
3 ladies and gentlemen, that tell a story. Shaundrecus
4 Edwards testified that he's on the phone for most of that
5 night. And these phone records -- these phone records show
6 that. You have the actual phone records that you will take
7 back with you to the jury room. Here is a blowup of that --
8 of the applicable times on that date. He is on the phone.
9 You can go down through here and look. He's on the phone
10 about every 15, 20 minutes for most of that night. He
11 talked about Tamika Thompson, this girlfriend, this girl he
12 was seeing, 442-0367. He was speaking to her on the phone
13 at 1:02 in the morning. That's when the murder took place.
14 You can see he is speaking to her at different times
15 throughout the night. He was there. There are phone calls
16 at 12:39, a phone call at 12:43, a phone call at 1:02. He
17 hadn't left. He was in the house.

18 The phone records also tell us more about this
19 story. They tell us what time the police officers showed up
20 at Shaundrecus' house. If you remember, because of the time
21 that has gone by and because probably people didn't take
22 really good notes a lot. And, of course, the lay witnesses
23 had no reason for them to remember these times so well.
24 Most people who got on this stand said, oh, it was about
25 this time; so and so was at my house about this long a

1 period of time. It's hard to remember and it's been a long
2 time, but we can go back and reconstruct, because we know
3 Leon Irby, whose phone number is 848-1086, we know he
4 called. He called Shaundrecus Edwards house at 3:29 in the
5 morning and had the very brief conversation where he said
6 "the police were just here at my house. Something has gone
7 on. Someone has been killed. What's going on?" And then
8 the police go from his house to Shaundrecus' house, where
9 they find the gun, 3:30 in the morning.

10 We know when Shaundrecus' mother came home that
11 she called Leon Irby, her friend, and they had a long
12 conversation; 27 minutes. That's at 1:03 in the morning.
13 And she said they started talking and that's when Leon Irby
14 told her "oh, by the way, Shaundrecus had come by earlier.
15 He acted like he was kind of drunk and gave him some
16 liquor." That shows us, ladies and gentlemen, that that
17 visit to Leon Irby's house, that the defense has told you
18 was so critical, was much earlier in the night. The murder
19 takes place at 1:02. At 1:05 Leon Irby -- Leon Irby is
20 telling Shaundrecus' mother that Shaundrecus had been there
21 earlier in the day. He's on the phone the whole time. He's
22 not entertaining the two people who had just killed
23 somebody. If for some God knows reason why people would
24 commit a murder and then go to a neighbor's house for a
25 couple of drinks and just sit around chatting, that's not

1 what happened. When they committed the murder, they ran
2 right back to Shaundrecus' house. As Ms. Edwards said, when
3 they got there, she was still on the phone.

4 We can reconstruct a little bit more. We know
5 that there is a time frame right in here of about 30
6 minutes, about 11:30, of about a half hour where Shaundrecus
7 was not on the phone. I would submit to you, ladies and
8 gentlemen, that makes sense that that's when he went over to
9 his neighbor's and had the hamburger, around that time. He
10 said -- Shaundrecus' mom said she got home around midnight.
11 That would coincide with that. So that kind of took me away
12 from gunshot residue, but Shaundrecus Edwards could not have
13 been there. He was at his house.

14 The defendant then finally wants you to believe
15 this alternative version of what he said happened that
16 night. Now, let's just take a minute and dwell on that,
17 because what he said is not something to be glossed over.
18 It is shocking, shocking allegation. What he is saying is
19 that officers framed him. He is saying that this officer
20 right here, Dale Arterburn, and Steve Denton framed him.
21 Two officers, one with 22 years of experience, one with nine
22 and a half years of experience, risks their jobs, risks
23 their pensions, committed perjury to set up him. Not only
24 that, that they did it in conjunction somehow with these
25 officers in Georgia. Not only that, but they did it in

1 conjunction with two guys who were already -- who are now
2 serving time in jail, two co-defendants. It would have been
3 the grandest conspiracy. I don't even think Hollywood could
4 make up this story. Think about that. Why would these
5 officers do that? An officer who was that unscrupulous that
6 he's going to frame somebody? You know what, ladies and
7 gentlemen? This case would have been over at six o'clock in
8 the morning on February the 27th. Over. They would have
9 been heroes for solving a crime. You know why? Because
10 just like the defense is trying to tell you, you have got
11 two murderers fleeing the crime scene; you have got a house
12 with two people in it; you have got two guns. Let's just
13 stop it right there. Let's frame this guy. Let's frame
14 Shaundrecus Edwards. That's what an unscrupulous officer
15 would do. That's not what they did. It's not what these
16 officers did. They followed the evidence. They followed
17 the testimony. They followed what made sense. And thank
18 goodness they did because it led to this defendant.

19 What about the defendants? Are they part of
20 this -- I'm sorry, the co-defendants, are they part of this
21 conspiracy? Is Shaundrecus Edwards and Marcus Parks part of
22 this conspiracy? Why would they frame this defendant?
23 Let's think about that for a minute. Well, you say
24 Shaundrecus Edwards was what? Because he's trying to save
25 his own skin.

1 What about Marcus Parks? Marcus Parks was taken
2 back to the law enforcement center without ever having a
3 chance to talk to Shaundrecus Edwards to concoct this story.
4 And what did he say? When he got back there, he confessed.
5 He confessed that morning. Ladies and gentlemen, he did the
6 hard part. He put -- he made himself guilty of murder. He
7 is serving 35 years right now because of what he said that
8 morning. The hand of one -- like I told you earlier, the
9 hand of one is the hand of all. He was there to commit a
10 robbery. He was there while that robbery took place, while
11 that murder took place. He made himself responsible. He
12 did the hard part. He implicated himself.

13 All right. So he does that. And now he's going
14 to say who the other person is with him. Why is he going to
15 lie? Why is he going to say, oh, it's this Albert Kelly
16 guy? How does he know he is not going to be caught in that
17 lie? Think about this. When you were young and you and
18 your brother or your sister got in trouble with your
19 parents, what's the first thing that they did? They
20 separate you, right? They are not quite sure what happened,
21 but something is missing. Something is -- some cookies, or
22 whatever, are gone. Something bad happened around the
23 house. Something got broken. You and your brother get
24 separated and your parents are talking to you. What do you
25 do? You are thinking, all right, my brother is in there,

1 he's probably going to tell the real story. I'm trying
2 to -- if I'm going to confess here, if I'm going to tell my
3 parents what happened, I don't want to get caught in another
4 lie. I don't know what my brothers and sister is going to
5 say.

6 Now, think about someone who was about to confess
7 to murder? Why is he going to tell the wrong person? Why
8 would he do that? There is no reason. There has been no
9 testimony that they -- that Marcus Parks disliked
10 Shaundrecus Edwards or Albert Kelly more than the other.
11 No. There is no reason.

12 Now, you must consider the defendant's testimony
13 as well. The defendant took the stand and he testified to
14 you. And I would submit to you, ladies and gentlemen, that
15 once he started talking -- you know how if you get caught in
16 a fib, you tell another fib to cover that up, and pretty
17 soon you are telling fib after fib after fib and you are
18 contradicting yourself. I would argue, ladies and
19 gentlemen, that's exactly what we have going on here. And I
20 jotted down a few of the things that this defendant told you
21 on the stand. You will probably remember others, but think
22 about the story that he told you. He told you -- he started
23 off, ladies and gentlemen, by saying that he was at
24 Shaun's -- went to Shaun's house for a haircut at about ten
25 o'clock at night. At ten o'clock at night for a haircut,

1 knowing that he was -- he had planned to leave town the next
2 morning at 4:30 in the morning. Why he's not getting a good
3 night's sleep, why he decides to get a haircut at ten
4 o'clock, who knows, but he does. That's what he tells you.

5 He tells you he's over there at Shaundrecus'
6 house. They get the guns out and so forth, and he goes home
7 at eleven o'clock and he wakes up his mother. He said
8 yesterday on the stand he wasn't sure if he woke her up or
9 she just woke up, but he admitted that in earlier sworn
10 testimony he said he woke her up. He says they get up --
11 she gets up about eleven o'clock. And what do they do? He
12 wakes her up because they want to talk, and they watched
13 television. They watched the news. They watched Seinfeld
14 and they watch their religious channel. But during this
15 time he does not tell her that he will be leaving at 4:30 in
16 the morning and that he will be leaving for an indefinite
17 time. He doesn't say good-bye to his mother. He doesn't
18 tell her where he's going, although he said that some
19 earlier time he was talking about possibly going to Atlanta.
20 However, on the other hand he tells you that he had made
21 definite plans to go to Atlanta because he had a job
22 interview. He doesn't tell his mother that.

23 So at about 4:30 in the morning he has to leave to
24 go to Atlanta with this job interview and apparently live,
25 and what does he do? He doesn't pack. There is no luggage.

1 Nothing even to change into. I assume he's going to go to
2 this job interview in his wet jeans.

3 He tells his friend, Shaun Edwards -- I'm sorry,
4 he calls his friend Shaun Edwards at 4:41 in the morning.
5 Shaun Edwards, the man in the house where he hid the gun.
6 Why does he call him at 4:41 in the morning? He told you,
7 ladies and gentlemen, he called Shaun Edwards at 4:41 in the
8 morning because he wanted to see about his haircut again.
9 Now, does that make sense?

10 I submit to you, ladies and gentlemen, that he
11 called Shaun Edwards at 4:41 for the same reason that Marcus
12 Parks went over to Shaun Edwards house at around that time,
13 because he knew that murder weapon was under the couch and
14 he knew Shaun Edwards didn't know where it was and he wanted
15 to tell Shaun Edwards about it; 4:41 in the morning. He
16 then leaves. He decides he's going to see a friend. This
17 friend's house, whose name he doesn't know. He just knows
18 it as a nickname. He had planned to meet him up, but the
19 man is not there. So what does he do at -- at whatever,
20 between 4:40 and five o'clock in the morning? The guy's
21 girlfriend apparently is willing to have a conversation with
22 him at that time. So he sits and chats with her for a
23 little while, and then he calls a cab. I thought he said it
24 was Yellow Cab. Y'all again have to remember, but I thought
25 I asked him "you saying Yellow Cab," and I thought he said

1 yes. You heard the man from the Yellow Cab saying, uh-uh,
2 because of -- because of liability reasons we are not even
3 going to be out on the road. You know, we will work for the
4 hospital, if they need us, but we are not going to be
5 driving people around.

6 So what does he do then? He goes over to his
7 ex-girlfriend's house, whom he had not even told he was
8 coming. Didn't even give her warning. He shows up at her
9 house at six o'clock. Why is that? What happened to this
10 job interview? Why doesn't he wait around there for his
11 friend? Why doesn't he try to call his friend? Why is it
12 so important that he leaves at 4:40 in the morning, one of
13 the snowiest days? You know, what happened? So he goes to
14 her house. He waits around all day. He doesn't say
15 anything to her. Why isn't he asking her to drive him? Why
16 doesn't he get a bus? Why doesn't he get a train? Why
17 doesn't he get to Atlanta some other way? No, he stays at
18 her house all day.

19 He then goes to Atlanta; again, without telling
20 anybody; without telling anybody where he's going; without
21 calling his mom to say good-bye; without calling his mom to
22 say he arrived safely on this snowy day. He says he works
23 in Atlanta, Georgia for Nokia, a multi-billion dollar
24 international conglomerate that's paying him under the
25 table. He can't tell you where this location is. He can't

1 even tell you the road of the business where he worked on,
2 but, nonetheless, he worked there for several months.

3 Then he told you about the night he was arrested.
4 And what is his story about the night he was arrested? He
5 said that he worked that day, but he was concerned about
6 sleeping, so he took sleeping pills. When did he take
7 sleeping pills? In the middle of the day, so he could go to
8 sleep later that night, and he is still up at 3:30 in the
9 morning. What sense does that make?

10 He says he drank one beer. And then he says he
11 was so intoxicated that eleven hours later when he's talking
12 to the police he's still intoxicated.

13 He says he's so tired that he he's -- and he's so
14 concerned about getting sleep, but yet he's still out and
15 about at 3:30 in the morning. Where is he going? Why is he
16 up at 3:30 in the morning?

17 He said the reason he was at that pay phone is
18 that he was calling his stepmother to find out where she is
19 living now. This is the woman he's living with. He says
20 he's at that pay phone because he needs to call her to find
21 out why all of the sudden that day she moves, and he's
22 confident she moved all his clothing. Then he needs to find
23 out where she is. 3:30 in the morning he calls his
24 stepmother. Does that make sense? Why not just spend the
25 rest of the night with your friend? He has a job, right?

1 He talks about all the money that he saves. Why not get a
2 hotel. You know, call your mother at 3:30 in the morning?
3 And then why doesn't he call? He never made the phone call.
4 According to the officer, he never even got to the phone.
5 According to Officer Hunter from Atlanta who testified, he
6 was staring at him as he was walking towards the phone. The
7 officer lost eye contact with him for about ten seconds, and
8 by that point he was heading back to the car. It's not
9 enough time to make a phone call. The defendant told you
10 the line was busy. 3:30 in the morning? Who is on the
11 phone at 3:30 in the morning? And let's say it was, why
12 isn't he going to wait until the line clears up? Where is
13 he going? Why is he going back to his car? He doesn't know
14 where the stepmother lives. Why is he doing that? It
15 doesn't make sense. He's fleeing. He's running, like he
16 has throughout this whole case.

17 He talked about this car that he had, this four
18 year old car that he had bought, he had paid \$200 for. That
19 didn't concern him. It didn't raise any suspicions, because
20 once he bought a brand new car for \$500. So he's not
21 concerned about the car, but yet he switches drivers with
22 his friend because his friend didn't have a license. But
23 what about Albert Kelly? Albert Kelly says he had a permit.
24 However, he's not allowed to show the permit because he
25 has -- because this person who sold him the car to for \$200

1 says he has to use the fake ID's. So what good is the
2 permit?

3 He says he decides to take the rap for this pistol
4 because his friend was on probation. Yet he's wanted for
5 murder. And so he's beginning to risk getting himself in
6 trouble and save his friend because he's wanted for murder.
7 When I asked him about that, he says oh, no, I just said
8 "all I knew is that they wanted to talk to me about a
9 murder." Okay. But then again he says "well, what I told
10 the officer is that they say I killed somebody." Which is
11 it? Did he know that people were saying he killed somebody,
12 or did he think that they just wanted to talk to him? It
13 depends which time you asked the question because his story
14 changed.

15 Then he told us about the confessions. He says he
16 confessed because he received this threat. Remember the
17 threat? A threat comes into his neighbor. His neighbor is
18 the guy who he knew for about two and a half months. He
19 refused to tell us the name of the neighbor because the
20 neighbor was, I forget, wanted or something. So this
21 neighbor, whose name he won't tell us, who lives in Georgia,
22 whose never been to South Carolina, the unknown people in
23 South Carolina find out who this neighbor is somehow and
24 have an idea that he lives next to Albert Kelly; and that if
25 they give this threat to the neighbor, that the neighbor

1 will give the threat to Albert Kelly, and that Albert Kelly
2 will go give a fake confession and they will be off. If
3 these so-called people in South Carolina want to give a
4 threat and they know this neighbor lives next to Albert
5 Kelly, why don't they tell Albert Kelly? Once again, it
6 doesn't make sense, ladies and gentlemen.

7 And then -- all right. So the reason he gives
8 this fake confession is because of this threat. And the
9 threat is we are going to kill your mom and your grandfather
10 unless you say you did it and exonerate us. So he gives the
11 fake confession, but he doesn't do what he's supposed to do
12 to save his mom. He never exonerated them. In fact, in his
13 statement he made them more guilty than they were. So he
14 doesn't do that. And if he's so concerned about it, why do
15 days and weeks go by and he doesn't say a word? He doesn't
16 tell the police in Atlanta; doesn't tell the police in South
17 Carolina; doesn't tell the prosecutor; doesn't go back to
18 South Carolina to protect his mother and grandfather;
19 doesn't call them; doesn't even let them know. Is that
20 believable?

21 And then he says the reason he gave the false
22 confession is two-fold. First off, because of the threat.
23 And then he also weaves in that the officers made this
24 threat; the officers made the threat to him as well and then
25 told him what to write; the officers told him you need to

1 write what we tell you or you are going to stay in Georgia.
2 That's the threat.

3 Now, what is so bad about staying in Georgia? The
4 worst he's going to get in Georgia is he had a pistol and he
5 says it wasn't even his pistol. All right. Let's think
6 about this. He's staying in Georgia with the pistol charge,
7 but you go to South Carolina for the murder charge. Which
8 is worse?

9 I want you to ask yourselves, ladies and
10 gentlemen, what would it take to get you to confess in
11 writing to killing another human being? What would it take?
12 Maybe if someone were standing in front of you with a loaded
13 pistol to the head of a loved one. Other than that, what
14 would it take for you in your own writing to say you killed
15 another human being? You know why -- you know why you give
16 a confession? You give a confession because when you are
17 caught and you don't see any way out. And then when you do
18 it, what you do is you try to minimize your own culpability
19 as much as you can and you try to get those rats who ratted
20 you out in the first place. And if you go through the
21 statement, you can see exactly where he did that throughout
22 the whole thing.

23 I was actually -- I have been blown up statements
24 that I was going to go through with you, but I have been a
25 little longer than I thought. You can read it yourself, but

1 think about this. In that statement he starts off by
2 talking about all this alcohol he drank. Why? "Oh, it
3 wasn't me. I'm not the kind of person that would kill
4 somebody." It was alcohol. He didn't drink as much as
5 said. He drank. Toni Glenn talked to you about how she was
6 over there and everybody was drinking. There was some beer.
7 There was some liquor. Marcus Parks and Shaundrecus Edwards
8 told you they brought some liquor back from Leon's house.
9 The defendant says "I drank some liquors from Leon's." We
10 don't know if he went over to Leon's at some point that
11 night and got some liquor. Who knows, but he was drinking.
12 He wasn't drinking as much as he said. What is that? It's
13 an attempt to mitigate and lessen your own guilt. It's hard
14 to say that you committed a cold-blooded murder. There is
15 some other reason for it.

16 Then he says when he approached the victim, what
17 did he say? The said "the victim was fighting us. I felt
18 like my life was in danger. We fell to the ground." Not I
19 pushed him to the ground, "we fell to the ground. The gun
20 went off. I thought I shot him in the shoulder," which
21 makes sense. You know where the bullet hole was.

22 And then he talked about how he got less money out
23 of this than Marcus did. "There was 700 stolen. I only got
24 300. Marcus shoved the billfolder down the drain."

25 And that actually brings up an important point.

1 If these officers are telling him what to say, why in the
2 world would they put in something like that? Hadn't even
3 known something had been stolen by that point. Marcus Parks
4 testified he didn't know whether the defendant got money or
5 not. I contend to you, ladies and gentlemen, that he got
6 the wallet and he kept it all for himself and used it, and
7 when he ran to Atlanta.

8 And that brings up the other point. What he did
9 was he was going to take down the other ones with him. He's
10 going to make them a little more responsible. And Marcus
11 Parks, he says -- "Marcus Parks is the one who he said, oh,
12 he look like he got the money," talking about the victim,
13 "let's get him. Marcus Parks is the one who got a little
14 bit more of the cash out of the robbery. Marcus Parks is
15 the one who shoved the billfolder down the drain."

16 As far as Shaundrecus Edwards, he says, "oh,
17 Shaundrecus held the gun when I got back and told me to wrap
18 it in that black and white Nike hat," which by the way, once
19 again, how does he know what brand hat that is? Y'all can
20 look at it, wherever it is. Nike. How does the defendant
21 know that if he wasn't there, if he didn't commit this
22 murder? Why in the world would the officers have enough
23 foresight to think about something like that? That makes
24 absolutely no sense.

25 And then Donna Wentz. He says that she drove him

1 to Atlanta, when, in fact, she testified that she drive him
2 to Greenville and he took -- drove him near the bus station.
3 Again, let's make her responsible too. Those three rat on
4 me, I'm going to rat on them.

5 But it's not just that confession. It is the
6 confession he made to that first officer. And let me say
7 this, and I'm wrapping it up, ladies and gentlemen, but
8 those officers, those Atlanta officers, acted exactly
9 appropriately when they handled this call. There is a
10 common misconception out there that whenever officers arrest
11 somebody, they have to give Miranda Warnings, or that they
12 are supposed to, or that they should, or it's visible. And
13 I guess we get that from TV, because as soon as they put the
14 cuffs on them, they start reading them their rights. Not
15 true. Miranda Warnings are required and are appropriate
16 when in a situation like with this officer and Detective
17 Steve Denton did; when you questioning them; when you are
18 sitting down and we are going to do an interrogation about
19 this crime. In this case, for those Atlanta officers, they
20 had no idea about this murder. They were stopping him
21 because he was looking -- he looked suspicious and he was in
22 a suspicious area and he was acting suspiciously. So, like
23 dutiful officers in a very high crime area, they went to
24 find out what's going on, and they stopped there and things
25 started snowballing; more and more suspicious activity; fake

1 names; nervousness; sweating; gun under the seat. And then
2 what happens? The defendant is finally caught. He knows
3 he's going down. He knows he's -- because that gun is under
4 the seat, they are both going to jail and they are going to
5 find out who he is. He's been running for two and a half
6 months and he says "I'm going to be honest with you. My
7 name is Shaundrecus -- "Albert Sentenio Kelly, and I'm
8 wanted out of Greer, South Carolina for murder because I
9 shot someone in the back of the head and I have been running
10 ever since." That's not so hard of a statement to remember.
11 These guys are officers. They are trained to remember what
12 is said. When that was said, that bell went off in that
13 officer's head this is important, and he says he wrote that
14 down in his notebook. And then he transferred that direct
15 quote into his report in quotes. That is what that
16 defendant said to him, not "I was being accused of knowing
17 something about a man getting shot." That's a whole lot
18 different. The officer knows what he says and the officer
19 knew it. And, of course, he's not going to start taking
20 written statements and questioning him. That's not his job.
21 That is the job for the jurisdiction where this took place.
22 He knew nothing about this murder. An officer knows you
23 don't start messing up somebody else's case. He did exactly
24 what he should have, and he locked it down, but get him
25 into -- get him back to our police station and let's get

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1 hangs up the phone. The defendant calls his ex-girlfriend.
2 He wants to make sure she's there. He wants to -- he wants
3 to know his options are available for a place to run, and
4 that's what he did, and he's been running ever since. He
5 ran from the police. He ran from the murder, and he's now
6 attempting to run from his own confession.

7 I ask you, ladies and gentlemen, to hold him
8 responsible and to find him guilty.

9 THE COURT: Ladies and gentlemen, my instructions
10 will probably take about 20 minutes. I will be glad to give
11 you a break at this time, if you would like to have one, or
12 we will proceed on.

13 I'll ask you to go to your jury room. Don't
14 discuss the case at this time.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: We will take about a ten minute break.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: I understand that both attorneys have
21 had an opportunity to look over the verdict form, is that
22 correct?

23 MR. MOYER: Yes, sir.

24 MR. SULLIVAN: Yes, sir.

25 THE COURT: Are they satisfactory?

1 MR. SULLIVAN: Yes, sir, from the defense, Your
2 Honor.

3 THE COURT: Okay. Let's bring the jury in.

4 (The following takes place in the presence of the
5 jury panel)

6 (Whereupon, at 10:42 a.m., the Court instructed
7 the jury panel)

8 THE COURT: Mr. Foreman, ladies and gentlemen, it
9 now becomes my responsibility to give you instructions on
10 the law in this case.

11 As I have stated to you earlier, the indictments,
12 which are two indictments, and one with two counts, they
13 charge the defendant in this case with murder, in violation
14 of the South Carolina Code Section 16-3-10.

15 There is also a charge of armed robbery. Again,
16 the South Carolina Code Section 16-11-330.

17 And also charged against the defendant is
18 possession of a weapon during the commission of a violent
19 crime. That's in violation of the Section 16-23-490 of our
20 Code.

21 Let me remind you, ladies and gentlemen, that the
22 fact that the defendant has been arrested and has been
23 charged and indicted in these cases is not evidence in the
24 case and can't be considered by you as evidence of the guilt
25 in this case, nor does it create any presumption or

1 inference of guilt. These indictments are merely the
2 instruments by which the charges are made against the
3 defendant and the formal document by which the case is
4 brought to this court.

5 As I stated, there are multiple charges in this
6 case. Each indictment and charge is a separate and distinct
7 offense. You must decide each indictment and each charge
8 separately on the evidence and the law applicable to it,
9 uninfluenced by your decision as to the other charge in the
10 indictment. The defendant could be convicted or acquitted
11 on any or all of the offenses charged. You will be asked to
12 write separate verdict forms of either guilty or not guilty
13 on each of the charges.

14 The defendant has entered a plea of not guilty to
15 the indictments, and that plea puts the burden on the State
16 to prove his guilt beyond a reasonable doubt.

17 A person charged with committing a criminal
18 offense in South Carolina is never required to prove himself
19 innocent. I charge you that's an important rule of law,
20 that the defendant in a criminal trial, no matter how
21 serious the charges may be, will always be presumed innocent
22 the crime for which the indictment was issued, unless that
23 guilt has been proven by evidence satisfying you of that
24 guilt beyond a reasonable doubt.

25 This presumption of innocence doesn't end when you

1 begin your deliberations, but it accompanies the defendant
2 throughout the trial, until you reach a verdict of guilt,
3 based on evidence satisfying you of that guilt beyond a
4 reasonable doubt.

5 The presumption of innocence has been described as
6 a robe of righteousness placed about the shoulders of a
7 defendant, which remains on the shoulders of that defendant
8 until it's been stripped from him by evidence satisfying you
9 the defendant's guilt beyond a reasonable doubt.

10 Presumption of innocence, ladies and gentlemen, is
11 not a mere legal theory. It's not a legal phrase that's
12 used. It is a substantial right to which every defendant is
13 entitled, unless you, the jury, are satisfied by the
14 evidence of the defendant's guilt beyond a reasonable doubt.

15 Now, what is a reasonable doubt in the law? A
16 reasonable doubt is the kind of doubt that would cause a
17 reasonable person to hesitate to act. The State has the
18 burden of proving the defendant guilt beyond a reasonable
19 doubt.

20 Some of you may in the past have served as jurors
21 in civil cases where you were told it was only necessary to
22 prove a fact that was more likely true than not true, such
23 as by the greater weight or the preponderance of the
24 evidence. In criminal cases the State's proof must be more
25 powerful than that. It must be beyond a reasonable doubt.

1 Proof beyond a reasonable doubt is proof that leaves you
2 firmly convinced of the defendant's guilt.

3 Now, there are very few things in the world that
4 we know with absolute certainty, and in criminal cases the
5 law does not require proof that overcomes every possible
6 doubt.

7 If, based upon your consideration of the evidence,
8 you are firmly convinced of the defendant's guilt of the
9 crime charged, you must find the defendant guilty.

10 If, on the other hand, you think there is a real
11 possibility that the defendant is not guilty, you must give
12 the defendant the benefit of the doubt and find him not
13 guilty.

14 Now, ladies and gentlemen, I remind you that
15 during this trial you and I have had certain duties to
16 perform. As the trial judge it's been my responsibility to
17 preside over the trial of the case, and I have also had the
18 duty to rule on the admissibility of evidence offered during
19 the trial.

20 You are to consider only the competent evidence
21 before you. If there has been testimony ordered stricken
22 from the record during the trial, you must disregard that
23 testimony. You are to consider only the testimony which has
24 been presented from the witness stand, any exhibits that
25 have been made part of the record and any stipulation of

1 counsel.

2 I also have the duty to charge you the law
3 applicable to the case. As the presiding judge, I'm the
4 sole judge of the law in this case, and it's your duty as
5 jurors to follow and apply the law as I now state it to you.
6 If you already have an idea as to what the law is or what
7 the law ought to be and it doesn't agree with what I explain
8 to you now the law is, you must abandon that idea, because
9 you are sworn to accept the law and apply the law exactly as
10 I state it to you.

11 In every case tried in this court before a jury
12 the jury becomes the sole and exclusive judge of the facts
13 in a case. A trial judge can't intimate, state, or comment
14 on, or make any statement to a trial jury about the facts in
15 a case. Since you, the jury, are the sole judges of the
16 facts, you are not to infer from what I have said during the
17 progress of the trial, in any rulings on the admissibility
18 of evidence, or otherwise, or anything that I say now to you
19 during the course of these instructions that I have an
20 opinion about the facts of the case. The law does not allow
21 me to have an opinion about the facts and I don't have an
22 opinion about the facts. It's a matter solely you, the
23 jury, to determine. And as jurors, it's your duty to
24 determine the effect, the value, the weight, and the truth
25 of the evidence presented during the trial.

1 There are two types of evidence which are
2 generally introduced in a trial. There is direct evidence
3 and there is circumstantial evidence.

4 Direct evidence is the testimony of a person who
5 claims to have actual knowledge of the facts, such as an
6 eyewitness. It's evidence which immediately establishes the
7 main fact to be proved.

8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a fact.
10 It's evidence which immediately establishes collateral facts
11 from which a main fact may be inferred. Circumstantial
12 evidence is based on inference and not on personal knowledge
13 or observation.

14 The law makes absolutely no distinction between
15 the weight to be given either direct or circumstantial
16 evidence, nor is a greater degree of certainty required of
17 circumstantial evidence than of direct evidence. You should
18 weigh all the evidence in the case. And after weighing the
19 evidence, if you are not convinced of the guilt of the
20 defendant beyond a reasonable doubt, then you must find the
21 defendant not guilty.

22 In order to establish criminal liability criminal
23 intent is required. It must be proven by the State beyond a
24 reasonable doubt. Criminal intent is always a matter that
25 must be determined by the jury from the circumstances

1 surrounding the situation.

2 There is no way to prove intent to a mathematical
3 certainty. There is no way that medical science can dissect
4 a person's brain and determine what the person had in mind,
5 so the law says that criminal intent may be inferred from
6 the circumstances shown to have existed. This is how you
7 make the determination of whether or not the element
8 requiring intent was present. It's not necessary to
9 establish intent by direct and positive evidence, but intent
10 may be established by inference, in the same way as any
11 other fact, by taking into consideration the acts of the
12 parties and all the facts and circumstances of this case.
13 Criminal intent is a mental state, a conscious wrongdoing,
14 and it's up to you to determine what the defendant intended
15 to do, based upon the circumstances shown to have existed.

16 Now, Mr. Foreman and ladies and gentlemen, of
17 necessity you must determine the credibility of witnesses
18 who have testified in this case. Credibility simply means
19 believability. It becomes your duty as jurors to analyze
20 and evaluate the evidence, determine which evidence
21 convinces you of its truth.

22 In determining the believability of witnesses who
23 have testified in the case, you may believe one witness over
24 several witnesses, or several witnesses over one witness.

25 You can believe a part of the testimony of a

1 witness and reject the remaining part of the testimony of
2 that very same witness.

3 You can believe the testimony of a witness in its
4 entirety or reject the testimony of a witness in its
5 entirety.

6 You may consider whether any witness has exhibited
7 to you any interests, bias, or prejudice, or other motive in
8 the case.

9 You may also consider the appearance and the
10 manner of the witness while on the witness stand.

11 Was he or she straightforward or hesitant in
12 answering?

13 Was the testimony of the witness consistent or
14 inconsistent?

15 How did the witness come to know the facts that he
16 or she testified to.

17 Was there some reason a witness would want to give
18 testimony which would help or hurt one side or the other?
19 In other words, was the witness biased or prejudiced?

20 Was the testimony of the witness strengthened or
21 weakened by other testimony or evidence?

22 It's totally your prerogative to determine the
23 credibility of the witnesses.

24 The Rules of Evidence ordinarily do not permit a
25 witness to testify to opinions or conclusions. An exception

1 to this rule exists for witness we call expert witnesses,
2 and a witness who by education and experience has become
3 expert in some art, science, profession or calling may give
4 an opinion as to relevant and material matter in which the
5 witness claims to be an expert and may also state the
6 reasons for that opinion.

7 You should consider the expert opinion received in
8 evidence in the case, and like any other evidence, give it
9 the weight that you think it deserves.

10 If you decide the opinion of an expert witness is
11 not based on sufficient education and experience, or you
12 conclude that there are reasons given in support of the
13 opinion are not sound, or that the opinion is outweighed by
14 other evidence, you may disregard that opinion in its
15 entirety. An expert witness testimony is to be given no
16 greater weight than that of any other witness simply because
17 the witness is an expert, and you are not required to accept
18 the expert's opinion, even though it may be uncontradicted.

19 If a crime is committed by two or more people who
20 are acting together in committing a crime, the act of one is
21 the act of all. A person who joins with another to
22 accomplish an illegal purpose is criminally responsible for
23 everything done by that other person which occurs as a
24 natural consequence of the act done in carrying out a common
25 plan and purpose.

1 For example, two people can be guilty of arson,
2 even though only one of those actually struck the match, if
3 the two were together when the illegal act was committed.
4 If they are acting together assisting each other, then the
5 act is committed by all. It's often said the hand of one is
6 the hand of all.

7 Being present at the commission of a crime means
8 to be sufficiently near, to aid and abet and assist in the
9 commission of the crime. However, mere presence at the
10 scene of a crime is not sufficient to convict one as a
11 principal on the theory of aiding and abetting.

12 There has been evidence presented that witnesses
13 may have made prior statements which are not consistent with
14 the witness' present testimony. You may use this evidence
15 to decide whether to believe a witness. You may also use
16 evidence of an earlier contradictory statement to determine
17 the truth of those statements. It's up to you to decide
18 whether to believe the earlier statement or the testimony
19 given at trial.

20 If a witness is shown to have knowingly testified
21 untruthfully concerning a material matter, you may consider
22 this in determining whether to trust the witness' testimony
23 as to other matters. You may reject all testimony of that
24 witness or give all or part of the testimony the weight that
25 you think it deserves.

1 A person who has a prior criminal record is
2 competent to testify during a trial. A past record does not
3 affect the ability of the witness to testify. It may only
4 be considered by you, if at all, in determining the witness'
5 believability. Remember, you are the sole judges of the
6 facts in the case and the believability of any or all the
7 witnesses who testify. Past records may only be considered
8 by you, if at all, in determining the witness'
9 believability.

10 You have heard evidence that the defendant was
11 convicted of crimes other than the one to which he now is on
12 trial. This evidence may be considered by you, if you
13 conclude it to be true, only in deciding whether the
14 defendant's testimony is believable, and for no other
15 purpose. You must not consider the defendant's prior record
16 as any evidence of the defendant's guilt of the charges that
17 we are trying today.

18 Statements alleged to have been made by the
19 defendant have been admitted into evidence in this case.
20 While the court has determined the statements are
21 admissible, I instruct you that you are to make the ultimate
22 decision of whether or not the defendant made those
23 statements.

24 If the defendant did make the statements, you must
25 determine whether the statements were made by the defendant

1 voluntarily and of his own free will. This means that the
2 statements were not caused by pressure or force, fear,
3 threats, coercion, or intimidation, or by the hope or
4 promise of leniency or reward of any kind.

5 In determining whether the statement was
6 voluntary, you should consider both the characteristics of
7 the defendant and the details of the questioning. Some of
8 the factors you may consider are the age of the defendant;
9 education or lack of education of the defendant; mental
10 ability and capacity; the defendant's intelligence and
11 background environment; place and length of the detention;
12 nature of the questioning; the advice, or lack thereof, of
13 the defendant of his Constitutional Rights, including, but
14 not limited to, the right to remain silent; that any
15 statement could be used against him in a court of law; the
16 right to have a lawyer present; that if he could not afford
17 a lawyer, a lawyer would be appointed to represent him
18 without any costs; and that he could stop making the
19 statement at any time.

20 You must carefully consider all the surrounding
21 circumstances before you give any weight to an alleged
22 statement.

23 The State has the burden of proving beyond a
24 reasonable doubt the alleged statements were voluntary. If
25 you determine it was, you may give the statement any further

1 consideration you deem proper. You must decide what weight,
2 if any, should be given to the alleged statements.

3 If you determine the alleged statements were not
4 the free and voluntary statements of the defendant, you
5 should not consider the statements at all.

6 Now, in this case the defendant is charged with
7 murder.

8 The State must prove beyond a reasonable doubt
9 that the defendant killed another person with malice
10 aforethought and that such intentional act was the proximate
11 cause of the victim's death.

12 Malice is hatred, ill will, or hostility toward
13 another person. It's the intentional doing of a wrongful
14 act without just cause or excuse and with an intent to
15 inflict an injury, or under circumstances that the law will
16 infer an evil intent.

17 Malice aforethought does not require that malice
18 exists for any particular time before the act is committed,
19 but malice must exist in the mind of the defendant just
20 before and at the time of the act which is committed.
21 Therefore, there must be a combination of the previous evil
22 intent and the act.

23 Malice aforethought may be expressed or inferred.
24 The terms express and inferred do not mean different kinds
25 of malice, but merely the manner in which the malice is

1 shown to have existed, that is, either by direct evidence or
2 by inference from the facts and circumstances which are
3 proved.

4 Express malice is shown when a person speaks words
5 which express hatred or ill will for another, or when the
6 person prepared beforehand to do the act which was later
7 accomplished.

8 Malice may be inferred from conduct showing a
9 total disregard for human life.

10 Inferred malice may also arise when the deed is
11 done with a deadly weapon.

12 A deadly weapon is any article, instrument or
13 substance likely to cause death or great bodily harm.

14 And whether an instrument has been used as a
15 deadly weapon depends on the facts and circumstances of each
16 case.

17 Examples of deadly weapons would include a pistol,
18 a shotgun, a rifle.

19 If one intentionally kills another during the
20 commission of a felony, the inference of malice may arise.
21 If facts are proved beyond a reasonable doubt sufficient to
22 raise an inference of malice to your satisfaction, this
23 inference would simply be an evidentiary fact to be taken
24 into consideration by you, along with other evidence in the
25 case, and you may give it the weight that you decide it

1 should receive.

2 The defendant is also charged with armed robbery.

3 In order to prove this offense, the State must first prove
4 beyond a reasonable doubt that the defendant took personal
5 property from a person or the presence of another person.

6 Property is in the presence of a person if it's
7 within that person's reach, inspection, observation or
8 control so that the person could, if not overcome with
9 violence or prevented by fear, kept possession of the
10 property.

11 The State must also prove beyond a reasonable
12 doubt that the defendant carried the property away intending
13 to permanently deprive the owner of the property and to keep
14 the property for the defendant's own use.

15 The slightest removal of the property or the
16 complete possession of the property, even for an instant by
17 the defendant, is sufficient to show a taking and carrying
18 away of the property.

19 The taking and carrying away of the property must
20 have been done with violence or by putting the owner of the
21 property in fear of violence.

22 Finally, the State must prove beyond a reasonable
23 doubt that the defendant was armed with a deadly weapon
24 during the robbery.

25 A deadly weapon, as I have stated, is an article,

1 an instrument likely to cause death or great bodily harm.
2 And whether the instrument has been used as a deadly weapon
3 depends upon the facts and circumstances of each case.

4 And, again, a pistol, a shotgun, a rifle is an
5 example of a deadly weapon.

6 The defendant has also been charged with
7 possession of a weapon during the commission of or attempt
8 to commit a violent crime.

9 The State must prove beyond a reasonable doubt
10 that the defendant was in possession of a firearm or visibly
11 displayed what appeared to be a firearm during the
12 commission of a violent crime.

13 And a firearm means gun, automatic rifle,
14 revolver, pistol, or other weapon which is designed or may
15 be readily converted to expel a projectile.

16 In order to find the defendant guilty of
17 possession of a weapon during the commission of a violent
18 crime, you must first find the defendant guilty of either
19 committing a violent crime or attempting to commit a violent
20 crime.

21 Murder and armed robbery are violent crimes.

22 In other words, in order to find the defendant
23 guilty of possession of the weapon during the commission of
24 a violent crime, you must of necessity find the defendant
25 guilty of at least one of the other charges, being murder or

1 the armed robbery.

2 Otherwise, if you, in your judgment, find the
3 defendant not guilty of those charges, then he would not, of
4 necessity, not be guilty of the weapons charge.

5 Now, on each of the verdicts from the three
6 charges there is one -- the forms that I have prepared for
7 you, Mr. Foreman, there is one of two verdicts - either
8 guilty or not guilty as to each of the charges.

9 And as I stated, each of them need to be
10 considered separately by you.

11 There is no significance whatsoever in the order
12 in which the possible verdicts are listed. One has to be
13 listed before the other.

14 Each of these should be deliberated by you. And
15 upon your completing your deliberation, then Mr. Foreman,
16 what I would ask you to do is to check the appropriate block
17 on the verdict form, sign your name and date it. And then
18 once you have reached a verdict on all three charges, let
19 the bailiff know that you have done that and we will then
20 accept the verdicts back in the jury room.

21 Your verdict must be unanimous. All of you must
22 agree upon the verdict on each of the charges.

23 During the course of your deliberation you can ask
24 me questions concerning any legal matter that may come up.
25 As I have stated to you, you are the judges of the facts.

1 It's not permissible for me to answer questions you have
2 regarding facts in the case. It's your duty, and your's
3 alone, to be the fact finders.

4 I'm going to ask that if you would now to return
5 to your jury room. There is still a matter of law that must
6 be addressed between the lawyers and myself.

7 In a few moments I'll have the bailiff bring you
8 the exhibits, the verdict forms that you will have to
9 consider, and at that point he will give you my instructions
10 to begin your deliberations. But at this time I ask you to
11 again not start your deliberations. If you would retire
12 briefly to your jury room and we will notify you in just a
13 few moments. You are excused at this time.

14 (Whereupon, at 11:05 a.m., the jury panel went to
15 the jury room to await instructions to begin deliberations)

16 THE COURT: Any exception to the charge?

17 MR. MOYER: Not from the State, Your Honor.

18 MR. SULLIVAN: Not from the defense, Your Honor.

19 THE COURT: All right. If the attorneys would
20 make sure all the exhibits are in proper form. If you will
21 go through with the court reporter and verify the proper
22 exhibits are going back. I have got the verdict forms here.
23 When the bailiff goes back, you can send the alternate back
24 out here for me.

25 All the exhibits are in order.

1 (Whereupon, at 11:10 a.m., the jury panel was
2 instructed to begin deliberations)

3 THE COURT: Send me the alternate back here,
4 please, the two alternates.

5 (Whereupon, the alternate jurors were brought back
6 into the courtroom)

7 THE COURT: Thank you very much. Your services
8 are not going to be needed on this trial. I don't know if
9 that's a relief or disappointment. I want to thank you for
10 participating in this case. We are about to start another
11 trial. You will not be in the pool for those because it's
12 already been selected. I understand that you need to go
13 back to the assembly room in case there is another case
14 that's going to start today. They will give you some
15 instructions down there in a little while as to how long you
16 will need to be here today. Thank you very much. They will
17 take you down to the assembly room.

18 (Whereupon, the jury alternates were discharged)

19 (Whereupon, at 11:12 a.m. proceedings were
20 adjourned, pending the verdict of the jury panel)

21 (Whereupon, at 1:36 p.m., proceedings were
22 reconvened)

23 (Jury Note was marked as Court Exhibit No. 3 for
24 identification)

25 THE COURT: All right. We received a question

1 from the jury. It was right before their lunch was brought
2 into them, so I let them complete their lunch before we
3 respond to their question.

4 Their question is "do we have to prove that Albert
5 was the triggerman to convict him of murder or if he was the
6 triggerman? In other words, if we can prove he was there,
7 is that part of the murder charge." It's signed by the
8 foreman of the jury.

9 I'll have the jury come back out. I'll charge
10 them on the pertinent law of the hand of one is the hand of
11 all, and we will let them go back and continue their
12 deliberations.

13 Any other charges that either side foresee that
14 needs to be made to them?

15 MR. MOYER: No, I think -- I agree with that
16 charge. I think perhaps the first part of that question is
17 a yes or no question. I would -- I would suggest that the
18 court answer that by saying no, and then follow that up by
19 charging them the law.

20 THE COURT: I'll let them decide the law instead
21 of answering it.

22 MR. MOYER: Okay.

23 THE COURT: All right. Let's bring the jury back.

24 (Whereupon, at 1:43 p.m., the jury panel returned
25 to open court)

1 THE COURT: Ladies and gentlemen and Mr. Foreman,
2 I understand that you did have a question. I have put that
3 question into the record and I am going to give you some law
4 that would be pertinent to the question that you have asked
5 and hopefully will help you in resolving that issue.

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

13 I used the example before of two people can be
14 guilty of the crime of arson when only one person strikes
15 the match and throws it to create the combustion.

16 But if two or more people are together and acting
17 together and assisting each other in committing the offense,
18 the act of one is the act of all; or sometimes said, the
19 hand of one is the hand of all.

20 Now, prior knowledge that a crime is going to be
21 committed, without more, is not sufficient to make a person
22 guilty of that crime. Mere knowledge that another person is
23 going to commit a crime, even if the defendant is present
24 when the crime is committed, is not sufficient to convict
25 the defendant as a principal. Guilt as a principal is shown

1 by actual or constructive presence at the scene as a result
2 of prior arrangement. Therefore, a finding of a prior
3 arranged plan or common scheme is necessary for a finding of
4 guilt as a principal.

5 The State must prove beyond a reasonable doubt by
6 competent evidence the theory of the hand of one is the hand
7 of all.

8 A principal in a crime is one who either actually
9 commits the crime, or is present, or who is present aiding,
10 abetting or assisting in committing the crime. When a
11 person does an act in the presence of or with the assistance
12 of another, the act is done by both..

13 Present at the commission of a crime means to be
14 sufficiently near to aid and abet and assist the commission
15 of the crime. However, mere presence at the scene of a
16 crime is not sufficient to convict one as a principal on the
17 theory of aiding and abetting.

18 Intent is also a necessary element and there must
19 have been a common design or intent to commit the crime and
20 the crime must have been committed pursuant thereto with the
21 person aiding an abetting by some overt act.

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

1 infer intent.

2 The State must prove all these elements beyond a
3 reasonable doubt.

4 I'll ask you to go back now with that instruction
5 and continue your deliberations and let us know when you
6 have reached a verdict. Thank you.

7 (Whereupon, at 1:47 p.m., the jury panel returned
8 to the jury room to continue their deliberations)

9 THE COURT: Any exceptions to the charge from the
10 State?

11 MR. MOYER: None from the State.

12 THE COURT: From the defense?

13 MR. SULLIVAN: None from the defense, Your Honor.

14 THE COURT: We will stand at ease and wait for the
15 jury.

16 (Whereupon, at 1:47 p.m., proceedings were
17 recessed, pending the verdict of the jury panel)

18 (Whereupon, at 2:25 p.m., proceedings were
19 reconvened)

20 THE COURT: I understand the jury has reached a
21 verdict in the case.

22 Let me just mention to those in the audience, many
23 of whom might be interested in this case. I don't know if
24 any of the participants or witnesses, but there is anybody
25 that's affiliated with this particular case that would feel

1 in any way that they can't control any emotions of whatever
2 the verdict is, then now would be a good time for you to
3 excuse yourself, because I certainly expect the respect for
4 the court, as well as for the jury who has worked hard and
5 deliberated and there will be proper --

6 (Off the record)

7 (Back on the record)

8 THE COURT: Let me repeat what I had started to
9 say that the jury has reached a verdict in this case. I
10 know that there is a lot of emotion involved in the case. I
11 don't know what the verdict may be. It may be one that
12 brings joy or brings sadness to one side or the other, but
13 whatever the verdict is, we will respect that verdict of the
14 jury. And if anyone feels that they cannot properly control
15 their emotions concerning the verdict and not show the
16 respect of the jury that needs be, then I'll give you an
17 opportunity now to excuse yourself from the courtroom.
18 Otherwise, when the verdict is announced, I'll expect the
19 audience to act appropriately toward the jury.

20 All right. Let's bring the jury in.

21 (Whereupon, at 2:28 p.m., the jury panel returned
22 to open court to report its verdict)

23 THE COURT: Mr. Foreman, I understand that the
24 jury has reached a verdict on each of the charges, is that
25 correct?

1 JURY FOREMAN: Yes, sir.

2 THE COURT: Is it a unanimous verdict?

3 JURY FOREMAN: Yes, sir.

4 THE COURT: If you would, please hand the verdict
5 forms to the bailiff.

6 All right, Madam Clerk, you may publish the
7 verdicts.

8 THE CLERK: Your Honor, Indictment Number
9 2004-GS-23-5966, State versus Albert S. Kelly, we, the jury,
10 by unanimous consent find the defendant Albert S. Kelly as
11 to the charge of murder guilty. Signed Terry S. Culbertson,
12 October 12, 2005.

13 Indictment Number 2005-GS-23-2024, we, the jury,
14 by unanimous consent find the defendant Albert S. Kelly as
15 to the charge of armed robbery guilty. Signed Terry S.
16 Culbertson, October 12, 2005.

17 Indictment Number 2005-GS-23-2024, we, the jury,
18 by unanimous consent find the defendant Albert S. Kelly as
19 to the charge of possession of a weapon during the
20 commission or the attempt to commit a violent crime guilty.
21 Signed Terry S. Culbertson, October 12, 2005.

22 If y'all agree with this verdict, please signify
23 by raising your right hand.

24 (Whereupon, all the jurors raised their right
25 hand)

1 THE COURT: Is there anything we need to take up
2 with the jury before they are discharged in this case?

3 MR. SULLIVAN: Not from the defense, Your Honor.

4 THE COURT: All right.

5 MR. SULLIVAN: Let the record show they all raised
6 their hand.

7 THE COURT: Yes, sir.

8 The record would show that all raised their hand
9 unanimous verdict of the jury.

10 Ladies and gentlemen, thank you very much for your
11 participation in this case. I wish I knew what the rest of
12 the week holds for us, and I don't, so you are going to need
13 to call back tonight after six o'clock to determine whether
14 or not your services are needed further this week. If they
15 are not and I don't see you again, I appreciate your
16 willingness to participate in the trials this week, to be
17 available for us. You certainly have been a conscientious
18 jury and I appreciate so much your attention. It was an
19 honor for me to work with you in this particular matter.

20 If you would call back tonight after six o'clock,
21 there would be further instructions for you at that time.

22 You are dismissed at this time. I'll ask you to
23 go with the bailiff.

24 Mr. Foreman, if you would, please just wait for
25 the clerk in the hall. She will have some papers for you to

1 sign with the clerk.

2 (Whereupon, at 2:32 p.m., the jury panel was
3 discharged)

4 THE COURT: Okay. Any motions? Any other matters
5 that we need to take up in regard to this case before
6 sentence is imposed?

7 MR. SULLIVAN: Not from the defense, Your Honor.

8 THE COURT: Anything from the State?

9 MR. MOYER: No, sir, Your Honor.

10 THE COURT: All right. We will give the clerk
11 just a moment before she comes back.

12 (Off the record)

13 (Back on the record)

14 THE COURT: All right. We are now ready for the
15 imposition of the sentence. If you would come forward,
16 please, Mr. Kelly and your attorney.

17 Solicitor, anything that you need to present as
18 well?

19 MR. MOYER: Thank you, Your Honor. I believe the
20 victim would like to give some input. Victim's brother.

21 THE COURT: Be glad to hear from anyone that wants
22 to be heard, sir.

23 MR. MOYER: Your Honor, this is Mr. Emilio
24 Delgado.

25 EMILIO DELGADO: Emilio Delgado.

1 THE COURT: All right, sir. Be glad to hear
2 anything that you have to tell me, sir.

3 INTERPRETER EPHRAIN PENEROS: I just don't want to
4 say much, but I want to thank God and thank the judge and
5 the people that were involved in the case, the police and
6 the jury. Because of them -- because of them justice is
7 going to be served because of the death of my brother. And
8 without them we couldn't have done nothing. I'm just
9 wanting to say that I'm leaving it within the hands of the
10 judge and I hope that you give him whatever he deserve for
11 what he did. Thank you.

12 THE COURT: Thank you, sir.

13 Does anyone else --

14 MR. MOYER: I don't think anyone else wishes to
15 speak, with respect to the State.

16 THE COURT: Is there anything else that the State
17 has to offer?

18 MR. MOYER: The only thing I would add, Your
19 Honor, in my 15 years -- 14 years of being a prosecutor,
20 this is probably one of most brutal and senseless murders I
21 have ever handled.

22 And I also hope Your Honor would consider the
23 defendant's testimony on the stand, which I think was proven
24 to be highly -- believed to be perjured testimony. I hope
25 you take that into consideration as well, Your Honor .

1 THE COURT: Thank you, Mr. Moyer.

2 Mr. Sullivan, I'll be glad to hear anything that
3 you have to tell me.

4 MR. SULLIVAN: Judge, you know his record from the
5 matters going into on his cross-examination. The only prior
6 close to violent thing was an assault when he was 18,
7 football games. One of the those little things that
8 happened as kids.

9 This was a hard case. As you know we tried this
10 case back in August and it was a deadlocked jury, six-six,
11 six to convict and six to acquit. So that's not an easy a
12 case for anybody.

13 In this case, judge, by the tenor of the question
14 posed by the jury I don't think they believed that Albert
15 was the shooter. I think they think there was a conspiracy
16 between the three of them, all three. I think he was
17 convicted as part of that conspiracy. I know usually the
18 shooter gets the worst sentence. In this case I don't think
19 they think he was the shooter, by the tenor of their
20 question.

21 Mr. Marcus Parks received has a 30 year sentence
22 for murder. We understand this is 30 to life. You have a
23 lot of discretion in this case, but since they are all three
24 were involved in this thing, I think they should be treated
25 as -- treated the same. I would like you to consider a

1 sentence similar to what Mr. Parks. I know he cooperated
2 initially and probably got consideration for that. He's
3 still going to be sentenced on some other stuff, but this
4 would be it for Mr. Kelly.

5 I would ask you -- I don't think, again, this jury
6 thinks this man pulled the trigger, because of their
7 question, did they have to find him to be a triggerman to
8 find him guilty. I think they think three of them were
9 involved in the conspiracy. Somebody shot the man. The
10 forensic points to Shaun Edwards. Now, I'm not -- I can't
11 say who did it. I don't know. That's really all I have to
12 say for you.

13 THE COURT: Thank you, Mr. Sullivan.

14 MR. MOYER: Your Honor, may I respond briefly to
15 that?

16 Your Honor, I don't think -- it's not the jury's
17 role to determine the extent of involvement of the
18 defendants in the case. It's their responsibilities only to
19 find guilt or innocence. And I think it is Your Honor's
20 responsibility to determine the extent of the actual
21 culpability or involvement this defendant had in the actual
22 crime. It is not our job to try to discern what they
23 thought the roles of the defendants were in this incident.
24 They were merely to find him guilty or innocent. And to try
25 to guess what roles they assigned to the different players

1 in this, based on the question, I think would not be
2 something that Your Honor should consider.

3 Marcus Parks testified for the State. He
4 cooperated. He gave a statement the day he was apprehended.
5 He got 35 years. I think he got a bit of a break that this
6 defendant is not deserving of, and that would be my only
7 response to that.

8 THE COURT: Thank you, sir.

9 Mr. Kelly, I'll be glad to hear anything that you
10 have to tell me, if you wish to.

11 THE DEFENDANT: I'm straight. I'm straight.

12 THE COURT: I'm certain, Mr. Sullivan, it was a
13 difficult case for everyone involved. These tragedies
14 create difficulty in our society and I certainly see lots of
15 the strings running through the testimony that we had in
16 this court of the problem that we have so much in these
17 days.

18 This is case 2004-GS-23-5966, the sentence of the
19 court is that the defendant be committed to the State
20 Department of Corrections for a period of 45 years.

21 Case Number 2005-GS-23-2024, the sentence of the
22 court is that the defendant be committed to the State
23 Department of Corrections for a period of 15 years. This to
24 be consecutive to the previously imposed sentence on today's
25 date.

1 And Case Number 2005-GS-23-2024-A, the sentence is
2 that the defendant be committed to the State Department of
3 Corrections for a period of five years. This to be
4 consecutive to the previously imposed sentences.

5 Wish you the very best, Mr. Kelly.

6 MR. SULLIVAN: Just the record he's advised me
7 that he wants me to file a notice of appeal, which I expect
8 that he would. I just want to put that on the record in
9 case something were to happen to me to protect his rights.

10 THE COURT: All right. Thank you very much.

11 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for GREENVILLE County, South Carolina, on the 10th, 11th and 12th days of October, 2005.

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

MARCH 7, 2006

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALBERT KELLY,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Attorney

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error when he failed to instruct the jury on the defense of alibi.

STATEMENT OF FACTS

On October 10 through 12, 2005, Albert S. Kelly stood trial in Greenville County before Judge G. Edward Welmaker and a jury on indictments charging him with murder, armed robbery and possession of a firearm during the commission of a violent crime. A codefendant testified that Kelly shot the victim during a robbery. ROA p. 134, line 3 – p. 135, line 11. The Georgia patrol officer who arrested Kelly testified that he spontaneously said, “I’m going to be honest. My name is Albert Sentenio Kelly ... and I’m wanted out of Greer, South Carolina, for murder because I shot a guy in the back of the head, and I have been running ever since.” ROA p. 247, line 25 – p. 248, line 14. Finally, the State introduced a statement Kelly purportedly gave South Carolina investigators:

[W]e went to rob him. He was fighting us, and I felt like my life was in danger once he acted like he had a gun in the back of his shirt, so I grabbed him and we fell to the ground and the gun went off. And I thought that he was just knocked out, but later on found out that he was really hurt badly. Dead. I thought I had shot him in the shoulder, and he was knocked unconscious laying in the snow.

ROA p. 339, line 23 – p. 341, line 15. (The codefendant corroborated Kelly’s claim that the victim appeared to be reaching for a weapon. ROA p. 134, lines 21-23; ROA p. 135, lines 9-11.)

Albert Kelly testified that he was at home with his mother when the incident occurred. ROA p. 404, line 7 – p. 410, line 5. His mother corroborated this alibi. ROA p. 385, line 2 – p. 387, line 5. Kelly testified that he told the Georgia officer, “I’m wanted in Greer, South Carolina, for murder because they said I shot a guy in the back of the head,” and that the South Carolina officers had told him what to put in his statement. ROA p. 414, lines 1-14; ROA p. 416, line 17 – p. 417, line 15.

The trial judge did not instruct the jury on alibi. ROA p. 566, line 8 – p. 583, line 13. (Defense counsel did not object to its omission. ROA p. 583, lines 16-18.) The jury returned with a question about presence: “[I]f we can prove he was there, is that part of the murder charge?” ROA p. 585, lines 4-8.

The jury ultimately found Kelly guilty as charged, and the judge imposed consecutive sentences of forty-five years for murder, fifteen years for armed robbery and five years for possession of a firearm during the commission of a violent crime.

ARGUMENT

The trial judge committed reversible error when he failed to instruct the jury on the defense of alibi.

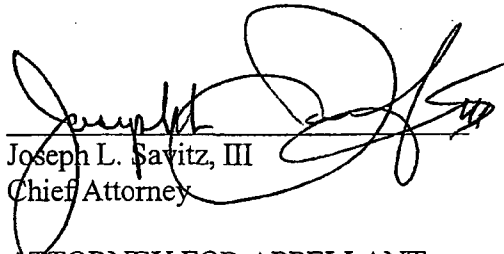
As previously recounted, both Kelly and his mother testified that he was at home at the time of the incident. Yet the trial judge did not instruct the jury on the defense of alibi – possibly because defense counsel did not request such a charge. (Since Kelly’s defense was alibi, there could have been no strategic reason for waiving an instruction on the law of alibi. Compare, for example, *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262 (2006).)

Alibi literally means “elsewhere,” and it is not an affirmative defense. *State v. Mayfield*, 235 S.C. 11, 109 S.E.2d 716 (1959). A charge on alibi should be given “when the accused submits that he could not have performed the criminal act because he was in another place at the time of its commission.” *State v. Robins*, 275 S.C. 373, 271 S.E.2d 319, 320 (1980).

The testimony of Kelly and his mother supported a jury instruction on alibi. Since the trial judge did not give this charge, either he or defense counsel committed reversible error. “It is well-settled that counsel’s rejection of an alibi charge when the defendant claims that he was in another place at the time of the commission of the criminal act constitutes deficient representation under an objective standard of reasonableness.” *Ford v. State*, 314 S.C. 245, 442 S.E.2d 604, 606 (1994). If the Court of Appeals finds that this issue is procedurally-barred because of defense counsel’s omission, Kelly should file an application for post-conviction relief alleging that he did not receive effective assistance of counsel for this reason. See, also, *Riddle v. State*, 308 S.C. 361, 418 S.E.2d 308 (1992).

If not, the Court should reverse Kelly’s convictions and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. The signature is stylized with large, flowing loops.

Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

This 1st day of March, 2007.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALBERT KELLY,

APPELLANT

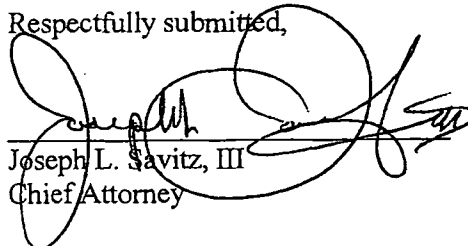
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Albert Kelly states:

1. He is Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge G. Edward Welmaker, which was held on October 12, 2005, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Albert Kelly.

Respectfully submitted,



Joseph L. Savitz, III
Chief Attorney

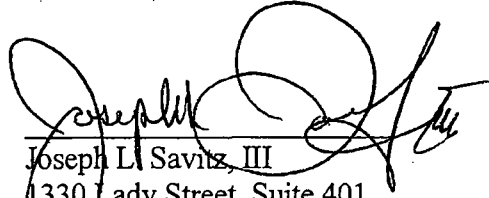
ATTORNEY FOR APPELLANT

This 1st day of March, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 1, 2007

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line.

Joseph L. Savitz, III
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

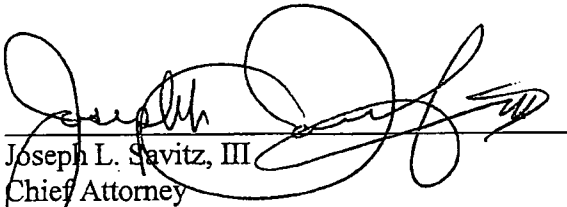
V.

ALBERT KELLY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of March, 2007. A copy of the brief and record on appeal have also been served on Albert Kelly, #277334 at Perry Correctional Institution, 430 Oaklawn Rd., Pelzer, SC 29669, this 1st day of March, 2007.



Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of March, 2007.

Kenneth D. Elliott (L.S.)

Notary Public for South Carolina

My Commission Expires: March 13, 2007.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

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

The State, Respondent,

v.

Albert Kelly, Appellant.

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2008-UP-530
Submitted September 2, 2008 – Filed September 11, 2008

APPEAL DISMISSED

Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and
Assistant Deputy Attorney General Donald J.
Zelenka, all of Columbia; and Solicitor Robert M.
Ariel, of Greenville, for Respondent.

PER CURIAM: Kelly was tried and convicted of murder, armed robbery, and possession of a firearm during the commission of a violent crime. On appeal, Kelly's counsel argues the trial court erred by failing to instruct the jury on the defense of alibi. Kelly also filed a pro se brief. After a thorough review of the record and briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

HEARN, C.J., HUFF and GEATHERS, JJ., concur.

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

STATE OF SOUTH CAROLINA)

County of GREENVILLE S.C.)

IN THE COURT OF COMMON PLEAS

ALBERT S. KELLY SCDC# 29734)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention PERRY CORRECTIONAL INSTITUTION, 430 OAKLAND ROAD, PERZER SOUTH CAROLINA 29669.
2. Name and location of Court which imposed sentence GREENVILLE GENERAL SESSIONS COURT
3. Name(s) of co-defendant(s) (if any) MARCUS PARKS, Shawn Edwards, Donna WENTZ
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2004-GS-23-5966,

(b) 2005-GS-23-2024
(c) 2005-GS-23-2024,

613

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

- (a) 45 YEARS Murder OCTOBER 12, 2005
(b) 15 YEARS Arm Robbery OCTOBER 12, 2005
(c) 5 years Pistol OCTOBER 12, 2005

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
(b) after a plea of not guilty ✓ _____
(c) after a plea of nolo contendere _____

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

YES

8. If you answered Ayes@ to (7), list:

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

- i. SOUTH CAROLINA COURT OF APPEALS
ii. _____
iii. _____

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

- i. APPEAL DISMISSED
ii. _____
iii. _____

(c) the date of each such result:

- i. September 11th 2008 -
ii. _____
iii. _____

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

- i. the Court stated in An opinion, that the
ii. Opinion Has no PRECEDENTIAL value -
iii. It should not be Relied on As PRECEDENT in
Any PROCEEDING EXCEPT As provided by Rule (239)

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) Appeal Case dismissed

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ~~4TH Amendment Due process~~
- (b) 6TH Amendment misrepresentation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See ATTACHED Pages
- (b) See ATTACHED Pages
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO, this following post conviction
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

yes

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

14th Amendment Due Process
6th Amendment Violations

DIRECT APPEAL

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? TIMOTHY Sullivan "yes"
 (c) your sentencing? TIMOTHY Sullivan "yes"
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? JOSEPH L. SAVITZ III "yes"
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. TIMOTHY Sullivan (Attorney AT law)
P.O. Box 2543 Greenville S.C. 29602
 ii. Joseph L. Savitz III (CHIEF Attorney)
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589 Columbia S.C. 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL
 ii. DIRECT Appeal
 iii. _____

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

A NEW TRIAL WITH ALL
Withheld Evidence THAT Proove
my Innocents, And INSTRUCTION ON ALIBI.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, ALBERT S. KELLY SCD# 277334, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Albert S. Kelly

SWORN to and subscribed before me this 24th
 day of JANUARY, 2008.

DANIEL MANTA
 Notary Public

(L.S.)

My Commission Expires: JANUARY 11, 2014

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

I, ALBERT S Kelly SCDC# 277334, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Albert S Kelly
Applicant

SWORN or affirmed to and subscribed before me this

24th day of January, 2008.

Daniel Martin

Notary Public

My Commission Expires: January 11, 2014

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
L. B. WILKINSON

2008 SEP 25 A 8:51

11. State Concisely And In The Same Order The Facts WHICH Support EACH of the Grounds set out in Question (10):

(a): 6th Amendment To Sufficient Representation of Defense Counsel was violated when Timothy Sullivan Refused To Object And Confront False Testimony Given By State Witness Case Investigator DALE ARTERBURN with the Greer Police Department, when Officer ARTERBURN gave testimony on (page 364 line 2-4) of trial transcript that the Greer Police Department did not seize any evidence from Apartment B-4 Marcus Parks -

Facts

Detective MARK Justice Searched Apartment B-4 Marcus Parks Home, And Recovered 2 Timberland Boots Matching the same prints of the shooter (Trigger Man) of the crime scene, which led from the crime to Apartment C-6 Shaun Edwards Apartment where the murder weapon was found - (See Exhibit A 33)

Argument

Trial Attorney Timothy Sullivan Did not Give Defendant Albert Kelly Sufficient Notice Adequate Representation At Trial when He Failed To Object on the basis of this False Testimony - 1 pair Timberland Boots was found in Marcus Parks Home - the Timberland Boots Matched the prints of the crime scene, Also went by Leon Irby's Apartment K-30 where He stated Albert Kelly never came to his Apartment, only Shaun Edwards And Marcus Parks - If Trial Counsel would Have objected this testimony on the grounds of it being false it would Have opened A door to the Timberland boots, Because Marcus Parks testified Albert Kelly never came to his House B-4, And He Did not know where Albert Kelly went when He left C-6 - Trial Attorney violated the 6th Amendment under Strickland v. Washington - In the

False Testimony would Have Been objected
A different outcome might Have Happened in the
Verdict -

Issue

6th Amendment To Sufficient Representation of Counsel
Was Violated when Trial Attorney Timothy Sullivan
Failed To object And correct False Testimony
Given By Shaun Edwards And Charlene Edwards -

Facts

Shaun Edwards And Charlene Edwards His Mother
Testified that they put Albert Kelly And Marcus
Parks out of Apartment 6-C At 3:00 Am on
2-27-04 the Morning of the murder - See Trial
Transcript (page 163 line 18-25) And page (280 Line 1-25)
they Also testified Police Arrived At 3:30 Am -

Argument

All Police Gave testimony that they Arrived AT
Apartment 6-C Shaun Edwards AT Aproximate Time
Frame of 2:30 To 4:00 Am - See (Lt Matthew Hamby
Testimony on page 314 line 7 - page 315 Line 1)
Once this False Testimony was given By Shaun Edwards
And His Mother - Timothy Sullivan Had A duty To
object on the Grounds of False Testimony - Once the
Jury Digested this False Testimony that was never
Corrected, It Painted A picture in the minds of
the Jury that Albert Kellys Alibi was False, Because
one Believing that False Testimony would Also
Believe Albert Kelly was Inside the Edwards
Apartment A Few Minutes Before the Police Arrived -
Timothy Sullivans Failure To object or correct
Violated Defendants 6th Amendment Right
To Adequate Representation of Counsel At Trial -

Issue

6th Amendment To Adequate Representation by Defense Counsel was violated when Defense Counsel Timothy Sullivan failed to object and correct the error's made by District Attorney Mark Moyer in his closing arguments -

Facts

Mark Moyer in closing arguments argued that the Greer Police Department Arrived At Shaun Edwards Apartment C-6 At 3:30 Am on 2-27-04 Night of the Murder. The statements he gave to the jury in his verbal closing arguments was false - not true - Police Arrived At the Edwards Apartment At 2:30 Am See: page 546 line 18 - page 547 line 9 - Mark Moyer argued false evidence whether intentionally or unknowing, and it created error and seriously affected and crippled Defendants Alibi, Timothy Sullivan failed to correct or object -

Argument

This is in violation of Defendants 6th Amendment Rights To Sufficient And Adequate Representation By Counsel, If the error would not have happen, the jury would have more than likely believed the Defendants Alibi witnesses - This error is violating Strickland vs, Washington - And Any other Misrepresentation Case -

Issue

Defendants 6th Amendment Rights was violated when Trial Attorney Timothy Sullivan failed to Request Exculpatory Evidence that could have proven Defendants Innocence -

Timothy Sullivan Refused To Request The Timberland And Timber Boots - The boots Matched The Foot Prints At The murder Scene And Eventually Ended At C-6 Shawn Edwards Apartment - Marcus Parks Gave Testimony That Albert Kelly Never Came To His Apartment B-4, That's Where The Timberland boots Was Found, Also Timber's Boots, That match The Ground - See Trial (Page 136 line 13 - Page 142 line 20 of Trial Transcript) See (EXHIBIT A-33 Forensic Scene Photos -)

"Argument"

Defense Counsel Timothy Sullivan violated Defendants 6th Amendment Rights To Sufficient Representation, In Violation of Strickland vs Washington, when He Failed To Request The Timberland And Timber Boots - The Boots Could Have Proved my Innocence And Supported my Alibi Defense 100% - Its no way Albert Kelly Committed The Crime If The boots or The Trigger Man was Found In Marcus Parks Apartment And Marcus Parks Testified Defendant Albert Kelly never Came To His Apartment -

Issue

Defense Counsel Timothy Sullivan violated Defendants 6th Amendment Right To Sufficient Representation when He Failed To Request The Brown wallet Found In The Victims Car, when Searched By Forensic -

Facts

See EXHIBIT Marked B-L Also EXHIBIT Marked B-F) SEARCH WARRANT And Forensics Report -

Mark Moyer Government District Attorney Intentionally or unknowingly Argued that Defendant Albert's Kelly took the victims wallet And spent it when He Ran To Atlanta See: (Trial page 7 line 20-25 Also Page 561 line 5-7) Trial Counsel Timothy Sullivan violated Defendant Albert Kelly's 6th Amendment Right to Adequate Representation when He Failed to object And correct the false Arguments about the wallet, Timothy Sullivan also violated the same Rights when He Refused to Request the brown wallet, knowing the Motive for the murder was being said Arm Robbery of the wallet - If Defense Counsel would Have Requested the wallet a different outcome would Have Happen in the verdict of Armed Robbery - these Evidence would Have also lifted the Reality of my Alibi Defense, And would Have showed the confession to be false - Timothy Sullivan violated Strickland vs Washington - these Evidence is Exculpatory Evidence And could Have Proved my Innocence -

Issue

Defense Counsel Timothy Sullivan violated Defendant Albert S. Kelly 6th Amendment Rights when He Failed to Request "380" Bullets Bought By Shaun Edwards in His Name 2 days Before the murder - the Evidence was Exculpatory And could Have Proven Defendants Innocence -

Facts

Shaun Edwards Testified on Cross Examination that He Admitted to buying "380" Bullets in His name at Wal-Mart in Greer 2 days Before the murder See (Trial page 170 line 12 - Page 171 line 15)

Shaun Edwards Also Testified He never touched the "380" Murder weapon And He never Buy nothing for or from Albert Kelly -

Lt. Matthew Hamby testified At Approximately 1:30 Afternoon on February 27th 2004 He Returned To Apartment C-6 Shaun Edwards Apartment with Detective Steve Denton And Found A "380" High Point Hand Gun Identified As the murder weapon with the box of "380" Ammunition Purchased By Shaun Edwards under the sofa inside A Toboggan Stocking Hat See (Trial page 315 line 12 - page 317 line 10)

Detective Dale Arturburn testified Shaun Edwards told him He purchased the "380" Ammo See (Trial page 365 line 4-11)

Argument

Defense Attorney Timothy Sullivan failed to Request Exculpatory Evidence once Again - The Box of 380 Ammo Shaun testified that Albert Kelly never got it from him (page 170 line 12 - page 171 line 15) But Bullets He purchased At Walmart is found with A "380" Gun that killed the victim - If Albert Kelly never touched the bullets going by Shaun's testimony, then this proves Albert Kelly never Had the bullets to put inside A black Hat with the murder weapon - This shows Shaun Edwards Involvement And possibly Trigger Man position - If these Evidence would Have Be Admitted to the Jury A different outcome would Have Happened in the verdict -

"Issue"

Dona Wentz lied under oath As A state witness -

Facts

Trial (Page 496 line 17 - page 497 line 11)
Dona Wentz testified that Albert S. Kelly called her from Shaun Edwards Apartment At 1:30 Am - on 2-27-04 -

If you check the Phone Records it will be clear to see that Shaun Edwards called Dona Wentz several times from his home, even when she was at work - It's been stated that Albert Kelly was not at Shaun House at these times - See Exhibit 495 of underlined calls - She testified she didn't know ~~Albert~~ Shaun Edwards - But it's several calls from her store connected to Shaun Edwards Phone Sheet - She testified I only called her once, and never stated I called her on 2-26-04 Day Before the murder - I think this evidence is not believable due to the fact of knowing Shaun was involved in a sexual relationship with Dona Wentz Behind my Back -

Issue

The Confession Should Have Been Void -
No Good And Not Adequate or Sufficient
Evidence -

Facts

Albert Kelly was Mentally ill when he wrote that statement, therefore my mind was not competent, and all I remember is voices telling me to write certain things, I don't know if it was voices in my head or the police voices, but I remember hearing them - I have proof that my mind is not adequate at all times, I zone out and go into another world -

Argument

The Confessions should be not allowed as evidence if I'm given a new trial, that way I don't have to repeat where those voices came from -

Statement of Issue on Appeal

The Trial Judge Committed Reversible Error
When He Failed To Instruct The Jury on The Defense
of Alibi and Trial Attorney
For Not Requesting -

On October 12, 2005 Albert S. Kelly stood Trial
In Greenville County Before Judge G. Welmaker And A
Jury on Indictments Charging Him with murder,
Armed Robbery And Possession of A Firearm during the
Commission of A violent crime. A Codefendant testified
That Kelly shot the victim during A Robbery -
Trial page 134, line 3 - Page 135 line 11 - The Georgia
Patrol Officer who Arrested Kelly testified that
Kelly said, "I'm going to be honest, my name is
Albert Sentenio Kelly - And I'm wanted out of Greer,
South Carolina, for Murder Because I shot A Guy
In the back of the head, And I Have Been Running
Every Since." Trial page 247, line 25 - page 248 14.
Finally, The State Introduced A statement Kelly
Purportedly Gave South Carolina Investigators -

(We) went to Rob Ham, He was Fighting
us, And I felt like my life was In Danger once
He Acted like He Had A gun In the back of his shirt;
So I Grabbed Him And we fell to the ground and
The Gun went off - And I thought that He was
Just knocked out, But later on found out that he
was Really hurt badly - Dead - I thought I
Had shot Him In the shoulder, And He was
Knocked & unconscious laying In the snow -

Trial page 339, Line 23 - Page 341, line 15 -
The Codefendant Corroborated Kelly's claim that
Victim Appeared to be reaching for A weapon -
Trial Page, 134, Line 21-23, Trial Page 135, lines 9-11 -

ALIBI Kelly testified that He told Georgia officer, "I'm wanted in Greer South Carolina, for murder because they said I shot a guy in the back of the head," And Also that the South Carolina officers Coercion Him And Told Him what to put in His statement. Tr. p. 414, line 1-14, Trial Page 416, line 17 - Page 417, Line 15 -

The Trial Judge did not instruct the Jury on ALIBI - Trial Page, 586, Line 8 - Page 583, lines 16-18 - The Jury Returned with A Question About Presence, ~~to (to) (I)~~ If we can prove He was there, Is that part of the murder charge? Trial page, 585, Line 4-8 -

The Jury ultimately found Kelly Guilty As charged, And the Judge imposed consecutive sentences of Forty Five years for Murder, fifteen years for Armed Robbery and five years for possession of A Firearm during the commission of A violent crime -

Argument

The Trial Judge committed Reversible Error when He failed to instruct the Jury on Alibi or Defense Counsel for not Requesting

As previously Recounted, Both Kelly And His Mother testified that He was At Home At the time of the Incident - yet the Trial Judge did not instruct the Jury on the Defense of ~~alibi~~ ALIBI, possibly Because Defense Counsel Did not Request such A charge. (Since Kellys Defense was Alibi, there could Have Been no strategic Reason for waiving and Instruction on the law of Alibi - →

Compare, For Example, State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) -

Alibi Literally Means "elsewhere," and It Is Not An Affirmative Defense.
 State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716 (1959) - A charge on Alibi Should Be given "When The Accused Submits That he Could not Have Performed The Criminal Act Because he was in Another Place At The Time of Its Commission."
 State v. Robins, 275 S.C. 373, 271 S.E.2d 319, 320 (1980)

The Testimony of Kelly And His Mother Supported A Jury Instruction on Alibi - Since The Trial Judge did not give this charge, either He or Defense Counsel Committed Reversible Error - "It Is well-settled That Counsel's Rejection of An Alibi charge When The Defendant claims That was In Another Place At The Time of The Commission of The Criminal Act constitutes Deficient Representation under An Objective Standard of Reasonableness" - Bond v. State, 314 S.C. 245, 442 S.E.2d 604, 606 (1994) - If The ~~General~~ ^{Find} General Session Kelly Did not Receive Effective Assistance of Counsel For This Reason The Court Should Reverse Kelly's Convictions And Remand For A New Trial And Sentence plea -

☆

Conclusion

I Request A New Trial, That
Way I Will Receive Sufficient
Representation And The Correct
Verdict Can Be Decided By
Very Reasonable Jurors. If
not The Charges Should Be Dismissed
As Insufficient Evidence With
A Direct Verdict of Acquittal on
Those Grounds — Are A Very
Reasonable Plea Bargain — So What
This Problem Is Spoken of No More —
I Pray For Reasonable Assistance In
This Very Small Problem — Also A Evidence
Hearing If Needed —

Respectfully,

A. Santaniety Kelly
Pro-Se Representative —

1830
EXHIBIT

STATE OF SOUTH CAROLINA }
COUNTY OF: Greenville }

AFFIDAVIT

Personally appeared before me one Sgt. M.T. Justice
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of
Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

One Pair of Black Timberland Boots or equivalent generic brand boots. One pair of tan Timberland Boots or equivalent generic brand boots. One pair of camouflage coveralls. Tommy Hilfiger Jacket. Any other clothing items or objects that are obviously associated with the crime of Murder. Any and all records either written or electronic including video and audio of any illegal act most specifically car-jacking's thefts robberies or assaults.

DESCRIPTION OF PREMISES TO BE SEARCHED

[REDACTED]

Greer, SC 29651

All closets, halls, rooms, cabinets, fixtures, packages or compartments that could reasonably be used to secret clothing or weapons associated with the crime of Murder.

REASON FOR AFFIANT'S BELIEF THAT
PROPERTY SOUGHT IS ON SUBJECT PREMISES

On Feb. 27, 2004 at approximately 0100hrs. Ignacio Delgado was Murdered in the area of Southgate MHP. Interviews of Shaun Edwards and Marcus Parks revealed the fact that clothing worn during the act of this Homicide were hidden at the address of [REDACTED] Greer, SC 29651. This property is necessary in order to complete a thorough comprehensive and fair investigation into the crime of Murder.

Sworn before me this date Feb 27, 2004 }
Judges Signature: [Signature] (L.S.)

[Signature]
Affiant
Address 101 W Poinsse
Greer
Phone 848-5353

A23
EXHIBIT

631

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

SEARCH WARRANT

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

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED:

[REDACTED]
Greer, SC 29651

All closets, halls, rooms, cabinets, fixtures, packages or compartments that could reasonably be used to secret clothing or weapons associated with the crime of Murder.

Now, therefore. You are hereby authorized to search the subject premises for the property described below. And to seize such property if found:

DESCRIPTION OF PROPERTY:

One Pair of Black Timberland Boots or equivalent generic brand boots. One pair of tan Timberland Boots or equivalent generic brand boots. One pair of camouflage coveralls. Tommy Hilfiger Jacket. Any other clothing items or objects that are obviously associated with the crime of Murder. Any and all records either written or electronic including video and audio of any illegal act most specifically car-jacking's thefts robberies or assaults.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to:

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Feb 27, S.C.

, 2004

[Signature]

(L.S)

(Signature of Judge)

6383
EXHIBIT

INDEX

AUTHORIZATION FOR DISPOSITION ☐ CLEARED FOR DISPOSAL. items _____ ☐ PHOTO AND DISPOSE. items _____ ☐ RELEASE TO: _____ items _____ ADDRESS _____		AUTHORIZING OFFICER: _____ DATE: _____
☐ OWNER NOTIFIED. RELEASE AUTHORIZED		

A33
EXHIBIT

63

RETURN

I received the attached Search Warrant 2-27, 2004, and have executed it as follows:

On 2-27, 2004 at 5:42 o'clock PM, I searched (the person) described in the Warrant and (the Premises)

I left a copy of the Warrant with Residence Posted
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Black Timberland Boots
camo overalls
Tommy Hilfiger Coat

Nothing more

This inventory was made in the presence of Mark Justin
And Eric Ross

I swear that this inventory is a true and detailed account of all the property taken by me on the Warrant.

SWORN to before me this _____ }
Day of _____, 2004 }

(L.S.) }

Signature of Judge }

(Signature of Officer Executing Warrant)

GREENVILLE 33

Greenville County Forensics

3-04-004209

Case Description

Death Investigation: Delgado, Juanito

9918

Scene Description

scene photos



5964



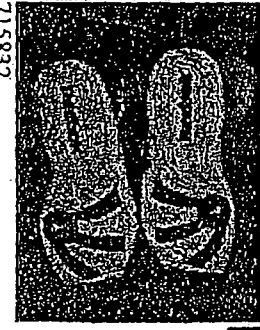
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716237



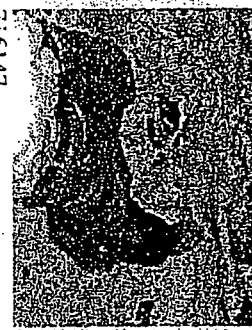
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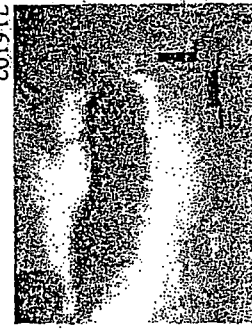
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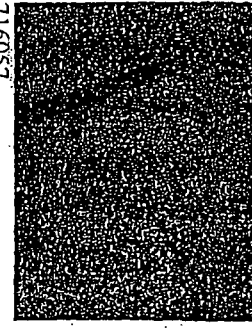
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716012



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715922



715877



715835

↑↑ Fenderlands

B-1
EXHIBIT

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
 AFFIDAVIT FOR SEARCH WARRANT)
 CITY OF GREER)
 CASE Number: GR04-004209

AFFIDAVIT

vs.)
)
)

Personally appeared before me this date 03/02/2004, Detective Dale A. Arterburn, who, being sworn, says there is probable cause to believe that certain property to be seized under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this county:

DESCRIPTION OF PROPERTY SOUGHT

Any and all items that could be collected through the forensic processing of the listed vehicle both interior, and exterior for latent fingerprints, blood, hair, weapons, clothing, currency, ammunitions, or any other item that could be connected with the robbery/murder of Ignacio Delgado.

DESCRIPTION OF PREMISES TO BE SEARCHED

White in color Ford Escort LX Station Wagon bearing S.C. license plate [REDACTED] and vehicle identification number [REDACTED] registered to Ignacio Delgado.

Currently located at Elgins body shop 306 Pendleton St. Greenville S.C.

**REASON FOR AFFIANT'S BELIEF THAT
PROPERTY SOUGHT IS ON SUBJECT PREMISES**

ON THE DATE OF FEBRUARY 27, 2004 A MURDER OCCURRED IN THE CITY OF GREER, SOUTH CAROLINA. THE VICTIM IGNACIO DELGADO WAS FOUND SHOT, AND WAS FOUND TO BE DECEASED OUTSIDE OF HIS VEHICLE THAT IS LISTED ABOVE. THE VEHICLE WAS FOUND RUNNING WITH THE DRIVERS SIDE WINDOW DOWN, AND PARKING LIGHTS ON. INVESTIGATORS HAVE ARRESTED 2 INDIVIDUALS, BOTH WHO HAVE COOPERATED AND GIVEN INFORMATION TO THIS

COPY

ORIGINAL

B-L
EXHIBIT

registered to Ignacio Delgado.
306 Pendleton St. Greenville S.C.

Currently located at Elgins body shop

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all items that could be collected through the forensic processing of the listed vehicle both interior, and exterior for latent fingerprints, blood, hair, weapons, clothing, currency, ammunitions, or any other item that could be connected to the robbery/murder of Ignacio Delgado.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Greer

3-2, 2004

S.C.

(Signature of Judge)

(L.S.)

COPY

B-1
EXHIBIT

INVESTIGATOR THAT THE MURDER OCCURRED DURING THE
COMMISSION OF AN ARMED ROBBERY. IT IS IMPERATIVE THAT
THE ABOVE PREMISES BE SEARCHED IN ATTEMPTS OF
LOCATING ANY EVIDENCE THAT COULD BE CONNECTED TO
THE CRIMES OF ROBBERY/MURDER.

Affiant respectfully requests a Search warrant for location be issued upon
review of information contained above,

Sworn to before me this date 2 20 04
March

Affiant Officer [Signature]

Notary Signature [Signature]
Commission expires May Henry 09/23/2007

STATE OF SOUTH CAROLINA)
SEARCH WARRANT)
COUNTY OF: GREENVILLE)

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

It appearing from the attached affidavit that there are reasonable grounds
to believe that certain property subject to seizure under provisions of Section
17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on
the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO
BE SEARCHED**

White in color Ford Escort LX Station Wagon bearing S.C. license plate
[redacted] and vehicle identification number [redacted]

COPY

638

B-7
EXHIBIT

Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT

AGENCY: Greer Police Department
AREA: CJ-11

CASE NUMBER: 3-04-004209

INCIDENT TYPE:	Death Investigation (follow up)	INCIDENT LOCATION:	██████████ Greenville, SC
VICTIM:	Delgado, Ignacio	ADDRESS:	Westgate Trailer Park ██████████ Greer, SC
COMPLAINANT:		ADDRESS	
INV. OFFICER	Arterburn	UNIT NUMBER	504

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 1

On 3/3/04 the R/O's were requested to respond to 942 S. Main Street by the investigating officer, for purposes of processing a vehicle involved in a death investigation. Upon arrival the vehicle was located outside of the impound lot. The investigating officer was not on scene.

Technician Orlando secured photographs of the interior and exterior of the vehicle. The vehicle was processed for latent prints with positive results. The following items were collected from the victim's vehicle.

The below listed items were collected from the interior of the vehicle:

DCO1- Brown wallet located in glove box of vehicle containing Florida Identification Card and South Carolina Identification Card (1117)

DCO2- Tape lifts from victim's vehicle, front driver's seat, front passenger's seat, and backseat (1139)

Technician Orlando conducted a Phenolphthalein Presumptive Blood Test on suspected blood on the driver's front seat, which showed negative results. No further action was taken.

Upon returning to the LEC, the digital images were scanned into the photo database under call id # 9958.

The retrieved latent prints were forwarded to the DPS Latent Division. All collected items were released back to the investigating agency.

Received and En Route: 1000 Arrived: 1032 Cleared: 1156 LEC: 1210

REPORTING OFFICER	Orlando D.C. <i>1200</i>	STAR #	8839	UNIT #	930	DATE	3/5/04
REPORTING OFFICER	Lt. Petersen	STAR #	8565	UNIT #	912	DATE	
APPROVING SUPERVISOR	<i>Sgt. D.L. Shaw</i>	STAR #	<i>8561</i>	UNIT #	<i>921</i>	DATE	<i>3/5/04</i>

10/06/05 11:46

CALL DETAILS FOR

(864) 801-3440

On an incoming call search, if the calling number is a cellular number, this is normally not the actual cellular customer's number; it is the cellular provider's trunk number. It is the trunk billing number BellSouth uses to identify calls originating from a particular cellular telephone carrier. Please contact the cellular carrier to identify the actual originating cellular telephone number. If you have questions on a carrier code, you can access the following web site for information <http://davis-company.com/pic/dbsearch.html>

Number	Date	Time	Calling No.	Called No.	Duration	Answered	Carrier	Call Type	Billed No
#1	02/26/04	00:02	864-422-0367	864-801-3440	5	Yes		001	
#2	02/26/04	00:11	864-801-3440	864-848-5214	4	Yes		001	
#3	02/26/04	00:12	864-801-4085	864-801-3440	1	Yes		001	
#4	02/26/04	00:15	864-801-3440	864-801-9391	1	Yes		001	
#5	02/26/04	00:24	864-801-3440	864-918-5342	1	Yes		001	
#6	02/26/04	00:25	864-801-3440	864-354-3629	8	Yes		001	
#7	02/26/04	00:25	864-801-3440	864-918-5342	5	Yes		001	
#8	02/26/04	00:28	864-238-0999	864-801-3440	0	NO		066	
#9	02/26/04	00:29	864-238-0999	864-801-3440	0	NO		066	
#10	02/26/04	00:30	864-238-0999	864-801-3440	0	NO		066	
#11	02/26/04	00:31	864-949-3615	864-801-3440	8	Yes		001	
#12	02/26/04	00:32	864-238-0999	864-801-3440	0	NO		066	
#13	02/26/04	00:37	864-238-0999	864-801-3440	1	Yes		066	
#14	02/26/04	00:40	864-801-3440	864-918-3452	1	Yes		001	
#15	02/26/04	00:40	864-801-3440	864-918-5342	6	Yes		001	
#16	02/26/04	00:48	864-949-3615	864-801-3440	4	Yes		034	
#17	02/26/04	00:52	864-949-3615	864-801-3440	9	Yes		001	
#18	02/26/04	01:11	864-801-3440	864-918-5342	X	Yes		001	
#19	02/26/04	01:12	864-801-3440	000-000-0000	0	Yes		330	
#20	02/26/04	01:12	864-801-3440	864-357-1268	1	Yes		001	
#21	02/26/04	01:23	864-801-3440	864-918-5342	4	Yes		001	
#22	02/26/04	01:35	864-801-3440	864-918-5342	X	Yes		001	
#23	02/26/04	01:43	864-238-0999	864-801-3440	1	Yes		066	
#24	02/26/04	02:47	864-801-3440	864-848-5214	2	Yes		001	
#25	02/26/04	03:11	864-801-3440	864-918-5342	1	Yes		001	
#26	02/26/04	03:14	864-801-3440	864-918-5342	1	Yes		001	
#27	02/26/04	03:16	864-238-0999	864-801-3440	1	Yes		066	
#28	02/26/04	03:29	864-801-3440	864-918-5342	1	Yes		001	
#29	02/26/04	03:39	864-801-3440	864-848-5214	1	Yes		001	
#30	02/26/04	03:42	864-801-3440	864-918-5342	1	Yes		001	
#31	02/26/04	03:43	864-801-3440	864-918-5342	1	Yes		001	
#32	02/26/04	03:51	864-801-3440	864-918-5342	1	Yes		001	
#33	02/26/04	04:48	864-238-0999	864-801-3440	0	NO		066	
#34	02/26/04	07:04	864-439-6433	864-801-3440	1	Yes		001	
#35	02/26/04	07:06	864-801-3440	864-422-0367	2	Yes		001	
#36	02/26/04	09:00	864-901-8950	864-801-3440	0	NO		066	
#37	02/26/04	10:10	864-801-3440	864-201-6171	1	Yes		001	
#38	02/26/04	10:11	864-801-3440	000-000-0000	0	Yes		330	
#39	02/26/04	10:11	864-801-3440	864-350-3424	2	Yes		001	
#40	02/26/04	10:30	864-346-9999	864-801-3440	1	Yes		066	
#41	02/26/04	10:46	864-801-3440	864-848-1086	7	Yes		001	
#42	02/26/04	11:35	864-801-3440	864-244-9903	9	Yes		001	
#43	02/26/04	11:54	864-801-3440	864-801-4085	1	Yes		001	
#44	02/26/04	11:56	864-801-3440	864-801-4085	1	Yes		001	
#45	02/26/04	12:20	864-801-3440	877-234-2564	0	NO	0555	141	8772342564
#46	02/26/04	12:20	864-801-3440	877-234-4567	4	Yes	QWEST	141	8772344567
#47	02/26/04	12:27	864-439-6433	864-801-3440	8	Yes		001	
#48	02/26/04	12:42	864-801-3440	864-244-9903	7	Yes		001	

Number	Date	Time	Calling No.	Called No.	Duration	Answered	Carrier	Call Type	Billed No
#49	02/26/04	12:54	864-801-3440	864-848-7104	1	Yes		001	
#50	02/26/04	12:58	864-801-3440	864-244-9903	3	Yes		001	
#51	02/26/04	13:04	864-801-3440	864-201-6171	1	Yes		001	
#52	02/26/04	13:07	864-801-3440	864-346-7785	1	Yes		001	
#53	02/26/04	13:10	864-801-3440	864-907-4079	1	Yes		001	
#54	02/26/04	13:11	864-801-3440	864-907-4079	1	Yes		001	
#55	02/26/04	13:13	864-801-3440	000-000-0000	0	Yes		330	
#56	02/26/04	13:14	864-801-3440	864-350-3424	4	Yes		001	
#57	02/26/04	13:19	864-801-3440	864-848-5214	2	Yes		001	
#58	02/26/04	13:23	864-801-3440	864-201-6171	1	Yes		001	
#59	02/26/04	13:25	864-801-3440	864-220-7884	1	Yes		001	
#60	02/26/04	13:26	864-801-8710	864-801-3440	3	Yes		001	
#61	02/26/04	13:32	864-901-8950	864-801-3440	1	Yes		066	
#62	02/26/04	13:40	864-292-8165	864-801-3440	1	Yes		001	
#63	02/26/04	13:42	864-244-3368	864-801-3440	3	Yes		001	
#64	02/26/04	13:48	864-848-5214	864-801-3440	1	Yes		001	
#65	02/26/04	13:51	864-848-1086	864-801-3440	1	Yes		001	
#66	02/26/04	13:54	864-801-3440	864-439-6433	5	Yes		001	
#67	02/26/04	13:59	864-801-3440	864-907-2564	1	Yes		001	
#68	02/26/04	14:10	864-801-3440	864-848-1086	1	Yes		001	
#69	02/26/04	14:14	864-801-3440	864-879-1257	4	Yes		001	
#70	02/26/04	14:15	864-901-8950	864-801-3440	1	Yes		066	
#71	02/26/04	14:21	864-901-8950	864-801-3440	0	NO		066	
#72	02/26/04	14:21	864-801-3440	864-848-5214	1	Yes		001	
#73	02/26/04	14:22	864-801-3440	864-848-5214	1	Yes		001	
#74	02/26/04	14:39	864-801-4235	864-801-3440	1	Yes		001	
#75	02/26/04	14:40	864-901-8950	864-801-3440	3	Yes		066	
#76	02/26/04	14:44	864-801-3440	864-848-5214	2	Yes		001	
#77	02/26/04	14:46	864-801-3440	000-000-0000	0	Yes		330	
#78	02/26/04	14:46	864-801-3440	864-350-3424	1	Yes		001	
#79	02/26/04	14:49	864-801-3440	864-439-6433	11	Yes		001	
#80	02/26/04	14:52	864-801-3440	000-000-0000	0	Yes		330	
#81	02/26/04	14:52	864-801-3440	864-350-3424	2	Yes		001	
#82	02/26/04	15:01	864-801-3440	864-439-6433	1	Yes		001	
#83	02/26/04	15:10	864-901-8950	864-801-3440	0	NO		066	
#84	02/26/04	15:13	864-901-8950	864-801-3440	0	NO		066	
#85	02/26/04	15:15	864-801-3440	864-201-6171	1	Yes		001	
#86	02/26/04	15:15	864-801-3440	864-205-4579	1	Yes		001	
#87	02/26/04	15:17	864-801-3440	864-205-4579	1	Yes		001	
#88	02/26/04	15:18	864-801-3440	864-848-1086	3	Yes		001	
#89	02/26/04	15:19	850-208-2300	864-801-3440	1	Yes	AT&T	119	
#90	02/26/04	15:22	864-801-3440	864-201-6171	1	Yes		001	
#91	02/26/04	15:26	864-801-3440	864-877-3161	2	Yes		001	
#92	02/26/04	15:28	864-848-1086	864-801-3440	1	Yes		001	
#93	02/26/04	15:33	864-901-8950	864-801-3440	0	NO		066	
#94	02/26/04	15:34	864-901-8950	864-801-3440	0	NO		066	
#95	02/26/04	15:35	864-901-8950	864-801-3440	0	NO		066	
#96	02/26/04	15:36	864-901-8950	864-801-3440	0	NO		066	
#97	02/26/04	15:38	864-901-8950	864-801-3440	0	NO		066	
#98	02/26/04	15:43	864-901-8950	864-801-3440	0	NO		066	
#99	02/26/04	15:57	864-801-3440	864-949-3615	6	Yes		001	
#100	02/26/04	15:59	864-230-0001	864-801-3440	0	NO		066	
#101	02/26/04	16:05	864-901-8950	864-801-3440	1	Yes		066	
#102	02/26/04	16:14	864-439-6433	864-801-3440	1	Yes		001	
#103	02/26/04	16:18	864-801-3440	864-907-4079	1	Yes		001	

40
2-495

Subpoena #: - 2 VERBATIM

BellSouth #: BST040355326

10/06/05 11:46

CALL DETAILS FOR

(864) 801-3440

5-495

Number	Date	Time	Calling No.	Called No.	Duration	Answered	Carrier	Call Type	Billed No
#104	02/26/04	16:21	864-801-3440	864-907-4079	1	Yes		001	
#105	02/26/04	16:25	864-801-3440	864-906-7422	1	Yes		001	
#106	02/26/04	16:27	864-235-1762	864-801-3440	1	Yes		001	
#107	02/26/04	16:29	864-801-3440	864-877-3161	7	Yes		001	
#108	02/26/04	16:36	864-801-3440	864-877-3161	4	Yes		001	
#109	02/26/04	16:44	864-801-3440	864-906-7422	1	Yes		001	
#110	02/26/04	16:55	864-801-3440	864-906-7422	1	Yes		001	
#111	02/26/04	16:58	864-801-3440	864-341-0133	1	Yes		001	
#112	02/26/04	16:58	864-801-3440	864-906-7422	1	Yes		001	
#113	02/26/04	17:03	864-363-9603	864-801-3440	4	Yes		066	
#114	02/26/04	17:07	864-801-3440	864-848-5214	7	Yes		001	
#115	02/26/04	17:09	864-346-9999	864-801-3440	0	NO		066	
#116	02/26/04	17:10	864-346-9999	864-801-3440	1	Yes		066	
#117	02/26/04	17:15	864-801-3440	864-350-2902	3	Yes		001	
#118	02/26/04	17:26	864-801-3440	864-907-4079	1	Yes		001	
#119	02/26/04	17:27	864-801-3440	864-907-4079	1	Yes		001	
#120	02/26/04	17:28	864-801-3440	864-906-7422	1	Yes		001	
#121	02/26/04	17:30	864-801-3440	864-906-7422	1	Yes		001	
#122	02/26/04	17:38	864-801-3440	864-906-7422	1	Yes		001	
#123	02/26/04	17:40	864-230-0001	864-801-3440	0	NO		066	
#124	02/26/04	17:40	864-801-3440	864-907-4079	1	Yes		001	
#125	02/26/04	17:42	864-801-3440	000-000-0000	0	Yes		330	
#126	02/26/04	17:42	864-801-3440	864-235-1762	1	Yes		001	
#127	02/26/04	17:43	864-801-3440	000-000-0000	0	Yes		330	
#128	02/26/04	17:43	864-801-3440	864-907-4079	1	Yes		001	
#129	02/26/04	17:44	864-801-3440	000-000-0000	0	Yes		330	
#130	02/26/04	17:44	864-801-3440	864-907-4079	1	Yes		001	
#131	02/26/04	17:45	864-801-3440	000-000-0000	0	Yes		330	
#132	02/26/04	17:45	864-801-3440	864-907-4079	1	Yes		001	
#133	02/26/04	17:47	864-801-3440	000-000-0000	0	Yes		330	
#134	02/26/04	17:47	864-801-3440	864-907-4079	1	Yes		001	
#135	02/26/04	17:48	864-901-8950	864-801-3440	1	Yes		066	
#136	02/26/04	17:49	864-801-3440	000-000-0000	0	Yes		330	
#137	02/26/04	17:49	864-801-3440	864-907-4079	1	Yes		001	
#138	02/26/04	17:50	864-801-3440	000-000-0000	0	Yes		330	
#139	02/26/04	17:50	864-801-3440	864-907-4079	1	Yes		001	
#140	02/26/04	17:52	864-801-3440	000-000-0000	0	Yes		330	
#141	02/26/04	17:52	864-232-9588	864-801-3440	1	Yes		001	
#142	02/26/04	17:52	864-801-3440	864-907-4079	1	Yes		001	
#143	02/26/04	17:53	864-801-3440	000-000-0000	0	Yes		330	
#144	02/26/04	17:54	864-801-3440	000-000-0000	0	Yes		330	
#145	02/26/04	17:55	864-801-3440	864-906-7422	1	Yes		001	
#146	02/26/04	17:56	864-801-3440	864-848-5214	1	Yes		001	
#147	02/26/04	17:57	864-801-3440	864-905-8706	1	Yes		006	
#148	02/26/04	17:58	864-801-3440	864-801-9391	2	Yes		001	
#149	02/26/04	18:01	864-801-3440	000-000-0000	0	Yes		330	
#150	02/26/04	18:01	864-801-3440	864-906-7422	1	Yes		001	
#151	02/26/04	18:41	864-801-3440	864-801-9391	1	Yes		001	
#152	02/26/04	18:43	864-277-9171	864-801-3440	2	Yes		001	
#153	02/26/04	18:45	864-801-3440	864-439-6433	2	Yes		001	
#154	02/26/04	18:59	864-885-1073	864-801-3440	2	Yes	BSLD	110	
#155	02/26/04	19:05	864-801-3440	864-275-7627	8	Yes		001	
#156	02/26/04	19:15	864-801-3440	864-877-3161	4	Yes		001	
#157	02/26/04	19:19	864-801-3440	864-346-7785	1	Yes		001	
#158	02/26/04	19:32	864-848-7106	864-801-3440	1	Yes		001	

10/06/05 11:46

CALL DETAILS FOR

(864) 801-3440

12
495

Number	Date	Time	Calling No.	Called No.	Duration	Answered	Carrier	Call Type	Billed No
#214	02/27/04	12:08	864-230-0001	864-801-3440	0	NO		066	
#215	02/27/04	12:49	864-901-8950	864-801-3440	0	NO		066	
#216	02/27/04	18:05	864-238-0999	864-801-3440	0	NO		066	
#217	02/27/04	18:11	864-238-0999	864-801-3440	0	NO		066	
#218	02/27/04	20:10	864-346-9999	864-801-3440	0	NO		066	
#219	02/27/04	21:00	864-363-9603	864-801-3440	0	NO		066	
#220	02/27/04	22:10	864-346-9999	864-801-3440	0	NO		066	
#221	02/27/04	22:28	864-363-9603	864-801-3440	0	NO		066	
#222	02/28/04	01:25	864-346-9999	864-801-3440	0	NO		066	
#223	02/28/04	10:21	864-901-8950	864-801-3440	0	NO		066	
#224	02/28/04	10:43	864-238-0999	864-801-3440	0	NO		066	
#225	02/28/04	16:43	864-901-8950	864-801-3440	0	NO		066	
#226	02/28/04	20:48	864-230-0001	864-801-3440	0	NO		066	
#227	02/28/04	22:04	864-901-8950	864-801-3440	0	NO		066	
#228	02/29/04	19:44	864-238-0999	864-801-3440	0	NO		066	
#229	03/01/04	11:34	770-575-0000	864-801-3440	0	NO	0444	110	
#230	03/01/04	22:47	864-901-8950	864-801-3440	0	NO		066	

CALL DETAILS FOR

(864) 811 40

X Alberts house

STANLEY J. BROWN

Number	Date	Time	Calling No.	Called No.	Duration	Answered	Carrier	Call Type	Billed No
#159	02/26/04	19:48	864-801-3440	864-422-0367	2	Yes		001	
#160	02/26/04	19:52	864-901-8950	864-801-3440	1	Yes		066	
#161	02/26/04	20:25	864-801-3440	864-473-1294	1	Yes		001	
#162	02/26/04	20:25	864-801-3440	864-949-6269	1	Yes		001	
#163	02/26/04	20:29	864-879-1257	864-801-3440	1	Yes		001	
#164	02/26/04	20:30	864-801-3440	864-473-1294	1	Yes		001	
#165	02/26/04	20:31	864-801-3440	864-473-1294	9	Yes		001	
#166	02/26/04	20:31	864-901-8950	864-801-3440	1	Yes		066	
#167	02/26/04	20:51	864-848-5214	864-801-3440	1	Yes		001	
#168	02/26/04	20:51	864-801-3440	864-848-5214	1	Yes		001	
#169	02/26/04	22:57	864-439-6433	864-801-3440	5	Yes		001	
#170	02/26/04	23:02	864-422-0367	864-801-3440	12	Yes		001	
#171	02/26/04	23:26	864-901-8950	864-801-3440	1	Yes		066	
#172	02/26/04	23:27	864-801-3440	000-000-0000	0	Yes		330	
#173	02/26/04	23:27	864-801-3440	864-879-4559	2	Yes		001	
#174	02/26/04	23:35	864-801-3440	864-422-0367	1	Yes		001	
#175	02/27/04	00:05	864-901-8950	864-801-3440	1	Yes		066	
#176	02/27/04	00:10	864-801-3440	864-244-3368	1	Yes		001	
#177	02/27/04	00:10	864-801-3440	864-244-9903	1	Yes		001	
#178	02/27/04	00:13	864-801-3440	000-000-0000	0	Yes		330	
#179	02/27/04	00:13	864-801-3440	864-350-3424	25	Yes		001	
#180	02/27/04	00:39	864-801-3440	864-201-6171	1	Yes		001	
#181	02/27/04	00:43	864-801-3440	864-439-6433	3	Yes		001	
#182	02/27/04	01:02	864-422-0367	864-801-3440	2	Yes	she called him	001	
#183	02/27/04	01:03	864-801-3440	864-848-1086	1	Yes		001	
#184	02/27/04	01:05	864-801-3440	864-848-1086	27	Yes		001	
#185	02/27/04	01:32	864-801-3440	864-439-3425	4	Yes		001	
#186	02/27/04	01:37	864-801-3440	864-346-7785	3	Yes		001	
#187	02/27/04	01:55	864-801-3440	864-422-0367	14	Yes		001	
#188	02/27/04	02:51	864-801-3440	000-000-0000	0	Yes		330	
#189	02/27/04	02:52	864-801-3440	000-000-0000	0	Yes		330	
#190	02/27/04	02:52	864-801-3440	864-346-7785	1	Yes		001	
#191	02/27/04	03:29	864-848-1086	864-801-3440	2	Yes		001	
#192	02/27/04	04:41	864-801-4085	864-801-3440	1	Yes		001	
#193	02/27/04	04:50	864-801-3440	864-848-1086	4	Yes		001	
#194	02/27/04	05:14	864-848-1086	864-801-3440	1	Yes		001	
#195	02/27/04	05:24	864-801-3440	864-949-0092	51	Yes		001	
#196	02/27/04	06:27	864-801-3440	864-244-9903	1	Yes		001	
#197	02/27/04	06:27	864-801-3440	864-801-9257	1	Yes		001	
#198	02/27/04	06:33	864-801-3440	000-000-0000	0	Yes		330	
#199	02/27/04	06:34	864-801-3440	864-350-3424	1	Yes		001	
#200	02/27/04	06:57	864-801-3440	864-949-0092	3	Yes		001	
#201	02/27/04	07:21	864-801-3440	000-000-0000	0	Yes		330	
#202	02/27/04	07:21	864-801-3440	864-350-3424	1	Yes		001	
#203	02/27/04	07:23	864-801-3440	864-848-1086	1	Yes		001	
#204	02/27/04	07:25	864-801-3440	864-949-0092	28	Yes		001	
#205	02/27/04	07:53	864-801-3440	000-000-0000	0	Yes		330	
#206	02/27/04	07:53	864-801-3440	864-350-3424	1	Yes		001	
#207	02/27/04	07:54	864-848-1086	864-801-3440	15	Yes		001	
#208	02/27/04	08:28	864-848-1086	864-801-3440	1	Yes		001	
#209	02/27/04	09:50	706-286-6011	864-801-3440	1	Yes	0444	119	
#210	02/27/04	09:51	864-801-3440	000-000-0000	0	Yes		330	
#211	02/27/04	09:51	864-801-3440	864-350-3424	11	Yes		001	
#212	02/27/04	10:30	864-236-0006	864-801-3440	1	Yes		001	
#213	02/27/04	12:07	864-346-9999	864-801-3440	0	NO		066	

Paul B. Wickersimer
Circuit Court Division
Greenville County Court House
305 EAST North Street
Greenville, S.C. 29601-

Case# 2008-CP-23-7212

Please STAMP this
Also ATTACHED 3,
Papers Send (1) copy TO
Attorney General, (1) copie
Back TO Plaintiff Albert -
12-1-2008

10f2

Albert S. Kelly
Perry Corr Inst -
430, OAKLAWN Rd
Pelzer, S.C. 29669

RE: Post-Conviction
Add ON

FILED-CLERK OF COURT
GREENVILLE CO S.C.
DAVID W. WICKERSIMER

DEC - 4 A 11:59

Dear Clerk,

on 9-23-08 I wrote

You A letter Informing you that I needed
my post-conviction Back Because of error -

on 10-07-2008 you wrote
me And Informed me that the post-conviction
Had been Filed And Processed And you could
not send it back - But, If I wish to
Submit Additional papers And Issues I
could -

The Following 3 Pages Are
Another Argument I wish to Add to My
post-conviction In order to Correct Error,
Also Amend Argument About Phone Records And
Dona Wentz - Please Send 1 copy TO ATTORNEY
General Mike Aki (1) copie Back TO Me For MVE 1-

Copy to Aki +
inmate

V
ver

ENTERED COMPUTER

Also Be Informed I Have A Newly
Discovered Evidence Claim And Issue,
But I Can't File IT untill I Receive
Answer Needing Motion To Discovery
Evidence And Color Digital Images
And Photos of Crime Scene, Evidence,
And Autopsy -

Also Be Informed I Have
Other Issues To Present In Post-
Conviction - But, Can't do so untill
Receive Above Discovery Material -

Please send copies
of this letter Also (3) Page
Issue - The Presented Document
Is To be Added As (EXHIBIT
A-995) 1 page sheet of phone
Record (labeled Bell South page 5)

EXHIBIT 495 IS TO be MOOT,
AVOID [REDACTED] ON POST CONVICTION -
ONLY EXHIBIT A-995 IS TO be
Applied To Argument About Phone
Call And Dona WENTZ -

Thank you -

12-1-08, Date
SC

x ALbert Kelly

430, OAKLAWN Rd
Perry C.I. (SmudY 15)
Pulzer, SC 29669

POST CONVICTION RELIEF

Case # 2008-CP-23-7212

ALBERT S. Kelly,
Plaintiff,

v.

THE STATE,
Defendants -

Date 12-1-2008

1 of 3

RE: Add on to Post-Conviction
Case # 2008-CP-23-7212
3 page Argument And Exhibit
A-995

FILED CLERK OF COURT
GREENVILLE CO. S.C.
2008 DEC 11 AM 11:59

2008 DEC -4 A 11:59

Facts

Dona Lynn Wentz gave testimony on October 11, 2005 in Greenville County General Sessions Court for the STATE, THAT Albert Kelly called her from Shaun Edwards House, Apartment C-6 Drummond Village on 2-26-04 At 1:30 Am the night before the murder 2-27-04 -

Issue

TRIAL Attorney Timothy Sullivan Deprived Plaintiff Albert Kelly of A Fair Trial when He Failed to object to False Arguments Being Given By Prosecutor Mark Moyer - This in violation of the 6th Amendment Right to Adequate And Sufficient Representation of Counsel -

Dona Lynn Wentz testified Albert Kelly called her day before the murder on 2-26-07 at 1:30 AM from Shaun Edwards Home Apt C-6 - Mark Moyer argued in closing arguments that Dona Wentz testified, Plaintiff Albert Kelly called her at 1:30 AM from Shaun Edwards House at 2-27-04 Night of the Murder, Minutes After the Murder -

See trial transcript (Page 496 line 11-21)
 Also trial transcript (Page 564 line 2 - Page 565 line 6) - Mark Moyer the prosecutor even used phone sheets when a call was made on 2-27-04 at 1:30 from Edwards to Wentz to confuse the testimony of Wentz, Making it seem like Albert Kelly was inside of Shaun Edwards AT 1:30 AM on 2-27-04, instead of 1:30 AM on 2-26-04 prior day before the murder -

This completely destroyed Plaintiff's Alibi witness that he was home at this time -

Timothy Sullivan failed to correct this false argument by prosecutor, also failed to object in order to preserve the issue and bring it to the attention of the jurors - this is in violation of the 6th Amendment right to sufficient and adequate representation at trial -

It not for this issue a different

outcome would have likely happen in the trial verdict, it is possible that the defendant could have been found not guilty -

648 This Error Was Prejudice To the defendant,
And deprived defendant of A Fair Trial - This
Error Is In violation of Strickland v.
Washington or Any other Misrepresentation
Case used As A Precedent -

Page 13 of 18 Post-conviction
And Page 14 of 18 Post-conviction
The Issue, Facts, And Argument About
Dona Wentz And The Phone Records Should
Be Avoided In That part of the 2 Pages
only - And This Amended Argument,
Issue, And Facts Added - The Prior
Argument of This Issue Is Insufficient,
And The Issue And Fact Is Not Adequate -

To Review The Phone Record
Review EXHIBIT (A-995) page 5 line # 185
A call was placed AT 1:32 AM on 2-27-04 -
Night of Murder - NOT 1:30 AM on 2-26-04
Morning before Murder As Wentz testified
Plaintiff Albert Kelly Call Her - Avoid
EXHIBIT 495 AS Moot - Due to Amendment (Amend)

This Missed The Jurors, And Had
Them Thinking Albert Kelly Was Inside
Shaun Edwards House Morning of the
Murder, Minutes After the Murder -
Timothy Sullivan's Failure to object
And correct was Misrepresentation
under 6th Amendment, where I'm
Afforded Sufficient And Adequate
Representation By Counsel -

A different outcome was likely
In verdict if not for This Issue -

10/06/05 11:46

CALL DETAILS FOR

(864) 801-3440

EXHIBIT A 995

Number	Date	Time	Calling No.	Called No.	Duration	Answered	Carrier	Call Type	Billed No
#159	02/26/04	19:48	864-801-3440	864-422-0367	2	Yes		001	
#160	02/26/04	19:52	864-901-8950	864-801-3440	1	Yes		066	
#161	02/26/04	20:25	864-801-3440	864-473-1294	1	Yes		001	
#162	02/26/04	20:25	864-801-3440	864-949-6269	1	Yes		001	
#163	02/26/04	20:29	864-879-1257	864-801-3440	1	Yes		001	
#164	02/26/04	20:30	864-801-3440	864-473-1294	1	Yes		001	
#165	02/26/04	20:31	864-801-3440	864-473-1294	9	Yes		001	
#166	02/26/04	20:31	864-901-8950	864-801-3440	1	Yes		066	
#167	02/26/04	20:51	864-848-5214	864-801-3440	1	Yes		001	
#168	02/26/04	20:51	864-801-3440	864-848-5214	1	Yes		001	
#169	02/26/04	22:57	864-439-6433	864-801-3440	5	Yes		001	
#170	02/26/04	23:02	864-422-0367	864-801-3440	12	Yes		001	
#171	02/26/04	23:26	864-901-8950	864-801-3440	1	Yes		066	
#172	02/26/04	23:27	864-801-3440	000-000-0000	0	Yes		330	
#173	02/26/04	23:27	864-801-3440	864-879-4559	2	Yes		001	
#174	02/26/04	23:35	864-801-3440	864-422-0367	1	Yes		001	
#175	02/27/04	00:05	864-901-8950	864-801-3440	1	Yes		066	
#176	02/27/04	00:10	864-801-3440	864-244-3368	1	Yes		001	
#177	02/27/04	00:10	864-801-3440	864-244-9903	1	Yes		001	
#178	02/27/04	00:13	864-801-3440	000-000-0000	0	Yes		330	
#179	02/27/04	00:13	864-801-3440	864-350-3424	25	Yes		001	
#180	02/27/04	00:39	864-801-3440	864-201-6171	1	Yes		001	
#181	02/27/04	00:43	864-801-3440	864-439-6433	3	Yes		001	
#182	02/27/04	01:02	864-422-0367	864-801-3440	2	Yes	she called him	001	
#183	02/27/04	01:03	864-801-3440	864-848-1086	1	Yes		001	
#184	02/27/04	01:05	864-801-3440	864-848-1086	27	Yes		001	
#185	02/27/04	01:32	864-801-3440	864-439-3425	4	Yes		001	
#186	02/27/04	01:37	864-801-3440	864-346-7785	3	Yes		001	
#187	02/27/04	01:55	864-801-3440	864-422-0367	14	Yes		001	
#188	02/27/04	02:51	864-801-3440	000-000-0000	0	Yes		330	
#189	02/27/04	02:52	864-801-3440	000-000-0000	0	Yes		330	
#190	02/27/04	02:52	864-801-3440	864-346-7785	1	Yes		001	
#191	02/27/04	03:29	864-848-1086	864-801-3440	2	Yes		001	
#192	02/27/04	04:41	864-801-4085	864-801-3440	1	Yes		001	
#193	02/27/04	04:50	864-801-3440	864-848-1086	4	Yes		001	
#194	02/27/04	05:14	864-848-1086	864-801-3440	1	Yes		001	
#195	02/27/04	05:24	864-801-3440	864-949-0092	51	Yes		001	
#196	02/27/04	06:27	864-801-3440	864-244-9903	1	Yes		001	
#197	02/27/04	06:27	864-801-3440	864-801-9257	1	Yes		001	
#198	02/27/04	06:33	864-801-3440	000-000-0000	0	Yes		330	
#199	02/27/04	06:34	864-801-3440	864-350-3424	1	Yes		001	
#200	02/27/04	06:57	864-801-3440	864-949-0092	3	Yes		001	
#201	02/27/04	07:21	864-801-3440	000-000-0000	0	Yes		330	
#202	02/27/04	07:21	864-801-3440	864-350-3424	1	Yes		001	
#203	02/27/04	07:23	864-801-3440	864-848-1086	1	Yes		001	
#204	02/27/04	07:25	864-801-3440	864-949-0092	28	Yes		001	
#205	02/27/04	07:53	864-801-3440	000-000-0000	0	Yes		330	
#206	02/27/04	07:53	864-801-3440	864-350-3424	1	Yes		001	
#207	02/27/04	07:54	864-848-1086	864-801-3440	15	Yes		001	
#208	02/27/04	08:28	864-848-1086	864-801-3440	1	Yes		001	
#209	02/27/04	09:50	706-286-6011	864-801-3440	1	Yes	0444	119	
#210	02/27/04	09:51	864-801-3440	000-000-0000	0	Yes		330	
#211	02/27/04	09:51	864-801-3440	864-350-3424	11	Yes		001	
#212	02/27/04	10:30	864-236-0006	864-801-3440	1	Yes		001	
#213	02/27/04	12:07	864-346-9999	364-801-3440	0	NO		066	

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Albert Santanio Kelly,)
 S.C.D.C. No. 277334,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2008-CP-23-7212

(44)

RETURN

2008 OCT 13 A 9:55

In response to the post-conviction relief application filed September 25, 2008, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the August 2004 term of General Sessions for murder (2004-GS-23-5966) and at the July 2005 term for armed robbery (2005-GS-23-2024, count 1) and possession of a weapon during commission of a violent crime (2005-GS-23-2024, count 2). C. Timothy Sullivan, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 12, 2005, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of forty-five (45) years for murder, fifteen (15) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense

SCANNED

12/12/08
 A.P.P. A.T.T.

1/2

perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Kelly, Op. No. 2008-UP-530 (S.C. Ct. App. filed September 11, 2008).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of trial counsel:
 - a. Failed to object to false testimony given by Investigator Arterburn.
 - b. Failed to object to false testimony given by Shaun Edwards and Charlene Edwards.
 - c. Failed to object to comments in the State's closing argument.
 - d. Failed to request exculpatory evidence:
 - i. Failed to request the brown wallet found in the victim's car.
 - ii. Failed to request the .380 bullets purchased by Shaun Edwards before the murder.
2. Trial issues:
 - a. State witness Donna Wentz lied under oath.
 - b. The confession should have been void.
 - c. Trial judge should have instructed the jury on alibi.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

December 3, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2008-CP-23-7212

ALBERT SANTANIO KELLY, 277334)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

2008 DEC 19 A 9:55

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

Albert Santanio Kelly, 277334
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer SC 29669

DATED this 3rd day of December, 2008.


 Judy A. G. Carey, Legal Assistant
 For Respondent

TO:
Judge of
Greenville County
Court House ..

Page 2 of 5

Date, 12-5-08

MOTION TO
Amend POST-
CONVICTION
APPLICATION

RE: ALBERT S. KELLY V.
STATE of South Carolina
2008-CP-23-7212

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DAVID W. FERGUSON

2008 DEC 11 A 8:34

and

Dear Judge,

PLEASE BE INFORMED
THAT BY ACCIDENT I FILED THE WRONG
POST-CONVICTION APPLICATION WHICH
WAS PROCESSED ON OCTOBER 7TH BY PAUL
WICKENSIMER -

I WROTE PAUL WICKENSIMER
A LETTER ON 9-23-08 INFORMING HIM
OF THIS -

PAUL WICKENSIMER INFORMED
ME ON OCTOBER 7TH 2008 THAT HE
CANNOT RETURN ANY OF THE PAPERS
SUBMITTED WITH MY APPLICATION -
BUT, I COULD ADD ADDITIONAL PAPERS -
ADDING ADDITIONAL PAGES WILL NOT CORRECT
PRIOR ERRORS CAUSED BY THE ROUGH
DRAFT -

ENTERED COMPUTER

COPY AGT in MCE

THE APPLICATION THAT I TURNED IN WAS A ROUGH DRAFT AND WAS NOT THE SUFFICIENT ADAQUATE COPIES THAT APPLICANT INTENDED TO TURN IN FOR REVIEW -

THEREFORE, APPLICANT REQUEST ~~PERMIT~~ PERMISSION TO AMEND PAGES 8-10 OF HIS POST-CONVICTION RELIEF APPLICATION - THE DENIAL OF THIS REQUEST WOULD RESULT IN PREJUDICE ON BEHALF OF APPLICANT BECAUSE OF THE MISTAKES AND FALSE INFORMATION THAT WAS UNKNOWINGLY PRESENT ON THE ROUGH DRAFT THAT WAS PROCESSED -

APPLICANT ASK TO HAVE ~~PER~~ PERMISSION BY THE JUDGE TO AMEND THE PROCESSED APPLICATION IN ORDER TO CORRECT ERRORS, ADAQUATELY ORGANIZE, AND SUFFICIENTLY PRESENT HIS CLAIMS TO RELIEF -

IF THE MOTION TO AMEND IS GRANTED BY THE JUDGE IN ORDER TO AMEND PAGES 8-10, IT WILL ALLOW THE APPLICANT A FAIR CHANCE TO PRESENT HIS CLAIMS FOR RELIEF TO THE COURT -

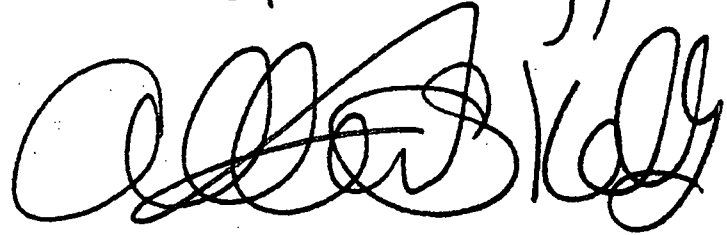
Already from Reading over the Attorney General's Return, I noticed THAT they have been Missled By the Rough DRAFT APPLICANT turned in By MISTAKE, WHICH Have Caused Error on Behalf of Attorney General upon Completing the original Return of Respondent, Received by APPLICANT on December 4th 2008 -

Wherefore, THIS Error CONSISTS OF APPLICANTS Main Claims OF Relief to be placed in the wrong Sections, ALSO Main Claims to be left out of THE RETURN Sent to Me By ATTORNEY GENERALS office -

Therefore, I Pray THAT THE Judge Will Allow Me to complete the claims, ~~the~~ facts, And Arguments I wish to Raise, by Giving me A Fair opportunity to Amend pages 8-18 - I Am A layman of THE law And by law I feel THAT I should be Given A Fair chance to present my APPLICATION TO THE Courts, As in A Adequate Sufficient way - Please Respond TO

My MOTION In (5) Working Days -

Respectfully,



12-5-2008

Dated, sc x

Albert S. Kelly
277334 (SmuD) y15)
(PCI) 430, OAKLAWN Rd
PELZER, SC. 29669

The Honorable Paul B. Wickensimer
Clerk of Court, Greenville County
305 EAST NORTH STREET,
Room 224
Greenville, S.C. 29601-2121

Page 1 of 5

6

Date,
12-5-2008

Re: Albert S. Kelly,
277334 v. STATE of
South Carolina 2008-CP-23-7212

FILED CLERK OF COURT
GREENVILLE CO. S.C.
DEC 11 2008

2008 DEC 11 A 8:34

Dear Paul Wickensimer,

Please find

Enclosed A letter to A Judge labled:
(MOTION TO Amend Post conviction
Application -) Please File/STAMP
The MOTION, And send me A
Filed/stamped Copie of the
letter Also This letter to you -
It's A total of (5) Pages

12-5-08 SC
Dated

x Albert S. Kelly
Albert S. Kelly
#277334 SmuDY15
(PCI) 430, OAKLAWN
PELZER, S.C. 29669

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

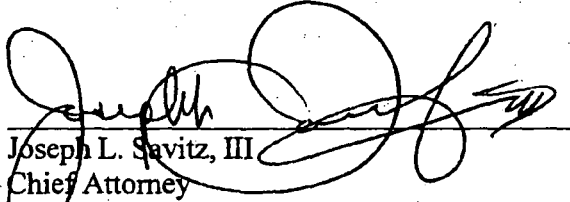
V.

ALBERT KELLY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of March, 2007. A copy of the brief and record on appeal have also been served on Albert Kelly, #277334 at Perry Correctional Institution, 430 Oaklawn Rd., Pelzer, SC 29669, this 1st day of March, 2007.



Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of March, 2007.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007

FROM:

661R
Pendi

ALBERT S. KELLY
277334 (DY 15)
PERRY CORRECTIONAL INST.
430, OAKLAWN ROAD
PELZER, SC. 29669

08-cp- 7212

DECEMBER 4, 2008

Page 1 of 5

TO:

(Send 1 copie BACK)
(Send COPY TO THE
ATTORNEY General)

PAUL B. WICKENSIMER
CLERK of COURT, Greenville County
305 EAST NORTH STREET, Rm 224
GREENVILLE, S.C. 29601-2121

RE: LETTER DATED 9-23-08
By APPLICANT, And LETTER
Dated OCTOBER 7, 2008 By
PAUL WICKENSIMER - THIS
IS Amended APPLICATION
of POST-CONVICTION RELIEF -
of CASE# 2008-CP 23-7212 -

RECEIVED
CLERK OF COURT
GREENVILLE, SC

2008 DEC 12 AM 9:38

(Bl)

PRINTED COMPUTER

DEAR Paul Wickensimer,
PLEASE FILE THE FOLLOWING (43) PAGES
OF POST-CONVICTION APPLICATION -
AS STATED ON 9-23-08 THE EXHIBITS
ALSO BRIEF (18) PAGES THAT WAS

p2/12/08

✓

Sent To your office And Filed on October 7, 2008 Was THE Rough DRAFT of APPLICANTS, IT WAS FALSE IN PART, INSUFFICIENT, INADAQUATE IN ALMOST A WHOLE -

YOU TOLD ME IN YOUR LETTER THAT I COULD SUBMIT ADDITIONAL PAPERS, THEREFORE, I TAKE THE OPPORTUNITY TO AMEND THE PRIOR APPLICATION BY SUBMITTING THE PRESENT 43 PAGE POST-CONVICTION APPLICATION -

OVERALL, THIS IS THE CORRECT POST-CONVICTION APPLICATION THAT IS SUFFICIENT AND ADAQUATE -

I REQUEST TO KEEP THE SAME CASE # AND THIS APPLICATION ADDED AS THE AMENDED POST CONVICTION APPLICATION TO CORRECT THE UNINTENTIONALLY ERRORS ACCIDENTALLY SENT IN THE PRIOR APPLICATION -
I WILL NOT RECEIVE A FAIR POST CONVICTION HEARING IF THE PRIOR APPLICATION AND EXHIBITS ARE REVIEWED AT ->

THE HEARING, THEREFORE, I REQUEST THE FOLLOWING 43 PAGES BE FILED IN PLACE OF THE INCORRECT PRIOR APPLICATION—

I AM A LAYMAN OF THE LAW, I DO NOT HAVE COUNSEL AS OF THIS DATE, THEREFORE, I REQUEST REASONABLE ASSISTANCE IN THIS MATTER, I AM PRO SE AND MADE A SIMPLE MISTAKE—

WHEREFORE, I PRAY THE FOLLOWING (43) PAGE POST CONVICTION RELIEF BE SUBMITTED TO THE COURTS AS CASE# 2008-CP-23-7212 AMENDED POST-CONVICTION APPLICATION—

THE DENIAL OF THIS REQUEST WOULD DENIE APPLICANT A REASONABLE AND FAIR OPPORTUNITY TO PRESENT HIS ISSUES OF UNLAWFUL INCARCERATION TO THE COURT FOR REVIEW—

ALSO, 1 PACKAGE OF EXHIBITS IS INCLUDED WITH THE (43) PAGE BRIEF AND IS FILED AS EVIDENCE

TO SUPPORT APPLICANTS CLAIMS
THRU HIS POST-CONVICTION APPLICA-
TION -

EXHIBITS INCLUDED ARE AS
FOLLOWS: EXHIBIT A33 WHICH IS A
TOTAL OF 5 PAGES, 1 AFFIDAVIT, 1 SEARCH
WARRANT, 1 PROPERTY REPORT, 1 RETURN
REPORT, 1 Greenville County Forensics
Scene photos of TAN Timberland
boots #715835 -

EXHIBIT (A11) 1 page of THE INCIDENT
REPORT WRITTEN BY KEITH S. BALLIEW

EXHIBIT B-2 3 page Affidavit
SEARCH Warrant By DALE ARTERBURN
of VICTIMS CAR

EXHIBIT B-11 1 page Forensics
Report of Brown Wallet And
2 ID's - ALSO EXHIBIT A4 Forensic
REPORT

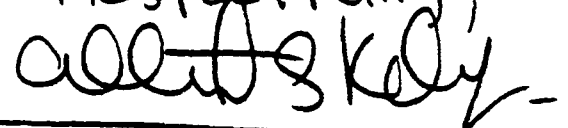
A TOTAL OF (11) EXHIBITS
PRESENTED AS EXHIBITS TO
SUPPORT CLAIMS OF RELIEF -

Send 1 copy of THIS letter
ALSO

5 of 5

Please Send After Filing, THE
 APPLICANT (1) COPIES OF THE
 Amended APPLICATION (43) Pages,
 And (1) COPIES OF EXHIBITS
 (11) (11) Pages — All OTHER MATERIAL
 FROM PRIOR POST-CONVICTION
 APPLICATION IS FALSE IN
 PART, INSUFFICIENT, INADEQUATE,
 WAS ACCIDENTALLY FILED, IS
 THE ROUGH DRAFT, AND WAS
 INCOMPLETED, AND SHOULD
 NOT BE REVIEWED BY THE
 COURTS — THE PRESENT Amended
 POST-CONVICTION IS THE
 CORRECT APPLICATION WHICH
 IS (43) Pages —

Also please let me know
 Is The Judge going To Answer
 my Request About MOTION
 TO DISCOVERY MATERIAL AND ALL
 COLORED PHOTOS OF EVIDENCE,
 AND AUTOPSY — I STILL NEED IT —

Respectfully,

 Albert S. Kelly #27733
 Perry C.I. 430 Oaklawn Rd
 Pelzer, SC. 29669

12-11-2008, sc x
 Dated

STATE OF SOUTH CAROLINA)

County of GREENVILLE S.C.)

IN THE COURT OF COMMON PLEAS

ALBERT S. KELLY SC# 277334)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

"Amended
APPLICATION"

2008-CT-23- 7212

"Amended"

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention PERRY Correctional Institution, 430 OAKLAWN ROAD, PELZER South Carolina 29669.
2. Name and location of Court which imposed sentence GREENVILLE General Sessions Court
3. Name(s) of co-defendant(s) (if any) MARCUS PARKS, Shawn Edwards, Donna WENTZ
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2004-GS-23-5966,

(b) 2 5-GS-23-202(c) 2005-GS-23-2024,

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

(a) 45 YEARS Murder OCTOBER 12, 2005(b) 15 YEARS Arm Robbery OCTOBER 12, 2005(c) 5 years PISTOL OCTOBER 12, 2005

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

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

YES

8. If you answered Ayes@ to (7), list:

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

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. APPEAL DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. September 11th 2008 -

ii. _____

iii. _____

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

i. The Court stated in An opinion, that theii. Opinion Has no Precedential value -iii. It should not be Relied on As Precedent inAny Proceeding except As provided by Rule (239)

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____

Appeal Case dismiss

- (b) _____
 (c) _____

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

- (a) DEFICIENT REPRESENTATION 6th Amendment
 (b) VIOLATION, BRADY MATERIAL (EXCULPATORY EVIDENCE),
 (c) NEWLY DISCOVERED EVIDENCE, FALSE TESTIMONY AND
ARGUMENTS AND EVIDENCE BY STATE WITNESSES AND DA

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

- (a) See ATTACHED PAGES
 (b) See ATTACHED PAGES
 (c) _____

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

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

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

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

yes

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

(a) which grounds have been presented:

i. 14th Amendment Due Process

ii. 6th Amendment Violations

iii. _____

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

i. Direct Appeal

ii. _____

iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? TIMOTHY Sullivan "yes"
 (c) your sentencing? TIMOTHY Sullivan "yes"
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? JOSEPH L. SAVITZ III "yes"
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. TIMOTHY Sullivan (Attorney AT law)
P.O. Box 2543 Greenville S.C. 29602
 ii. Joseph L. Savitz III (CHIEF ATTORNEY)
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589 Columbia S.C. 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL
 ii. DIRECT APPEAL
 iii. _____

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

A NEW TRIAL WITH ALL
WITHHELD EVIDENCE THAT PROOVE
MY INNOCENTS, AND INSTRUCTION ON ALIBI

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, ALBERT S. KELLY SCDC# 277334, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Albert S. Kelly

SWORN to and subscribed before me this 24th
 day of JANUARY, 2008.

DANIEL MARTIN (L.S.)
 Notary Public

My Commission Expires: JANUARY 11, 2014

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

I, ALBERT S KELLY SC# 277334, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Albert S Kelly
Applicant

SWORN or affirmed to and subscribed before me this
24th day of January, 2008.

Daniel Martin
Notary Public

My Commission Expires: January 11, 2014

11): STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN QUESTION (10):

(A1): =

FACTS

DETECTIVE DALE ARTERBURN WITH THE GREER POLICE DEPARTMENT WAS THE INVESTIGATOR OVER APPLICANTS CASE WHEREIN APPLICANT WAS CHARGE WITH MURDER, ARMED ROBBERY, AND POSSESSION OF A DEADLY WEAPON -

(A2): = THE DAY OF THE MURDER ON February 27, 2004 DETECTIVE SGT. MARK JUSTICE OF THE GREER POLICE DEPARTMENT SEARCHED APARTMENT B-4 AT 801 SOUTH MAIN STREET GREER SOUTH CAROLINA THE HOME OF APPLICANTS CO-DEFENDANT MARCUS PARKS - SGT MARK JUSTICE [REDACTED] FOUND AND RECOVERED 1 PAIR OF "TIMBERLAND TAN" BOOTS IN THE HOME OF CO-DEFENDANT MARCUS PARKS - SGT JUSTICE INTENTIONALLY OR UNKNOWINGLY WROTE THE COLOR OF THE BOOTS AS BEING BLACK WHICH IS NOT CORRECT - See (EXHIBIT A-33 WHICH IS THE AFFIDAVIT ALSO 2 page PROPERTY REPORT OF EVIDENCE RECOVERED BY MARK JUSTICE, ALSO A FORENSIC SCENE PHOTOS # 715835 OF THE TAN TIMBERLAND BOOTS WHICH MATCHED THE FOOTPRINTS AT THE CRIME SCENE) - EXHIBIT A-33 IS A TOTAL OF 5 PAGES -

(A3): = CASE INVESTIGATOR, DETECTIVE DALE ARTERBURN OF THE GREER POLICE DEPARTMENT GAVE TESTIMONY AT TRIAL THAT THE GREER POLICE DEPARTMENT DID NOT SEARCH APT B-4, CO-DEFENDANT MARCUS PARKS, WHERE THESE TAN TIMBERLAND BOOTS WAS RECOVERED BY SGT MARK JUSTICE. See: TRIAL Page (364 line 2-4) -

FACTS PAGE 40 of 43

(A4): = CO-DEFENDANT MARCUS PARKS GAVE TESTIMONY AT TRIAL THAT APPLICANT ALBERT S. KELLY DID NOT COME TO HIS APARTMENT B-4 AFTER LEAVING SHAUN EDWARDS APT C-6 - MARCUS PARKS TESTIFIED ON DIRECT EXAMINATION THAT AFTER HE LEFT SHAUN EDWARDS APARTMENT HE CO-DEFENDANT MARCUS PARKS WENT HOME TO APT B-4, MARCUS PARKS TESTIFIED HE DOES NOT KNOW WHERE ALBERT KELLY WENT, AND HE MARCUS PARKS DID NOT SEE THE DIRECTION ALBERT KELLY HEADED IN - See: TRIAL (Page 141 LINE 23 - LINE 1-8 PAGE 142)

(A5): = TRIAL ATTORNEY TIMOTHY SULLIVAN IN CLOSING ARGUMENTS STATED THE POLICE DEPARTMENT ON 2-27-04 FOLLOWED FOOTPRINTS FROM THE CRIME SCENE TO APT K-30 WHERE THEY SPOKE WITH LEON IRBY WHO TESTIFIED CO-DEFENDANTS SHAUN EDWARDS AND MARCUS PARKS HAD COME BY HIS APARTMENT - THE FOOTPRINTS WAS FOLLOWED AROUND LEON IRBY'S APT K-30 AND ENDED AT THE REAR OF CO-DEFENDANT SHAUN EDWARDS APARTMENT C-6 WHERE A SEARCH WAS CONDUCTED - See: TRIAL (Page 526 LINE 22 - Page 528 LINE 3)

(A6) = ISSUE

DEFENSE COUNSEL TIMOTHY SULLIVAN VIOLATED APPLICANTS 6TH AMENDMENT RIGHTS TO ADEQUATE AND SUFFICIENT REPRESENTATION OF COUNSEL WHEN HE FAILED TO OBJECT AND CORRECT FALSE TESTIMONY OF DETECTIVE DALE ARTERBURN, ALSO, TO REQUEST THE TIMBERLAND BOOTS IDENTIFIED ON PHOTO #715835 WHICH WAS EXCULPATORY EVIDENCE THAT COULD HAVE PROVEN APPLICANTS INNOCENCE -

Argument

(A7): =

IT IS WELL ON THE RECORD AND DOCUMENTED BY POLICE REPORTS AND WARRANTS, ALSO TRIAL TESTIMONY THAT 2 SETS OF FOOTPRINTS WAS FOLLOWED FROM THE CRIME SCENE TO APARTMENT C-6 SHAUN EDWARDS WHERE THE MURDER WEAPON WAS FOUND
See: TRIAL (Page 263 Line 15 - Page 265 Line 22)

TESTIMONY OF SGT MARK JUSTICE - THE FOOTPRINTS LED FROM THE CRIME SCENE DIRECTLY TO APT C-6 WHERE THE FOOTPRINTS IN THE SNOW ENDED -

IT IS WELL DOCUMENTED BY FORENSIC PHOTOS #715835 ALSO, 5 PAGE EXHIBIT A-33 PRESENTED BY APPLICANT THAT SGT MARK JUSTICE CONDUCTED A SEARCH AND RECOVERED THE TAN TIMBERLAND BOOTS FROM APT B-4 MARCUS PARKS ALSO THAT THE FOOT TRACKS LEFT IN THE SNOW WAS TIMBERLAND AND TEMBER FOOT TRACKS WHICH WAS MEASURED AND PHOTOGRAPHED BY FORENSIC'S - See (EXHIBIT A-33 Greenville County FORENSICS PHOTOS) #715835

IT IS WELL DOCUMENTED BY TRIAL TESTIMONY OF MARCUS PARKS Co-defendant THAT AFTER THE ALLEGED MURDER HE AND APPLICANT RAN FROM THE MURDER CRIME SCENE BACK TO APT C-6 SHAUN EDWARDS, AND WHEN THEY ALBERT KELLY AND MARCUS PARKS ALLEGEDLY LEFT SHAUN EDWARDS APT C-6 AT 3:00 AM ON 2-27-04, THAT HE Co-defendant MARCUS PARKS WENT HOME TO APT B-4, AND HE DID NOT SEE THE DIRECTION, OR KNOW WHERE APPLICANT ALBERT KELLY WENT - See: TRIAL (Page 136 Line 13 - Page 142 Line 8)

From THE EXHIBITS PRESENTED ON POST CONVICTION ALSO TRIAL TESTIMONY IT IS CLEAR THAT DETECTIVE DALE ARTERBURN LIED WHEN HE GAVE FALSE TESTIMONY ABOUT HIS POLICE DEPARTMENT NOT SEARCHING CO-DEFENDANT MARCUS PARKS HOME APARTMENT B-4 - See: TRIAL (Page 364 Line 2-4)

From Arguments Made by Timothy Sullivan In Closing Also opening STATEMENTS, IT IS CLEAR THAT TIMOTHY SULLIVAN WAS AWARE OF THE FOOTPRINTS IN THE SNOW, ALSO THE BOOTS, WHICH FORENSIC PHOTOGRAPHED ALSO MEASURED ON # 715835 TIMBERLAND BOOTS, WHICH APPLICANT ALLEGED WAS THE BOOTS [REDACTED] HAD ON THE MORNING THEY SHAWN EDWARDS, AND, MARCUS PARKS, COMMITTED THE MURDER OF IGNACIO DELGADO - See: TRIAL (Page 83 Line 24 - Page 84 Line 13) THESE PAGES ALSO (Page 526 Line 22 - Page 528 Line 3)

IS PROOF THAT TIMOTHY SULLIVAN WAS AWARE OF FOOTPRINTS IN SNOW, AND THEREFORE HE HAD TO HAVE BEEN AWARE OF THE BOOTS BECAUSE APPLICANT VERBALLY MADE HIM AWARE AT SEVERAL ATTORNEY VISITS BEFORE TRIAL -

From THE TESTIMONY OF MARCUS PARKS THAT ALBERT KILLY DID NOT COME TO HIS APARTMENT, THE TIMBERLAND BOOTS MATCHING THE CRIME SCENE TRACKS, WHICH WENT FROM THE CRIME SCENE, TO APT C-6, WHERE THE MURDER WEAPON WAS FOUND, COULD HAVE MADE A BIG DIFFERENCE IN THE TRIAL VERDICT AGAINST APPLICANT - THESE EVIDENCE ARE BRADY MATERIAL AND WAS

EXCULPATORY EVIDENCE THAT COULD HAVE DIRECTLY PROVEN THE APPLICANTS INNOCENCE - THE TIMBERLAND BOOTS ALSO COULD HAVE MADE THE REALITY OF APPLICANTS ALIBI WITNESS BELIEVABLE - ALSO THE EXCULPATORY EVIDENCE, TIMBERLAND BOOTS, COULD HAVE PROVEN THE REALITY THAT THE CONFESSIONS ALLEGEDLY MADE BY APPLICANT WAS FALSE - IF NOT FOR THE WITHHELD EVIDENCE A DIFFERENT OUTCOME WOULD HAVE RESULTED IN THE OUTCOME OF THE TRIAL - TIMOTHY SULLIVANS CONDUCT OF NOT REQUESTING OR PRESENTING THE TIMBERLAND BOOTS IN PHOTOE SHOOT #715835 SO UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT THE TRIAL CANNOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT: STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984) - COUNSEL ALSO VIOLATED APPLICANTS 6TH AMENDMENT RIGHTS TO ADEQUATE ASSISTANCE OF COUNSEL WHEN HE FAILED TO OBJECT OR CORRECT THE FALSE TESTIMONY GIVEN ABOUT THE SEARCH WHICH WAS CONDUCTED AT MARCUS PARKS B-4 HOME, WHEREIN, THE TIMBERLAND BOOTS FROM PHOTOE #715835 WAS RECOVERED BY SGT JUSTICE, THIS FALSE TESTIMONY GIVEN BY CASE DETECTIVE DALE ARTERBURN WITH THE GREER POLICE DEPARTMENT

See: TRIAL (Page 364 Line 2-4)

WHEN THE JURORS WAS ALLOWED TO HEAR THIS FALSE TESTIMONY, AND THE WITHHELD EVIDENCE OF EXCULPATORY NATURE

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was withheld, by prosecutor, due to attorneys failure to request, it misled the jurors into believing no search of Marcus Parks was conducted, when in reality Brady material was discovered. I Applicant also feel the prosecutor Mark Moyer had a duty under due process to present the evidence to the defense knowing this evidence to be Brady material and exculpatory evidence, regardless if requested, by attorney, or not, due to the importance and crucial performance the Timberland boots in photo #715835 could have played in the innocence of Applicant -

OVERALL, TRIAL ATTORNEY TIMOTHY SULLIVANS performance was deficient under reasonableness as a professional, also counsels deficient performance was prejudice to the Applicant in such a way, that, had it not been for counsels unprofessional errors, the result of the trial would have been likely different -

Cherry v. State, 300 S.C. at 117, 386 S.E. 2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065).

Cherry, 300 S.C. at 117-18, 386 S.E. 2d at 625. [REDACTED] "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial."

Johnson v. State, 325 S.C. 182, 186, 480 S.E. 2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984))

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THE APPLICANT SUBMITS HE CAN SATISFY BOTH REQUIREMENTS OF THE STRICKLAND V. WASHINGTON TEST BY THE QUESTIONS OF FACTS THAT IS SHOWN BY THE RECORD, ALSO FACTS THAT CANNOT BE REFUTED BY THE RECORD - THE APPLICANT REQUEST AN EVIDENTIARY HEARING TO FULLY RESOLVE THIS ISSUE, ALSO JUDGEMENT, THAT DEFENSE COUNSEL TIMOTHY SULLIVAN'S REPRESENTATION OF APPLICANT, WAS NOT ADEQUATE, NOR SUFFICIENT, DUE TO THE FACTS, ISSUES, AND ARGUMENT STATED IN THIS POST-CONVICTION APPLICATION -

(A8): =

FACTS

THE VICTIM IGNACIO DELGADO WAS FOUND LAYING APPROXIMATELY 10 FEET FROM THE FRONT DOOR OF TRAILER #51 AND APPROXIMATELY 6 FEET FROM HIS CAR - THE CAR WAS RUNNING, THE PARK LIGHTS WERE ON AND THE STEREO WAS BLARING -

SEE (EXHIBIT A-11 PAGE 1) OF OFFICER KEITH S. BALLIEW INCIDENT REPORT -

(A9) - THE VICTIM'S CAR WAS REQUESTED TO BE SEARCHED BY CASE INVESTIGATOR DALE ARTERBURN, AN AFFIDAVIT WAS DONE BY DALE ARTERBURN WHERE HE STATED, "PROPERTY SOUGHT," WAS ANY ITEMS THAT COULD BE CONNECTED TO THE ROBBERY / MURDER OF IGNACIO DELGADO - INVESTIGATOR ARTERBURN ALSO STATED THAT HE HAD

INFORMATION THAT THE MURDER HAPPEN DURING AN ARMED ROBBERY - ALSO THAT IT IS IMPERATIVE THAT THE ABOVE PREMISES BE SEARCHED IN ATTEMPTS OF LOCATING ANY EVIDENCE THAT COULD BE CONNECTED TO THE CRIMES OF ROBBERY / MURDER -
See: EXHIBIT B-E; A 3 PAGE REPORT BY DALE ARTERBURN WHICH CONSISTS OF 1 AFFIDAVIT AND 2 PAGE SEARCH WARRANT - TOTAL OF 3 PAGES -
See: UNDERLINED PARTS

(A:11) ON 3-3-2004 FORENSIC OFFICER ORLANDO D.C, ALSO, WERE REQUESTED TO RESPOND TO 942 S. MAIN STREET BY INVESTIGATOR DALE ARTERBURN, FOR PROCESSING A VEHICLE INVOLVED IN A DEATH INVESTIGATION OF IGNACIO DELGADO - THE BELOW ITEMS WAS COLLECTED FROM THE INTERIOR OF THE VEHICLE:

DC01 - BROWN WALLET LOCATED IN GLOVE BOX OF VEHICLE CONTAINING FLORIDA IDENTIFICATION CARD AND SOUTH CAROLINA IDENTIFICATION CARD (1117) -

THE ABOVE COLLECTED ITEMS WERE RELEASED AND GIVEN TO THE INVESTIGATOR -

See: (EXHIBIT B-11) 1 PAGE REPORT OF FORENSIC OFFICER ORLANDO D.C. CONDUCTED ON 3-3-04 -

(A:12) DETECTIVE DALE ARTERBURN GAVE TESTIMONY ON DIRECT EXAMINATION THAT NO WALLET WAS FOUND AT THE SCENE -
See: (TRIAL PAGE 349 LINE 12-14)

(A:13) = IGNACIO Delgados BROTHER Emilio Delgado SR. Gave TESTIMONY ON DIRECT EXAMINATION THAT HIM AND HIS BROTHER VICTIM CAME TO AMERICA IN 1979 AND THAT THEY LIVED IN FLORIDA AND SOUTH CAROLINA - See: TRIAL Page 96 Line 15 - Page 97 Line 7

(A:14) = ISSUE
TRIAL ATTORNEY TIMOTHY SULLIVAN VIOLATED DEFENDANTS 6TH AMENDMENT RIGHT TO ADEQUATE, SUFFICIENT, AND REASONABLE REPRESENTATION AT TRIAL WHEN HE FAILED TO CORRECT FALSE TESTIMONY OR OBJECT TO FALSE TESTIMONY GIVEN BY DETECTIVE DALE ARTERBURN, THAT NO WALLET WAS FOUND, ALSO BY PROSECUTOR MARK MOYER ARGUMENT ABOUT WALLET, ALSO, FOR COUNSEL'S FAILURE TO REQUEST THE BRADY MATERIAL, THAT WAS EXCULPATORY EVIDENCE, THE BROWN WALLET"

(A:15) = Argument

A BROWN WALLET WAS FOUND IN THE VICTIMS CAR, THE BROWN WALLET CONTAINED A SOUTH CAROLINA I.D. AND A FLORIDA I.D.
See: (EXHIBIT B-11) FORENSIC REPORT OF SEARCH OF VICTIMS VEHICLE 1 PAGE)

VICTIMS BROTHER EMILIO DELGADO SR GAVE DIRECT TESTIMONY AT TRIAL THAT THE VICTIM LIVED IN FLORIDA AND GREENVILLE SC. AND HAVE BEEN

In America Since 1979 - See (Trial Page 96 line 15 - Page 97 Line 7) -

Evidentially THE wallet, BROWN wallet Found In THE VICTIMS CAR WITH Florida I.D. And South Carolina I.D. Belonged To THE VICTIM And Was His wallet -

THE TESTIMONY DALE ARTERburn Gave Was Clearly False TESTIMONY See (Trial Page 349 Line 12-14) When He STATED NO wallet was Found -

DISTRICT ATTORNEY MARK MOYER Made MATTERS WORSE WHEN HE ARGUED THAT APPLICANT TOOK THE VICTIMS wallet DURING A Armed Robbery And SPENT THE VICTIMS Money WHEN HE RAN TO ATLANTA Georgia See (TRIAL Page 437 Line 20-25) ALSO: (TRIAL page 561 Line 5-7)

Defendant ALBERT Kelly Was CHARGED WITH Murder, THE MOTIVE Armed Robbery, Taking THE VICTIMS wallet See (page 71 Line 14 - page 72 line 5) ALSO: (page 580 Line 2-24) ALSO, THE Judge INSTRUCTED THE Jury ON charges OF Armed Robbery -

APPLICANT ARGUES THAT IT IS NO way HE WAS PRESENT AT THE Scene

And Robbed THE Victim For His Wallet -
 IT IS Clear To See By THE EXHIBITS
 PRESENTED, THAT THE VICTIMS Florida
 And South Carolina ID's Were Found In
 THE VICTIMS Car, WHICH WAS PART OF
 THE CRIME SCENE, DISCOVERED INSIDE OF A
 BROWN WALLET -

THIS EVIDENCE WAS CRUCIAL TO THE
 APPLICANTS CLAIM OF INNOCENCE, ALSO
 THIS EVIDENCE COULD HAVE PROOVEN THE
 FALSE NATURE OF THE Confession Wrote
 By APPLICANT - THIS EVIDENCE WOULD
 HAVE PROOVEN Detective ARTERburns
 False TESTIMONY TO THE JURY, ALSO
 THIS ~~(EVIDENCE)~~ WOULD HAVE PROOVEN
 PROSECUTOR MARK Moyers ARGUMENTS
 TO BE FALSE THAT APPLICANT TOOK THE
 VICTIMS WALLET, AND, SPENT THE MONEY
 WHEN HE RAN TO ATLANTA - MOST OF
 ALL THE BROWN WALLET AND ID's WOULD
 HAVE PROOVEN THAT APPLICANT DID NOT
 ROB THE VICTIM OF HIS WALLET -
 THE SHOWING OF THIS EVIDENCE COULD
 HAVE ALSO SHOWED THE APPLICANTS
 ALIBI WITNESS TO BE BELIEVABLE -

(A16): THE APPLICANT ASSERTS HIS
 ATTORNEY WAS INEFFECTIVE, AND THAT
 HIS ASSISTANCE WAS NOT IN THE
 STANDARD OF REASONABLENESS AS A
 PROFESSIONAL AND AS A CRIMINAL DEFENSE
 ATTORNEY -

Counsel's Failure To Present THE Wallet To THE Jury undermined THE PROPER FUNCTIONING OF THE PROCESS THAT THE TRIAL CANNOT BE RELIED ON AS HAVING PRODUCED A FAIR RESULT -

Counsel's performance was deficient, ALSO VERY PREJUDICE TO THE APPLICANTS Defense, THAT HE IS INNOCENT, Related To ALIBI Defense -

IF NOT FOR THIS VIOLATION IT IS LIKELY THAT APPLICANT WOULD HAVE BEEN FOUND NOT GUILTY OF ARMED ROBBERY, THE TAKING AWAY OF THE VICTIMS WALLET, AND SPENDING THE MONEY IN ATLANTA, ALSO I'm CONFIDENT THAT A DIFFERENT OUTCOME WOULD HAVE HAPPEN AT TRIAL - THIS EVIDENCE PRESENTED TO THE JURY WOULD HAVE ALSO PROOVEN THE APPLICANTS Confession To Greer Police on 5-10-04 AT 1449 Hours To Be false -

(A:17) = FACTS

Co-defendant Shaun Edwards ALSO HIS MOTHER STATE WITNESS CHARLENE Edwards TESTIFIED ON DIRECT EXAMINATION THAT THEY PUT APPLICANT ALBERT S. Kelly And Co-defendant Marcus PARKS OUT OF THEIR APARTMENT C-6 AT 3:00 AM on 2-27-04 Morning of THE Murder And THAT Police Arrived MINUTS later. See TRIAL Page 163 line 18-25 ALSO Page 280 Line 1-25)

(A:18)=

PROSECUTOR Mark Moyer Argued THAT CHARlene Edwards And Co-defendant SHaun Edwards Kicked APPLICANT And Co-defendant Marcus PARKS OUT OF THEIR House AT 3:00 Am on 2-27-04 And AT 3:30 Am on 2-27-04 THE POLICE Arrived AT THE Edwards APARTment WHERE A SEARCH Was Conducted - See: (Trial Page, 546 Line 18 - PAGE 547 Line 9)

(A:19)= WITNESS Leon IRBY TESTIFIED THAT

He Called Charlene Edwards House AT 3:29 Am on 2-27-04 Morning of murder And Told HER THAT POLICE Had Just Left HIS Apartment K-30, Following FOOT PRINTS From A murder Scene, And, THAT He Told POLICE To Follow THE FOOT PRINTS, THEY LEAd TO APT C-6 SHaun [REDACTED] And CHARlene Edwards Home - Also, He, Leon IRby, Told POLICE SHaun And Co-defendants Marcus Parks Had been by HIS Home APT # K-30 PRIOR TO POLICE Arriving - See: (Trial Transcript Page 375 line 14 - 377, Line 15) ALSO: (Page, 381, Line 21 - Page 382 Line 1 - 12).

(A:20)= MARK Moyer Based HIS Arguments OF THE Above TESTIMONY(S) AS Being TRUE based ON BellSouth Phone Records - See: (Trial Page, 546 Line 18 - 20) ALSO: (Page 547 Line 2 - 9)

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(A:21) = L.T. MATTHEW HAMBY OF THE CREEK POLICE DEPARTMENT WAS THE LIEUTENANT OVER THE CRIMINAL INVESTIGATION, AND L.T. HAMBY GAVE DIRECT TESTIMONY THAT HE ALSO THE OTHER POLICE ARRIVED AT APT # C6 SHAUN EDWARDS, (CO-DEFENDANT), AND CHARLENE EDWARDS (STATE WITNESS) AND, MOTHER OF SHAUN, AT APPROXIMATELY 2:30 TO 4:00 AM ON 2-27-04, APPROXIMATE TIME FRAME - SEE (TRIAL PAGE 314 LINE 2 - PAGE 315 LINE 11) -

(A:22) = DETECTIVE DALE ARTERBURN GAVE TESTIMONY ON DIRECT EXAMINATION THAT HE ARRIVED ON THE MURDER SCENE AT 1:40 AM ON 2-27-04 - SEE (TRIAL PAGE 350 LINE 6-18):

(A:23) = DETECTIVE MARK JUSTICE TESTIFIED THE SNOW IS THE KEY THAT SOLVED THE CRIME REAL QUICK SEE (PAGE 274 TRIAL TRANSCRIPT LINE 15-20)

ALSO DETECTIVE MARK JUSTICE TESTIFIED HE ENDED UP AT APARTMENT C-6 AFTER STOPPING TO TALK TO LEON IRBY AT 2:30 IN THAT GENERAL TIME SEE (TRIAL PAGE 266 LINE 3-25)

Failed To object To THE False TESTIMONY
OF CHARlene Edwards And SHAUN Edwards About
THEM PUTTING APPLICANT Albert Kelly out
AT 3:00 Am on 2-27-04 Morning of THE
Murder -

Also TIMOTHY Sullivan Failed To
Correct or object To False Closing Arguments
Made by PROSECUTOR MARK MOYER THAT
~~THE~~ POLICE Arrived AT CHARlene
Edwards APARTment C-6 AT 3:30 Am
on 2-27-04 By using Bell South Phone
Records -

TIMOTHY Sullivan VIOLATED defendants
6TH Amendment Rights To Reasonable
Representation AT TRIAL - when He
Failed To Correct THE False Elements,
Also Failed To Object THE False
Elements of Prosecutors ARGUMENT -

(A:25) = Argument

All POLICE Gave TESTIMONY THAT THEY
Arr way Before 3:30 Am ON 2-27-04
AT THE Edwards APARTment Where THE
Murder Weapon Was found - ITS well
Documented By POLICE Reports And
Incident Reports From THE Morning
OF 2-27-04, ALSO ITS well Documented

In THE TRIAL TRANSCRIPT OF DETECTIVE MATTHEW Hamby, And Mark JUSTICE THAT THEY Arrived Before 3:30 Am -

THE TESTIMONY OF CHARLEN EDWARDS DESTROYED APPLICANTS ALIBI WITNESS BECAUSE IT MADE IT SEEM LIKE THE DEFENDANT ALBERT KELLY WAS INSIDE OF THE EDWARDS HOME WHEN HIS ALIBI SHOULD HAVE BEEN IN MOTION -

IF THE FALSE ARGUMENT OF CHARLENE EDWARDS WAS GIVEN A SMALL OR BIG CHANCE AT BEING TRUE, THAT SHE PUT ALBERT KELLY AND ~~STAN~~ MARCUS PARKS OUT OF HER APT #C-6 AT 3:00, ITS ALREADY BEEN PROOVEN FALSE BY POLICE TIME FRAMES THATS DOCUMENTED -

IF MARK MOYERS ARGUMENT THAT LEON IRBY CALLED CHARLENE EDWARDS SOON AS POLICE LEFT HIS HOUSE K-30 AT 3:30 AM ON 2-27-04, TO NOTIFY HER POLICE WAS FOLLOWING FOOTTRACKS FROM A MURDER, TO HER APT C-6, ITS BEEN PROOVEN FALSE, BECAUSE IF POLICE ARRIVED AT THE EDWARDS APARTMENT C-6 AT 3:30 AM ON 2-27-04 [REDACTED] AS THE PROSECUTOR IS SAYING BY USING THE PHONE RECORDS, THAT MEANS ALL OF THE POLICE TIMES IS FALSE -

Also IF CHARlene Edwards TESTIMONY About HER placing Applicant out of HER House AT 300 Was True, Albert Kelly The Applicant Would Have Been Inside of THE Edwards Apartment AT 2:30 Am on 2-27-04, When Police Arrived And Searched Aptc-6 -

CHARlene Edwards [REDACTED] TESTIFIED False TESTIMONY - Leon Irby TESTIFIED False TESTIMONY - Prosecutor Mark Moyer Argued False TESTIMONY by using THE Phone Records. TIMOTHY SULLIVAN Failed TO object TO THIS False Evidence Being Told TO THE Jury -

THIS False Evidence Argued by Prosecutor, Also TESTIFIED by CHARlene Edwards And Leon Irby VIOLATED Rights of Applicants TO A Fair TRIAL, ALSO Completely Destroyed Applicants Alibi TESTIMONY THAT He Was Home from 11:00 pm on 2-26-04 - 4:30 or So, Am on 2-27-04 WITH HIS MOTHER Joyce Gordon -

IF NOT For THIS violation And Error A different outcome Would Have Happen In The TRIAL, And IT Is likely THE Jury Would Have BELIEVED Applicants Alibi TESTIMONY -

Timothy Sullivan violated Applicants Rights To Reasonable Representation By Defense Counsel - Timothy Sullivans Representation Was Not Adequate, Also was INSUFFICIENT By Professional STANDARDS -

(B:1) = FACTS

Shaun Edwards TESTIFIED THAT HE PURCHASED 380 Bullets From Walmart 2 days PRIOR TO THE MURDER, ALSO HE SHAUN EDWARDS TESTIFIED HE DIDNOT Buy Bullets For or From ALBERT Kelly See;
(TRIAL Page 170 line 12 - Page 171 line 12)

(B:2) = L.T. MATTHEW HAMBY TESTIFIED AT APPROXIMATELY 1:30 ON 2-27-04, HE ALSO DETECTIVE STEVE DENTON RETURNED TO SHAUN EDWARDS APARTMENT, C-6, AND FOUND A 380 HIGH POINT PISTOL (THE MURDER WEAPON) WRAPED IN A black Toboggan Stocking Hat WITH THE Bullets, 380s, PURCHASED by SHAUN EDWARDS From Wal-Mart ON 2-25-04 -
See (TRIAL Page 315 line 12 - Page 317 Line 10)

(B:3) = Detective Arterburn Testified
THAT Shaun Edwards Told Him He Purchased
THE "380" Ammo See (Trial Page 365 line
9 - page 366 line 11)

(B:4) Shaun Edwards Testified He Had
THE 380 Ammo Because He Was About
To buy A 380 Handgun And He Told THE
Police THE Same See (Trial Page 170 line 17 -
Page 171 line 8)

(B:5) = ISSUE

NEWLY DISCOVERED
EVIDENCE
THAT COULD PROOVE APPLICANTS
INNOCENCE -

(B:6) = Argument

EARLY IN PLAINTIFFS INCARCERATION
WHILE AT THE KIRKLAND CORRECTIONS
INSTITUTION, APPLICANT DISCOVERED
FACTS GIVING RISE TO THIS CASE
FROM SHAUN EDWARDS CO-DEFENDANT
WHILE THEY WERE BOTH INCARCERATED
AT THE SAME INSTITUTION IN
OCTOBER AND NOVEMBER 2005 -

Shaun Edwards (Co-defendant) spoke with ALBERT KELLY (APPLICANT) SEVERAL TIMES IN THE KIRKLAND CAFETERIA, KIRKLAND YARD, AND CO-DEFENDANT Shaun Edwards, Gave APPLICANT packs OF TOP CIGARETTE TOBACCO, PURCHASED FROM THE CANTEN, TO EXPRESS HIS FEELINGS AND PEACE OFFERINGS FOR FRAMING APPLICANT ALBERT KELLY -

Shaun Edwards STATED AND CONFESSED TWICE TO THE APPLICANT THAT (HE) Shaun Edwards, AND (CO-DEFENDANT) Marcus PARKS IS THE ONE WHO COMMITTED THE MURDER AND ATTEMPTED ARMED ROBBERY OF IGNACIO DELGADO -

Shaun Edwards TOLD (ME) ALBERT KELLY THAT Marcus PARKS WAS THE SHOOTER (TRIGGER) (MAN) - Shaun Edwards STATED THAT THE "380" PISTOL BELONGED TO ~~██████~~ Marcus PARKS FROM A ROBBERY THEY COMMITTED NEAR TABS FLEA MARKET IN CREEK SEVERAL DAYS PRIOR TO THE MURDER - Shaun Edwards ALSO STATED THAT THE "22" ALSO BELONGED TO Marcus, BUT; HE AND HIS FRIEND FROM NEW YORK BOUGHT THE 22 HAND GUN FROM Marcus PARKS -

Shaun Edwards ALSO STATED THAT THE "SKS" ASSAULT RIFLE CAME FROM A HOME INVASION COMMITTED BY HIM AND Marcus ON A WHITE GUY NEAR TABS FLEA MARKET ~~██~~ SEVERAL DAYS BEFORE THE MURDER - Shaun TOLD APPLICANT TO KEEP ALL OF THIS INFORMATION SILENT UNTILL HE WAS RELEASED FROM PRISON, THEN HE WOULD HELP APLICANT GET OUT - ALSO Shaun

Said if I said something before his release, He would deny
Shaun Edwards Also Told APPLICANT About A Texico
Robbery He Committed ON December or January
2003-2004, THE Same Store Dona WENTZ Worked,
And, THAT Dona WENTZ Had Something to do WITH
Helping Him - SHAUN EDWARDS TOLD APPLICANT
About SEVERAL More Busniess And STORE Robberys,
Also Home INVASIONS, Him And MARCUS PARKS
Committed In The Greer, WITH Another Guy Named
AS New YORK -

SHAUN Confessed To ALBERT KELLY THAT ON
February 26, 2007 Him And ~~_____~~ Marcus
IRBYS House Asking To borrow leon's van For
TRANSPORTATION - SHAUN Said leon denied The
Request And Gave MARCUS And Him 2 cups
OF LIQUOR - SHAUN STATED Him, And, MARCUS
PARKS WENT BACK TO APARTMENT C-6 From
Leon Irbys House About 10:00 pm Seconds
Before ALBERT KELLY Showed UP, And TONIE GLEN -

SHAUN STATED THAT WHEN ALBERT
Kelly LEFT HIS House later, THAT - Him And
MARCUS PARKS WENT OUT looking For A CAR -
SHAUN SAID MARCUS PARKS Had THE "380"
High POINT, THAT WAS loaded WITH 2
different TYPES OF BulLETS - SHAUN Said THAT
2 OF THE BulLETS WAS Gold looking, And
THE OTHERS WAS THE BulLETS PURCHASED by
Him, SHAUN EDWARDS From Wal-mart on 2-25-04 -

SHAUN SAID He Had THE Black "22"
Hand gun WHICH He Actually bought From
MARCUS PARKS, And, SHAUN STATED He Was
Susspose To buy THE "380" High POINT
From MARCUS PARKS when He got Some
Money -

280f43

SHAUN Confessed THAT THEY WENT TO Marcus PARKS Apartment B-4 For A little while And Marcus CHANGED SHOES, Marcus placed ON A PAIR OF TAN TIMBERLAND BOOTS IN # 715835 of forensic Digital Images -

SHAUN SAID ABOUT 12:45 MIDNIGHT HIM AND Marcus WENT WALKING TO THE Southgate Trailer Park, And, They Saw A mexican who He Knew by the name of NACHO. who use TO Sell HIM BEER - SHAUN EDWARDS STATED HIM AND Marcus PARKS ATTEMPTED TO Robb Ignacio Delgado FOR HIS CAR AND Money - Marcus PARKS PULLED THE 380 Highpoint OUT, And, Ignacio GRABBED Marcus GETTING THE upper Hand - SHAUN EDWARDS Confessed THAT Marcus PARKS SHOT Ignacio IN THE FACE - THEY BOTH RAN BACK TO Drummond Village APT # C6 -

SHAUN SAID HIM AND Marcus PARKS Came UP WITH THE plan TO blame THE Murder ON Albert Kelly who was owed \$ 3,000.00 By SHAUN EDWARDS AND HIS MOTHER, IF THEY GOT Caught - SHAUN SAID, He WATCHED Marcus PARKS place All of THE Bullets BACK IN THE Box, WITH 1 Gold off Brand bullet, THAT WAS Same Make AS Bullet THAT Killed THE VICTIM - SHAUN SAID He did NOT know Marcus left THE Gun under HIS SOFA -

SHAUN SAID Marcus AND Him WENT BACK TO APT # B4 And SHAUN

Said Marcus, Iaced His TAN Timberland boots⁶⁹⁵
from Digital Image #T15835 Inside of THE
KITCHEN CABINET - SHAUN SAID HE LEFT HIS
BLACK TIMBERS AT MARCUS HOUSE, ALSO, AND
PUT ON A PAIR OF MARCUS SHOES -

SHAUN EDWARDS SAID NOTHING WAS
TAKEN FROM THE VICTIM, NO MONEY -

SHAUN EDWARDS ALREADY TESTIFIED HE DIDNOT BUY THE
380 BULLETS FOR ALBERT KELLY SEE; (TRIAL PAGE 170 LINE
17 - PAGE 171 LINE 12) -

THIS BEING THE CASE ALBERT KELLY NEVER HAD
THE BULLETS PURCHASED BY SHAUN EDWARDS AT WAL-MART
ON 2-25-04 TO PLACE WITH THE MURDER WEAPON
INSIDE OF A TOBBAGAN STOCKING HAT, TO PLACE UNDER
SHAUN EDWARDS SOFA WHERE THOSE ITEMS WAS FOUND -

THEFORE, THE NEWLY DISCOVERED EVIDENCE
THAT 1 GOLD BULLET, OR 1 OFF BRAND BULLET, IS INSIDE
OF THE BOX OF 380 AMMO BELONGING TO SHAUN
EDWARDS, SAME MAKE AND BRAND AS 1 BULLET THAT KILLED
IGNACIO DELGADO, THIS NEWLY DISCOVERED EVIDENCE
COULD PROOVE DEFENDANTS ALIBI, AND CLAIM OF
INNOCENCE - ALSO COULD PROOVE MARCUS PARKS AND
SHAUN EDWARDS WERE THE ONES WHO COMMITTED THE
MURDER AND FRAMED ALBERT KELLY -

SHAUN ALSO SAID HE DID IT TO GET
LESSER TIME FOR HIMSELF, AND, HIS PARTNER
IN CRIME MARCUS PARKS - ALSO ABOUT \$3,000.00

A EVIDENT HEARING NEEDS BE HELD TO
EXAMIN THE BOX OF 380 AMMO, IF THIS IS
TRUE, THE 1 MATCHING BULLET, WITH AMMO
ALBERT KELLY NEVER TOUCHED, COULD RESULT
IN A DIFFERENT OUTCOME AT THE TRIAL -

(B:7) =

Dona Wentz Gave Testimony
 THAT DEFENDANT ALBERT KELLY
 Called Her on 2-26-04 THE NIGHT
 BEFORE THE MURDER AT 1:30 AM FROM
 Shaun Edwards House Apt C-6 —
See TRIAL Page 496 line 11-18)

(B:8) = DISTRICT ATTORNEY Mark Moyer
 Gave Closing Arguments THAT HE HAD
 Came up WITH A TIME Chronological
 Time Table of 2-27-04 And THAT
 THE Bell-South Phone Records Prove
 ALBERT KELLY Called Dona Wentz AT
 1:30 AM on 2-27-04 Morning of
 THE MURDER. See TRIAL Page 564 line
3-24) From Shaun Edwards C-6 —

(B:9) = Issue

THIS IS FALSE ARGUMENT BY
 THE PROSECUTOR — ATTORNEY TIMOTHY
 SULLIVAN VIOLATED DEFENDANTS 6TH
 Amendment Right For Failure TO
 Object And Correct —

IT IS WELL DOCUMENTED THAT DONA WENTZ TESTIFIED ALBERT KELLY APPLICANT CALLED HER THE NIGHT BEFORE 2-27-04 FROM SHAUN EDWARDS AT 1:30 AM. PROSECUTOR MARK MOYER ASKED HER HAD SHE HEARD FROM ALBERT KELLY THE NIGHT BEFORE 2-27-04, DONA WENTZ TESTIFIED YES, WHEN HE CALLED ME AT 1:30 AM FROM SHAUN EDWARDS APARTMENT -
See (Trial Page 496 line 11-18) ALSO,
See: (Page 497 Line 9-11)

MARK MOYER FLIPPED THE TESTIMONY OF DONA WENTZ AND MADE IT SEEM LIKE SHE SAID ALBERT KELLY CALLED HER THE MORNING OF THE MURDER AT 1:30 AM ON 2-27-04 WHICH IS NOT TRUE - MARK MOYER USED THE BELL SOUTH PHONE RECORDS TO PROOVE THIS POINT WHICH WE ALREADY KNOW IS INSUFFICIENT EVIDENCE, IN A DAQUATE, FROM PRIOR FACTS, ISSUES, AND ARGUMENTS PRESENTED IN THIS POST CONVICTION ABOUT PHONE RECORDS ABOUT TIMES -

TRIAL ATTORNEY TIMOTHY SULLIVAN DID NOT
OBJECT OR CORRECT THIS FALSE ARGUMENT,
THEREBY, ALLOWING THE JURY TO HEAR IT
AS BEING CORRECT AS STATED BY MARK
MOYER — THIS ARGUMENT PLAYED A BIG
ROLE, AND IS ONE OF THE PROXIMATE
CAUSES OF APPLICANTS INCARCERATION —
BECAUSE, THE JURY WAS MORE THAN
LIKELY MISSED THINKING ALBERT
KELLY WAS INSIDE OF THE EDWARDS
APARTMENT MINUTES AFTER THE
MURDER OF IGNACIO DELGADO — THIS
HIGHLY EFFECTED THE BELIEVABILITY
OF DEFENDANTS ALIBI WITNESS
AND DEFENSE AT TRIAL —

HAD NOT BEEN FOR THIS
ERROR A DIFFERENT OUTCOME WOULD
HAVE HAPPENED IN THE TRIAL, AND
THE JURORS MIGHT LIKELY HAVE
BELIEVED ALIBI DEFENSE
AND TAKEN CONFESSION AS BEING FALSE —
THIS IS IN VIOLATION OF DEFENDANTS
6TH AMENDMENT RIGHT TO REASONABLE,
ADEQUATE, AND SUFFICIENT
REPRESENTATION BY DEFENSE
COUNSEL — IF,
THIS ERROR HAD NOT HAPPENED
APPLICANT MIGHT HAVE LIKELY
BEEN FOUND NOT GUILTY —

PAGE 34 of 43

(C1)=FACTS

FORENSIC TECHNICIAN CLAPP
Secured 8mm digital video

of the scene - the video was
Marked AS EXHIBIT 21 AT TRIAL -

See: (EXHIBIT A-4 Included In Brief
of Post-conviction)

(C2)= TECHNICIAN CLAPP Secured

video digital images of
All footwear impressions in
the snow at the scene, also
followed away from the scene to
APT C-6 Second Incident
Location -

(C3)= APPLICANT WAS Given ONLY A
few Black And White forensic
photos of the scene also
evidence collected, And Could NOT
VIEW the evidence collected
Sufficiently -

(C4) = THE FAILURE OF TIMOTHY SULLIVAN TO MAKE IT POSSIBLE FOR APPLICANT TO VIEW THE VIDEO, ALSO REFUSAL OF A PRELIMINARY HEARING BEFORE TRIAL, WAS INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF 6TH AMENDMENT RIGHTS -

(C5) = Argument

WHEN ATTORNEY TIMOTHY SULLIVAN WAS FIRST APPOINTED TO REPRESENT DEFENDANT ALBERT KELLY, THE ATTORNEY MADE IT CLEAR TO ALBERT KELLY THAT HE WAS NOT GOING TO REQUEST A PRELIMINARY HEARING BECAUSE IT WAS USELESS IN A CASE LIKE ALBERT KELLY'S -

ALBERT KELLY STILL REQUESTED A PRELIMINARY HEARING BY PLACING THE APPLICATION IN U.S. MAIL, BECAUSE ALBERT KELLY WANTED

A CHANCE TO VIEW THE EVIDENCE SUFFICIENTLY WHICH I WAS NOT ABLE TO DO WITH THE MOTION TO DISCOVERY BLACK AND WHITE PHOTOGRAPHS OF THE EVIDENCE COLLECTED -

ALSO TO VIEW THE VIDEO WHICH MORE THAN LIKELY HOLD PROOF RELATED TO THE CLAIM OF APPLICANTS INNOCENCE -

TIMOTHY SULLIVAN VIOLATED THE 6TH AMENDMENT RIGHT OF APPLICANT WHEN HE REFUSED APPLICANT A PRELIMINARY HEARING - APPLICANT REQUEST A FULL HEARING TO VIEW ALL EVIDENCE, ALSO THE VIDEO SEE: EXHIBIT (A-4) 1 PAGE
FORINISICS REPORT OF TECHNICIAN CLAPP
WHO SECURED THE VIDEO'S CONTENTS -

(C6) =

FACTS

APPLICANTS DEFENSE WAS ALIBI, AND JOYCE GORDON ALSO APPLICANT TESTIFIED THAT APPLICANT WAS AT HOME FROM 11:00 PM ON 2-26-07 THREW THE HOURS OF 3:30 OR 4:30 AM ON 2-27-04
SEE: (TRIAL PAGE 385 - PAGE 386 LINE 1) ALSO: (PAGE 392 LINE 1-7)

(C7) = ALBERT KELLY THE APPLICANT GAVE TESTIMONY THAT HE LEFT HIS MOTHERS HOUSE AT 10:00 PM ON 2-26-07, AND,

7023
EXHIBIT

page 4 of 5

RETURN

I received the attached Search Warrant 2-27, 2004, and have executed it as follows:

On 2-27, 2004 at 5:42 o'clock PM, I searched (the person) described in the Warrant and (the Premises)

I left a copy of the Warrant with Residence Posted
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Black Timberland Boots
Camo overalls
Tommy Hilfiger Coat

Nothing More

This inventory was made in the presence of

And

Mark Justin

Eric Ross

I swear that this inventory is a true and detailed account of all the property taken by me on the Warrant.

SWORN to before me this _____

Day of _____, 2004

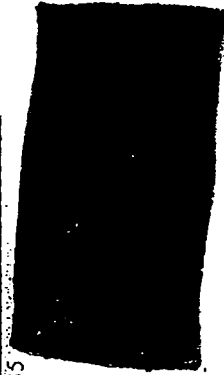
(L.S.)

Signature of Judge

(Signature of Officer Executing Warrant)



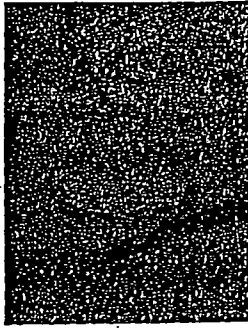
↑ f em b e r l a n d s



715835



715832



716057



716237



716102



715877



715874



716147



715922



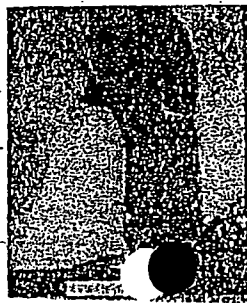
715919



715787



715967



5964



16192



16012

Page 5 of 5

3-04-004209

Death Investigation: Delgado, Ignacio

19918

scene photos

Description

Description

704

GREER POLICE DEPARTMENT
INCIDENT REPORTPage 1 NCIC
ENTRY/NOAGENCY I.D.
SC0230300

OFFENSE

CLASS

DAY

CASE NUMBER

03-04-004209

INCIDENT TYPE		OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. MURDER		C	No	Residence/ Home		(X) INDIVIDUAL
						() BUSINESS
						() FINANCIAL INST.
						() GOVERNMENT
						() RELIG. ORGN.
						() SOC./PUBLIC
						() OTHER
						() UNKNOWN
						() POLICE OFF.
INCIDENT LOCATION (SUBDIVISION, HILL VILLAGE, APARTMENT, STREET AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE
South-Gate Trailer Park 107 Johnson AV 51 Greer, SC						29651
INCIDENT DATE	TIME	TO	DATE	TIME	WEAPON TYPE	TIME ARRIVED
02-27-2004	0112		02-27-2004	0700	Handgun	0114
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX
Lopez, Cornilio Reyes					W	M
ADDRESS			CITY	STATE	ZIP CODE	PATROL DISTRICT
						Beat B
VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX
Delgado, Ignacio Sanchez				J	W	M
ADDRESS			CITY	STATE	ZIP CODE	PATROL DISTRICT
107 Johnson AV			Greer	SC	29651	Beat B
VISIBLE INJURY (MCT. 1) ☒ YES ☐ NO EXPLAIN.						COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☒ NO DRUGS: ☐ YES ☒ NO TYPE:						
☐ SUSPECT	NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE
☐ RUNAWAY	ADDRESS			DATE OF BIRTH	HEIGHT	WEIGHT
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.			CITY	STATE	ZIP CODE
☐ WARRANT	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK.			ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO	DATE/TIME OF OFFENSE	DATE/TIME OF ARREST
☐ MISSING	DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:			TOTAL # ARRESTED		
ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE:						
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY						
CHARGES						
WARRANT #						TICKET #
TAG NUMBER						VALUE
458 RLR						1EPPI5JXPW273476
YEAR						COLOR
1993						WHITE
MAKE						UCR VEHICLE TYPE
FORD						Automobile
MODEL						
ESCORT						
STYLE						
AUTO PASSENGER						
ADDITIONAL VEHICLE DESCRIPTION						
On above date and approximate time I was dispatched to lot 51 Southgate Trailer Park in reference to a possible lynching occurring outside that residence. I arrived on scene in approximately one minute. I found the victim Ignacio Sanchez-Delgado lying on the ground approximately 10 feet from the front door of trailer #51 and approximately 6 feet from his car. I noted that the car was running, the park lights were on and the stereo was blaring.						
The victim had apparently been shot once in the face in his right cheek area. There were no visible signs of respiration nor could I hear any breath sounds when I kneeled down. I immediately called for First Responders						
JURISDICTION OF THEFT						JURISDICTION OF RECOVERY
TYPE						TOTAL VALUE
STOLEN						0
DAMAGED						0
BURNED						0
RECOVERED						0
SEIZED						0
SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADMIN. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST						
REPORTING OFFICER(S)		DATE	UNIT NO.	APPROVING OFFICER		DATE
Keith S. Balliew / 0147		02-27-2004	402	Ronald S. Broome / 0060		02-27-2004
						318

B-E
EXHIBIT

Page 1 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
AFFIDAVIT FOR SEARCH WARRANT)
CITY OF GREER)
CASE Number: GR04-004209

AFFIDAVIT

vs.

Personally appeared before me this date 03/02/2004, Detective Dale A. Arterburn, who, being sworn, says there is probable cause to believe that certain property to be seized under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this county:

DESCRIPTION OF PROPERTY SOUGHT

Any and all items that could be collected through the forensic processing of the listed vehicle both interior, and exterior for latent fingerprints, blood, hair, weapons, clothing, currency, ammunitions, or any other item that could be connected with the robbery/murder of Ignacio Delgado.

DESCRIPTION OF PREMISES TO BE SEARCHED

White in color Ford Escort LX Station Wagon bearing S.C. license plate 458-RLR and vehicle identification number 1FAPP15JXPW27346 registered to Ignacio Delgado.

Currently located at Elgins body shop 306 Pendleton St. Greenville S.C.

**REASON FOR AFFIANT'S BELIEF THAT
PROPERTY SOUGHT IS ON SUBJECT PREMISES**

ON THE DATE OF FEBRUARY 27, 2004 A MURDER OCCURRED IN THE CITY OF GREER, SOUTH CAROLINA. THE VICTIM IGNACIO DELGADO WAS FOUND SHOT, AND WAS FOUND TO BE DECEASED OUTSIDE OF HIS VEHICLE THAT IS LISTED ABOVE. THE VEHICLE WAS FOUND RUNNING WITH THE DRIVERS SIDE WINDOW DOWN, AND PARKING LIGHTS ON. INVESTIGATORS HAVE ARRESTED 2 INDIVIDUALS, BOTH WHO HAVE COOPERATED AND GIVEN INFORMATION TO THIS

COPY

ORIGINAL

INVESTIGATOR THAT THE MURDER OCCURRED DURING THE
COMMISSION OF AN ARMED ROBBERY. IT IS IMPERATIVE THAT
THE ABOVE PREMISES BE SEARCHED IN ATTEMPTS OF
LOCATING ANY EVIDENCE THAT COULD BE CONNECTED TO
THE CRIMES OF ROBBERY/MURDER.

Affiant respectfully requests a Search warrant for location be issued upon review of information contained above,

Sworn to before me this date 2 20 04

March

Affiant Officer

Notary Signature

Commission expires

Matthew Henry 09/23/2007

STATE OF SOUTH CAROLINA)

SEARCH WARRANT

COUNTY OF: GREENVILLE)

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

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO
BE SEARCHED**

White in color Ford Escort LX Station Wagon bearing S.C. license plate 458-RLR and vehicle identification number 1FAPP15JXPW27346,

COPY

B-E
EXHIBIT

Page 3 of 3

707

registered to Ignacio Delgado.
306 Pendleton St. Greenville S.C.

Currently located at Elgins body shop

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all items that could be collected through the forensic processing of the listed vehicle both interior, and exterior for latent fingerprints, blood, hair, weapons, clothing, currency, ammunitions, or any other item that could be connected to the robbery/murder of Ignacio Delgado.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Green S.C.
3-2, 2004
(Signature of Judge) (L.S.)

COPY

ADDITIONAL

708

EXHIBIT 8-11

**Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT**

AGENCY: Greer Police Department
AREA: CJ-11

CASE NUMBER: 3-04-004209

INCIDENT TYPE:	Death Investigation (follow up)	INCIDENT LOCATION:	942 S. Main Street Greenville, SC
VICTIM:	Delgado, Ignacio	ADDRESS:	Westgate Trailer Park #35 Greer, SC
COMPLAINANT:		ADDRESS:	
INV. OFFICER	Arterburn	UNIT NUMBER	504

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 1

On 3/3/04 the R/O's were requested to respond to 942 S. Main Street by the investigating officer, for purposes of processing a vehicle involved in a death investigation. Upon arrival the vehicle was located outside of the impound lot. The investigating officer was not on scene.

Technician Orlando secured photographs of the interior and exterior of the vehicle. The vehicle was processed for latent prints with positive results. The following items were collected from the victim's vehicle.

The below listed items were collected from the interior of the vehicle:

DC01- Brown wallet located in glove box of vehicle containing Florida Identification Card and South Carolina Identification Card (1117)

DC02- Tape lifts from victim's vehicle, front driver's seat, front passenger's seat, and backseat (1139)

Technician Orlando conducted a Phenolphthalein Presumptive Blood Test on suspected blood on the driver's front seat, which showed negative results. No further action was taken.

Upon returning to the LEC, the digital images were scanned into the photo database under call id # 9958.

The retrieved latent prints were forwarded to the DPS Latent Division. All collected items were released back to the investigating agency.

Received and En Route: 1000 Arrived: 1032 Cleared: 1156 LEC: 1210

REPORTING OFFICER	Orlando D.C. <i>DCO</i>	STAR #	8839	UNIT #	930	DATE	3/5/04
REPORTING OFFICER	Lt. Petersen	STAR #	8565	UNIT #	912	DATE	
APPROVING SUPERVISOR	<i>Sgt. DL Shaw</i>	STAR #	<i>8561</i>	UNIT #	<i>901</i>	DATE	<i>3/5/04</i>

EXHIBIT
A-4

709

Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT

AGENCY: Greer Police Department
AREA: CJ12

CASE NUMBER: 3-04-004209

INCIDENT TYPE:	Death Investigation	INCIDENT LOCATION:	[REDACTED]
VICTIM:	Delgado, Ignacio	ADDRESS:	[REDACTED]
COMPLAINANT:		ADDRESS:	Greer, SC.
INV. OFFICER	Arterburn Coppins GCCO	UNIT NUMBER	504 C3

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 3

The investigating officer stated that the victim had been discovered outside, face up, and on the ground at the south end of the mobile home residence at the above incident location. The officer advised that the victim appeared to have a single gunshot wound to the head and that EMS personnel had declared the victim "DECEASED" on scene.

The officer requested digital still images of the victim, and of the victim's relative position outside of the residence.

Technician Clapp secured 8mm digital video of the scene (MC3).

(Snow covered the scene). The victim was at the south end of the above incident location, under a collapsible canopy. The victim was clothed in the following: brown and white flannel jacket, blue in color shirt, blue in color jeans, black in color belt, a black in color toboggan, and a brown in color sandal on the left foot. A second sandal was on the ground near the right foot. The victim's vehicle, a 1993 Ford station wagon, VIN-1FAPP15JXPW273476 was approximately nine (9) feet away on the roadway. The vehicle was to be towed from the scene in order to allow the vehicle to dry, unknown by whom and where during the time the R/O's were on scene.

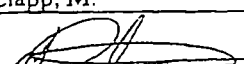
Several different footwear impressions were found about in the snow. Technician Clapp secured digital still images of the impressions as well as images of impressions of all personnel on scene. Two sets of footwear impressions were followed away from the scene to 801 S. Main St. [REDACTED] Greer, SC. (second incident location), and followed by Technician Clapp.

While Technician Clapp was at the second location, the investigating officer requested a Gunshot Residue Collection Kit (SEM) be performed on B/M Howard Gentry (05/20/1956). The officer advised that the subject had been walking near the scene and that the subject had consented to the collection (AT1).

Digital still images of the victim and the victim's relative position were then secured. The canopy was then removed and more digital still images secured. The investigating deputy coroner then assisted in obtaining measurements of the victim's relative position. The victim's hands were then bagged.

The victim was then removed and transported to 701 Grove Rd. Greenville, SC. (Greenville Memorial Hospital Morgue) by Bio-Care.

No cartridge casings were found.

REPORTING OFFICER	Tomlin, A	STAR #	8770	UNIT #	928	DATE	03/01/04
REPORTING OFFICER	Clapp, M.	STAR #	8655	UNIT #	924	DATE	
APPROVING SUPERVISOR		STAR #	8565	UNIT #	912	DATE	3/3/04

Went to Shaun Edwards Apartment.

See, Trial (Page 405 line 5-11). Applicant

Testified that he went back to his Mother's Apartment at 11 pm on 2-26-04
See, (Trial Page 407 Line 10-14) And

Marcus Parks and Shaun went towards the Trailer Park where victim was killed, both of them were armed -

(C8) = Albert Kelly Applicant testified he did not leave his Mother's house

until 3:30 or 4:00 am on 2-27-04

Make later See, (Trial Page 408 line 5-7)

(C9) =

The Judge Weimer asked Timothy Sullivan if he had any charges,

were there any self defense, alibi, or any of those kind of things? y'all

weren't looking for any? See, (Trial Page, 488 line 24 - Page 489 line 1-2)

Also, (Page 489 Line 9-16) - Timothy

Sullivan told the Judge he have nothing special, no defense, its just one shot at murder or not, guilty or not guilty -

(C10) = Mark Moyer TESTIFIED IN CLOSING
ARGUMENTS THAT ALBERT KELLY APPLICANT
GOT ALIBI WITNESS TO SAY WHAT HE WANT
THAT PERSON TO SAY FOR HIM
See TRIAL Page 540 Line 13-20

(C-11) = ISSUE
APPLICANT DID NOT RECEIVE
EFFECTIVE ASSISTANCE OF COUNSEL
WHEN TIMOTHY SULLIVAN FAILED TO
REQUEST AN ALIBI INSTRUCTION
AND, REFUSED TO REQUEST AN
ALIBI INSTRUCTION WHEN ASKED
BY JUDGE WELMAKER -

(C-12) = Argument
TIMOTHY SULLIVAN TRIAL ATTORNEY
VIOLATED APPLICANTS 6TH AMENDMENT
RIGHTS TO EFFECTIVE ASSISTANCE OF
COUNSEL WHEN HE REFUSED TO
REQUEST ALIBI INSTRUCTION -
AS PREVIOUSLY RECOUNTED BOTH
KELLY AND JOYCE GORDON TESTIFIED
THAT APPLICANT WAS AT HOME
AT THE TIME OF THE INCIDENT -
YET TIMOTHY SULLIVAN DID NOT

Request A Alibi charge knowing THIS TO
 Be APPLICANTS ONLY Defense - Since Albert
 Kellys Defense was Alibi, There could Have
 Been no STRATEGIC Reason for waiving
 A INSTRUCTION on the law of Alibi
 Compare, for example, STATE v. Pagan,
 369 S.C. 201, 631 S.E.2d 262 (2006)

A charge on Alibi should be given
 when the Accused submits that he
 could not have performed the criminal
 act because he was in another place
 at the time of its commission."
State v. Robins, 275 S.C. 373, 271
 S.E.2d 319, 320 (1980)

The testimony of Kelly And His Mother
 Joyce Gordon supported A JURY INSTRUCTION
 ON ALIBI - Since Defense Counsel
 Timothy Sullivan Did not Give
 THIS, OR REQUEST THIS INSTRUCTION
 He violated Defendants 6th Amend-
 ment Right TO Effective Assistance -

The Courts is well settled
 THAT Counsels Rejection of An
 Alibi charge when The Defendant

CLAIMS THAT HE WAS IN ANOTHER PLACE AT THE TIME OF THE COMMISSION OF THE CRIMINAL ACT CONSTITUTES DEFICIENT REPRESENTATION UNDER AN OBJECTIVE STANDARD OF REASONABLENESS": Ford v.

STATE, 314 S.C. 245, 442 S.E.2d 604,

606 (1994) - IF THE COURT FINDS

THAT KELLY DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL FOR THE REASONS

STATED, THE COURT SHOULD REVERSE

ALBERT KELLY'S CONVICTIONS AND REMAND FOR A NEW TRIAL -

(G-13) + Final Conclusion

APPLICANT SUBMITS THAT HE CAN SATISFY THE REQUIREMENTS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR ALL FACTS, ISSUES, AND ARGUMENTS PRESENTED FROM (A-1) - (G-13) - INEFFECTIVE ASSISTANCE OF COUNSEL RAISES QUESTIONS OF FACTS THAT CANNOT BE CONCLUSIVELY REFUTED BY THE RECORD ALONE, BUT, BY THE MOTION TO DISCOVERY EXHIBITS SUBMITTED BY APPLICANT IN THIS APPLICATION, ALSO ISSUES AND FACTS NOT CLEARLY STATED BY THE

Record — THE APPLICANT REQUEST AN
Full Evidentiary HEARING TO FULLY EXHAUST
STATE REMEDYS; AND, OR, FULLY RESOLVE
THIS CASE ONCE AND FOR ALL —

(G:14) = THE APPLICANT WAS GIVEN
PERMISSION BY PAUL B. WICKENSIMER
CLERK OF COURTS THAT APPLICANT
COULD SUBMIT ADDITIONAL PAPERS
TO THIS POST-CONVICTION, DUE TO
THE FACT RELATED TO PLAINTIFFS
LETTER DATED 9-23-08, THAT HE
ACCIDENTALLY SENT THE ROUGH DRAFT
OF HIS POST-CONVICTION, WHICH
WAS THE WRONG, INSUFFICIENT, INADEQUATE,
APPLICATION — APPLICANT ALSO
WROTE JUDGE IN ORDER TO AMEND
THE POST-CONVICTION APPLICATION
AND ALL PAPERS SENT PRIOR TO
THIS FINAL CERTIFIED POST-
CONVICTION THAT HAVE BEEN AMENDED,
IN ORDER TO CORRECT THE FALSITY,
ALSO INADEQUACY, AND INSUFFICIENT
SENCE OF PRIOR POST-CONVICTION
APPLICATION, FILED ON OCTOBER 7, 2008 -
SEE: LETTER BY PAUL WICKENSIMER

Dated October 7, 2008 TO APPLICANT, ALSO
APPLICANTS letter dated 9-23-08 In order
TO VERIFY THE CLAIMS OF (C14) -

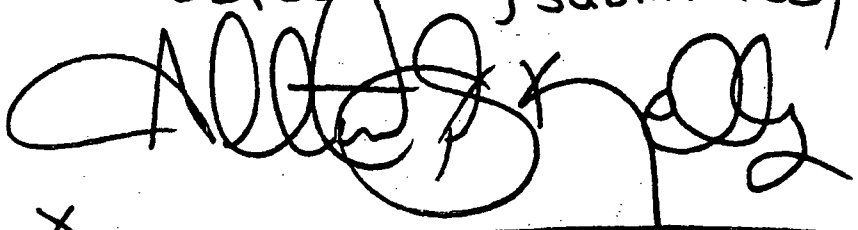
Furthermore, IT would be PREJUDICE
TO Denie A layMan of THE law WHO IS
Still pro-se And Have NOT been Appointed
An ATTORNEY As of 12-4-2008 THE FAIR
OPPORTUNITY TO SUBMIT A SUFFICIENT
And ADAQUATE POST-CONVICTION
APPLICATION, DUE TO A MISTAKE
BRING MADE IN POSTAGE AND
DELIVERY -

OVERALL, APPLICANT ALLEGE HE CAN'T
RECEIVE A RIGHTEOUSS HEARING IN
THIS MATTER BASED UPON THE PRIOR
POST-CONVICTION, AND THAT THE PRIOR
POSTCONVICTION SHOULD BE MOOT,
AND VOID DUE TO THE FACTS STATED
ABOVE - APPLICANT ALLEGE'S HE CAN
RECEIVE A RIGHTEOUSS HEARING
BASED UPON THIS PRESENT POST
CONVICTION APPLICATION, WHICH
HAVE BEEN AMENDED FOR CORRECTION
OF FALSE RELATIONS, AND INSUFFICIENT,
INADAQUATE, ELEMENTS -

+ WHEREFORE, APPLICANT REQUEST THAT
A EVIDENT HEARING BE HELD AND COUNSEL
APPOINTED TO REPRESENT THE APPLICANT,

= Righteously, I PRAY THAT THIS
ISSUE'S AT HAND CAN BE RESOLVED IN
EQUAL JUSTICE, AND THE RESULT IS
SATISFACTORY BY APPLICANT, ALSO
RESPONDENT, [REDACTED]

Respectfully submitted,



12-4-2008

[REDACTED]

DATED

sc

X

ALBERT S. KELLY
277334 (SMUD 415)
PERRY, CORR, INST
430, OAKLAWN ROAD -
PELZER S.C. 29669

PRO-SE APPLICANT

THE Following
 IS () EXHIBITS
 PRESENTED SEPARATELY
 AS A PACKAGE OF EXHIBITS
 TO SUPPORT THE (43) PAGE
 POST-CONVICTION APPLICATION.
 ALSO, (11) EXHIBITS -
TOTAL = (11) Pages of
 EXHIBITS

Respectfully,

x Albert S. Kelly,

12-4-08, sc
 Dated

Perry Correctional Inst
 430, OAKLAWN Rd
 PELZER, S.C. 29669

7183
EXHIBIT

Page 1 of 5

STATE OF SOUTH CAROLINA }
COUNTY OF: Greenville }

AFFIDAVIT

Personally appeared before me one Sgt. M.T. Justice
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of
Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

One Pair of Black Timberland Boots or equivalent generic brand boots. One pair of tan Timberland Boots or equivalent generic brand boots. One pair of camouflage coveralls. Tommy Hilfiger Jacket. Any other clothing items or objects that are obviously associated with the crime of Murder. Any and all records either written or electronic including video and audio of any illegal act most specifically car-jacking's thefts robberies or assaults.

DESCRIPTION OF PREMISES TO BE SEARCHED

[REDACTED] Apartment 4
Greer, SC 29651

All closets, halls, rooms, cabinets, fixtures, packages or compartments that could reasonably be used to secret clothing or weapons associated with the crime of Murder.

REASON FOR AFFIANT'S BELIEF THAT
PROPERTY SOUGHT IS ON SUBJECT PREMISES

On Feb. 27, 2004 at approximately 0100hrs. Ignacio Delgado was Murdered in the area of Southgate MHP. Interviews of Shaun Edwards and Marcus Parks revealed the fact that clothing worn during the act of this Homicide were hidden at the address of 801 South Main #4 Greer, SC 29651. This property is necessary in order to complete a thorough comprehensive and fair investigation into the crime of Murder.

Sworn before me this date Feb 27, 2004 }
Judges Signature: [Signature] (L.S.)

Affiant [Signature]
Address 101 W Poins
Greer
Phone 848-5353

A23
EXHIBIT

719

Page 2 of 5

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

SEARCH WARRANT

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

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED:

[REDACTED] Apartment 4
Greer, SC 29651

All closets, halls, rooms, cabinets, fixtures, packages or compartments that could reasonably be used to secret clothing or weapons associated with the crime of Murder.

Now, therefore, You are hereby authorized to search the subject premises for the property described below. And to seize such property if found:

DESCRIPTION OF PROPERTY:

One Pair of Black Timberland Boots or equivalent generic brand boots. One pair of tan Timberland Boots or equivalent generic brand boots. One pair of camouflage coveralls. Tommy Hilfiger Jacket. Any other clothing items or objects that are obviously associated with the crime of Murder. Any and all records either written or electronic including video and audio of any illegal act most specifically car-jacking's thefts robberies or assaults.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to:

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Feb 27, S.C.

, 2004

[Signature]

(L.S)

(Signature of Judge)

Page 3 of 5
GREER POLICE DEPARTMENT

PROPERTY REPORT

1. Date & Time Impounded 2-27-04 5:45 PM		4. Laboratory Examination ☐ Yes - Submit Lab Request Form ☐ No		For Prop - Room Use		2. Case No. 2R04-0042-09	
6. Found or Recovered From ☐ Person ☒ Place Name 801 S. Main St. #4B Greer		7. Where property was impounded (Give exact location-address) 801 S. Main #4B					
8. Owner's Name		9. Owner's Address				10. Owner's Phone #	

[illegible][illegible]

AUTHORIZATION FOR DISPOSITION ☐ CLEARED FOR DISPOSAL. items _____ ☐ HOLD ACTIVE CASE: items _____ ☐ PHOTO AND DISPOSE. items _____ ☐ RELEASE TO: _____ items _____ ADDRESS _____		AUTHORIZING OFFICER: _____ DATE: _____
☐ OWNER NOTIFIED. RELEASE AUTHORIZED		

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2008-CP-23-7212

ORIGINAL

ALBERT S. KELLY)

APPLICANT)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

RESPONDENT)

November 15, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

ELIZABETH WIYGUL, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

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TIM SULLIVAN

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Cross By Ms. Ratigan 21

» > o < «

Certificate of Reporter 25

APPLICANT'S EXHIBITS

1	Crime Scene Report	18	18

1 MS. WIYGUL: Your Honor, he's got some odd kind of --
2 [indiscernible] between his cuffs, and with the Court's
3 permission, they're going to remove that during the
4 hearing --

5 THE COURT: Absolutely.

6 MS. WIYGUL: --so he can--

7 THE COURT: If it's okay with the officers, it's okay
8 with me.

9 All right, ladies and gentlemen, let's see, this is
10 the case of Albert S. Kelly vs. The State of South
11 Carolina. Case number 2008-CP-23-7212. An application
12 for post-conviction relief --

13 Ms. Ratigan, anything you need to put on the record,
14 ma'am?

15 MS. RATIGAN: Brief procedural history, Your Honor.
16 This is the case of Albert S. Kelly vs. The State. He was
17 indicted for murder, armed robbery, possession of a weapon
18 during the commission of a violent crime. He was
19 represented on these charges by Mr. Sullivan. The case
20 was brought to trial before Judge Welmaker in October of
21 2005. The jury found him guilty on all counts. On
22 October 12, 2005 Judge Welmaker levied consecutive
23 sentences of 45 years for murder, 15 for armed robbery and
24 five years for the possession of a weapon charge. He did
25 file an appeal, that was perfected in the nature of a

1 Anders brief at the South Carolina Court of Appeals.
2 Dismissed his appeal in September of 2008. The State is
3 ready to proceed.

4 I would just note just so no one is confused, the
5 transcript in this case is pretty thick. But you'll see
6 on the front it says Volume One. It's actually a three
7 volume transcript and they're all bound together.

8 THE COURT: Okay.

9 MS. RATIGAN: So it's just the one big transcript
10 we'll be dealing with.

11 THE COURT: Okay, good enough.

12 All right, Ms. Wiygul.

13 MS. WIYGUL: Your Honor, the Applicant will call
14 Albert Kelly.

15 THE CLERK: Mr. Kelly, if you'd step up to the Bible,
16 please, over here. Place your left hand on the Bible,
17 raise your right hand.

18 ALBERT KELLY, after being duly sworn, testified
19 as follows:

20 THE CLERK: Thank you, you may be seated. State your
21 full name for the record.

22 THE WITNESS: Albert Santanio Kelly.

23 THE CLERK: Thank you.

24 ///

25 ///

DIRECT EXAMINATION

2 BY MS. WIYGUL:

3 Q Mr. Kelly, did Tim Sullivan represent you on these
4 charges?

5 A Yes, ma'am.

6 Q And did you actually go through one trial that ended
7 in a mistrial?

8 A Ended in hung jury, six/six.

9 Q Okay. And after that point did The State make you
10 any plea offers?

11 A Yes, ma'am.

12 Q Tell us what the State was offering?

13 A Well Tim came and asked me in the holding cell if he
14 could get me the same plea that he got Sean Edwards, would
15 I take it? And I told him, No.

16 Q Okay. What was that offer?

17 A Fifteen years non-violent.

18 Q Okay.

19 A For accessory before and after the fact.

20 Q Okay. All right. After this point did you proceed
21 to a second trial?

22 A Yes, ma'am.

23 Q And that's the trial we're here about today, correct?

24 A Yes, ma'am.

25 Q Okay. During that trial or prior to trial, was there

ALBERT KELLY-DIRECT BY MS. WIYGUL

1 some evidence that you wanted Mr. Sullivan to get from the
2 police that he did not obtain?

3 A Yes, ma'am.

4 Q Could you tell us a little bit about that?

5 A Well, the first piece of evidence, exculpatory
6 evidence was brown Timberland boots -- well Timberland
7 boots, I don't know if they was tan or black but
8 Timberland boots. And those boots are the boots that
9 matched the trigger's man position. Those are the boots
10 that the trigger man had on. I testified that Sean
11 Edwards had those boots on. And those boots could have
12 proved my innocence on murder.

13 Q Okay. So, Mr. Sullivan, to the best of your
14 knowledge, did he request that the police or the
15 solicitor's office get those boots?

16 A I don't know if he requested it from them but I know
17 that he didn't request it at trial. I know he knew about
18 the boots but I don't know if he requested it from them
19 and they didn't give them to him or whatever. But I know
20 that they wun't [verbatim] presented at trial. And he was
21 aware of them.

22 Q Okay. And was there also an issue about a wallet?

23 A Yes, ma'am, a brown wallet.

24 Q Tell us about that.

25 A I was charged with armed robbery. The prosecutor,

ALBERT KELLY-DIRECT BY MS. WIYGUL

1 Mark Moyer, argued that I took the victim's wallet and
2 spent his money in Atlanta. But the forensics searched
3 the victim's car a few days after the murder and found the
4 brown wallet containing the victim's South Carolina ID and
5 Florida ID.

6 Q And that was from the victim's car?

7 A That was from the victim's car. And the presentation
8 of that -- the presentation of that wallet could have
9 proved my innocence of armed robbery, that I didn't take
10 the victim's wallet.

11 Q Okay. Was there also a issue having to do with some
12 bullets?

13 A Yes, ma'am. It was .380 bullets. Sean Edwards
14 bought the bullets two days prior to the murder from
15 Wal-Mart. Sean Edwards gave testimony on
16 cross-examination by Mr. Sullivan that he did not buy the
17 bullets for Albert Kelly, he did not get the bullets from
18 Albert Kelly.

19 Q And was there actually a receipt from Wal-Mart
20 presented at trial?

21 A Yes, ma'am, there was a receipt where he bought the
22 bullets from Wal-Mart presented at trial.

23 Q And this was Sean Edwards?

24 A This was Sean Edwards.

25 Q Okay. And did you feel like Mr. Sullivan should have

ALBERT KELLY-DIRECT BY MS. WIYGUL

1 done something more about those bullets?

2 A I feel that he should have presented the bullets
3 because the bullets would have proved that there's no way
4 Albert Kelly could have possessed the murder weapon and it
5 would have proved that Sean Edwards possessed the murder
6 weapon. Because Sean Edwards testified I never had the
7 bullets. And by me never having the bullets, that proved
8 that there's no way I could have had the murder weapon to
9 hide them with the bullets in his house under his sofa.

10 Q Okay. Did you have a alibi in this case?

11 A Yes, ma'am, I had a alibi. Joyce Gordon, who is
12 presently Joyce Dennis, testified for me and said I was
13 home with her from 11:00 o'clock p.m. on 2/26/2004 to like
14 5:30 or 6:00 the next morning 2/27, from the murder frame.

15 Q Okay. And was testimony brought out during trial
16 about this police arriving at Ms. Dennis' house at 1:30?

17 A No, police arrived at Charlene Edwards apartment --

18 Q Charlene Edwards apartment.

19 A The police arrived at Charlene Edwards apartment at
20 1:30.

21 Q Okay.

22 A That's the time the police arrived at Charlene
23 Edwards apartment.

24 Q Okay. And did the co-defendants testify about at any
25 time, your co-defendants?

ALBERT KELLY-DIRECT BY MS. WIYGUL

1 A Marcus -- Sean Edwards and Charlene Edwards is his
2 mother. Sean Edwards being the co-defendant testified
3 that they kicked me out of there house at 3:00 o'clock in
4 the morning. Marcus Parks corroborated his testimony and
5 stated that me and him left Charlene Edwards apartment at
6 3:00 o'clock in the morning. And Mark Moyer further gave
7 testimony to the jury in closing arguments--

8 Q And Mark Moyer, just for clarification, this is the
9 solicitor that was arguing the case on behalf of The
10 State?

11 A Yes, ma'am.

12 Q And during closing what did he say relevant to the
13 time?

14 A He testified that at 3:30 that the police arrived at
15 Sean Edwards apartment 30 minutes before Albert Kelly and
16 Marcus Parks left Sean Edwards apartment. Destroying the
17 Defendant's alibi witness with false timeframe.

18 Q Okay. And did you want Mr. Sullivan to make an
19 objection to him stating that?

20 A Yes, ma'am. Mr. Sullivan did try to correct him to
21 the jury but he did try to correct him by stating that it
22 didn't happen at that time. But I feel that he should
23 have objected so it would have been preserved for the
24 record.

25 Q Okay. And did Mr. Sullivan request a alibi jury

ALBERT KELLY-DIRECT BY MS. WIYGUL

1 instruction?

2 A No, ma'am, I had a alibi defense and he did not
3 request an instruction on alibi. And I presented evidence
4 that I was a alibi.

5 Q Okay. Was there anything else that you felt like
6 Mr. Sullivan should have done in this case that was not
7 done?

8 A That's about it.

9 Q Okay.

10 MS. WIYGUL: All right, I have no further questions.
11 Thank you, sir, please answer any questions Ms. Ratigan
12 may have.

13 CROSS-EXAMINATION

14 BY MS. RATIGAN:

15 Q Let me clarify a couple of things, I'm a little bit
16 confused. So, you're saying there was some Timberland
17 boots that matched the boots of Sean Edwards?

18 A That matched the position of the trigger man, Sean
19 Edwards.

20 Q Now, are these the boots that the police had in
21 custody?

22 A Yes, ma'am, I got the paper right here of the boots
23 and the search warrant.

24 Q So, the police had the boots in evidence and you
25 believe that -- what should Mr. Sullivan had done with

ALBERT KELLY-CROSS BY MS. RATIGAN

1 that? He should have presented that at trial maybe?

2 A Yes, ma'am.

3 Q Okay. And the police -- the issue about the wallet,
4 they also had that in evidence?

5 A Yes, ma'am. I have the paper from the motion to
6 discovery here of that also.

7 Q And that, again, you thought that Mr. Sullivan should
8 have argued the thing about the wallet being found in the
9 victim's car and he failed to do--

10 A I don't think -- I don't think Tim knew about the
11 wallet, because I didn't find out about the wallet until
12 after I was in the county jail and -- after I was in
13 prison and I searched my motion to discovery again. But
14 Tim didn't never say nothing to me about a wallet and I
15 never mentioned it to him but I still feel that he should
16 have presented and he should have been aware of it and
17 should have presented it.

18 Q Okay. And that's something you found out you said
19 after the trial.

20 A Yes, ma'am.

21 Q Okay. And the thing about the bullets, you're saying
22 now that Mr. Sullivan should have brought out the evidence
23 that Mr. Edwards purchased these bullets two days before
24 the shooting, he brought doubt the he did state that
25 Mr. Edwards purchase these bullets two days before the

ALBERT KELLY-CROSS BY MS. RATIGAN

1 shooting.

2 A He brought out -- he brought out -- he did state that
3 Mr. Edwards purchased the bullets two days before the
4 shooting.

5 Q Okay.

6 A But the reason why I said he should have presented
7 them because Sean Edwards was talking to a person in the
8 holding cell, I can't think of his name, but he was
9 talking to a person in the holding cell that was supposed
10 to have testified for me but he didn't show up as a
11 witness. And that person stated that Sean Edwards said it
12 was one bullet in those box of bullets that matched the
13 bullet that killed the victim.

14 Q Okay.

15 A And those were Sean Edwards bullets found with the
16 murder weapon. He stated that I had. And those bullets
17 could have proved there was no way I could have possessed
18 the murder weapon.

19 Q Okay. So, Mr. Sullivan brought out that Mr. Edwards
20 had purchased the bullets but you wanted him to actually
21 move the actual, physical bullets into evidence?

22 A Yes, ma'am.

23 Q Okay. And clarify for me just a little bit, I got a
24 little bit confused about the alibi timeframe, what did
25 you want Mr. Sullivan to object to regarding the alibi?

ALBERT KELLY-CROSS BY MS. RATIGAN

1 A I wanted him to present a alibi defense to request an
2 instruction on alibi. So, my alibi could have been
3 decided by the jury. But he didn't request an instruction
4 on alibi. And knowing that Mark Moyer had gave false
5 timeframes about the murder and the witnesses.

6 Q Okay. That's the question I'm asking you. You said
7 he didn't properly object to the false timeframe. Explain
8 to me very simply, what false timeframe you're talking
9 about that Mr. Moyer set up.

10 A Well, in the trial transcript, Charlene Edwards and
11 Sean Edwards testified that they kicked me out of their
12 apartment at three o'clock a.m. on 2/27/04. Mark Moyer
13 further gave closing arguments that the police showed up
14 at 3:30 a.m. But from police reports and from independent
15 police testimony, we know that the police showed up at the
16 murder seen at one -- around 1:05 a.m. And that they
17 showed up at Sean Edwards apartment at 1:30, before
18 leaving Leon Irby's apartment. And Leon Irby testified
19 that the footprints came to his house and that Sean
20 Edwards and Marcus Parks is the only one that came by his
21 house. And Albert Kelly never came to his house. The
22 footprints went right by Leon Irby's apartment and those--

23 Q Well, you're saying is that Mr. Sullivan should have
24 objected--

25 A To the false timeframe.

ALBERT KELLY-CROSS BY MS. RATIGAN

1 Q To the mischaracterization of times and places and
2 all that?

3 A Yes, ma'am.

4 Q Okay. Just want to make sure we're all on the same
5 page.

6 MS. RATIGAN: That's all I have, Your Honor.

7 THE COURT: Okay, any redirect?

8 MS. WIYGUL: Just very briefly.

9 REDIRECT EXAMINATION

10 BY MS. WIYGUL:

11 Q Regarding the bullets, Mr. Kelly, are you saying that
12 Mr. Sullivan should have gotten an expert to compare the
13 bullets found at Sean Edwards house with the bullet that
14 was found in the victim?

15 A Yes, ma'am. Because one bullet in those box of
16 bullets matched the bullet that killed the victim.

17 Q So, you wanted him to get an expert and get some -- I
18 think it's ballistic testing done to compare those?

19 A Yes, ma'am. Also with the boots and wallet, also.

20 Q Okay.

21 MS. WIYGUL: I have no further questions. Thank you,
22 Mr. Kelly.

23 THE COURT: Thank you, Mr. Kelly, I appreciate it,
24 sir. You can step back down.

25 Anything further from the Applicant?

ALBERT KELLY-REDIRECT BY MS. WIYGUL

1 MS. WIYGUL: We'll go ahead and call Mr. Sullivan,
2 Your Honor.

3 THE COURT: All right, Mr. Sullivan, if you'd come
4 up, please.

5 THE CLERK: Mr. Sullivan, place your left hand on the
6 Bible, raise your right hand.

7 TIM SULLIVAN, after being duly sworn, testified
8 as follows:

9 THE CLERK: Thank you, you may be seated. State your
10 name for.

11 THE WITNESS: C. Timothy Sullivan.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MS. WIYGUL:

15 Q Mr. Sullivan, were you appointed or retained in this
16 case?

17 A I was appointed on May 13th of '04.

18 Q Okay. And you heard Mr. Kelly's testimony just now?

19 A Yes, I did.

20 Q Can you tell us, did you request a visual inspection
21 of the boots that he was discussing?

22 A Not that I recall.

23 Q Okay. And do you recall anything about a wallet
24 being found in the victim's car?

25 A Not in -- the testimony I heard from me to the

TIM SULLIVAN-DIRECT BY MS. WIYGUL

1 co-defendants or from Albert is that the wallet was
2 stuffed -- the wallet taken from the victim was put into a
3 drain hole or man cover type thing. And I think Albert
4 testified or gave testimony that he stuffed it down in
5 there with a broom. I think I asked one of the detectives
6 in one of the trials about that. They never did recover
7 that wallet. The wallet that he's talking about I don't
8 recall. The wallet involving the robbery was supposedly
9 jammed down a -- down a drain.

10 Q Okay.

11 A It was never referred.

12 Q Mr. Sullivan, I'm going to ask you to take a look at
13 what has been marked as B2 for identification purposes,
14 can you tell me which that is, sir?

15 A Looks like it is a brown wallet in the glove box of a
16 vehicle, Florida identification, South Carolina
17 identification cards.

18 Q Is that a crime scene investigation report?

19 A Yes, this would be evidence. Summary action taken.
20 This would be Crime Scene Investigation Report Greenville
21 Forensic Division. Greenville Police Department.

22 Q And do you recall reading this information prior to
23 Mr. Kelly's trial?

24 A I don't remember reading it. I probably looked at
25 it. But the other testimony I had the statements that the

TIM SULLIVAN-DIRECT BY MS. WIYGUL

1 wallet taken from him was the one stuffed down the thing.

2 I didn't pay anymore attention to this, I guess.

3 Q Okay.

4 A I hate to speculate but I imagine that's what
5 happened.

6 MS. WIYGUL: We would ask that this document be
7 entered into evidence.

8 THE COURT: Any objection?

9 MS. RATIGAN: No objection.

10 THE COURT: All right, without objection the same is
11 entered as Applicant's No. 1.

12 Hold on, Ms. Wiygul.

13 Do you need to mark that?

14 THE COURT REPORTER: Please.

15 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
16 identification and received into evidence.)

17 THE COURT: Okay, go ahead.

18 BY MS. WIYGUL:

19 Q Mr. Sullivan, at any time during your representation
20 of Mr. Kelly did you hire an expert?

21 A No.

22 Q Okay. Did you ever think about hiring an expert to
23 compare the bullets that were found in Sean Edwards home
24 with the bullet that was used to shoot the victim?

25 A I think they had the box of bullets that Sean had

TIM SULLIVAN-DIRECT BY MS. WIYGUL

1 bought. And they had a receipt from that. Then the fella
2 was shot. Now, the expert I did have was from the
3 forensics from SLED, Columbia, about gunshot residue.

4 Q So you did call a expert witness to the stand?

5 A But that was to show that the jacket worn by the
6 shooter had gunshot residue. And the testimony was that
7 Sean Edwards, I believe it was, wore that jacket that
8 night.

9 Q Okay.

10 A I had testimony that Sean Edwards was the shooter in
11 this case.

12 Q And Sean Edwards was actually the gentleman that
13 purchased these .380 bullets, correct?

14 A Yeah. What happened was when this went down, roughly
15 three people jumped this guy. Then he was shot in a
16 struggle or whatever. It lightly snowed. So, they
17 tracked him to a fella's apartment. Then I think they had
18 a drink there and then they tracked him to Sean's house
19 and they found everything. Stuffed under the sofa they
20 found the guns, the bullets, the clothes, the boots,
21 everything was in his apartment.

22 Q Okay.

23 A Then Albert left town, had other things to do. And
24 these two guys were caught and charged. They confessed.

25 But since Albert wasn't around, they pointed at him as the

TIM SULLIVAN-DIRECT BY MS. WIYGUL

1 shooter. And so they stuck to that story.

2 Q Okay.

3 A But everything was found in Sean's apartment. And
4 then I had testimony that he had the jacket on that had
5 that gun shot residue.

6 Q All right.

7 A I had that expert testimony.

8 Q Okay. But you did not hire an expert to do any
9 testing of the bullets found versus the bullet that was
10 used in the crime?

11 A No.

12 Q Okay. Did you -- you heard Mr. Kelly's testimony
13 regarding the timeline and the importance of the timeline
14 to his alibi?

15 A That was confusing. We had problems in the first
16 trial that ended in a six/six jury. And then the second
17 trial about exactly who was where and when.

18 Q Okay. Do you recall Mr. Moyer saying anything in his
19 closing that would have. . .

20 A I don't. I'd have to go back and look.

21 Q Okay.

22 A I don't recall anything that upset me at the time.

23 Q Okay. Do you recall making any objections during
24 Mr. Moyer's closing?

25 A No. I very seldom object during closing. I know

TIM SULLIVAN-DIRECT BY MS. WIYGUL

1 didn't.

2 Q Okay. Did you request an alibi jury instruction in
3 this case?

4 A I'd have to look and see. I presented the alibi that
5 he had left before they claimed this had happened but I
6 don't recall the time. They had telephone records of
7 phone conversations between he and his girlfriend and when
8 she picked him up and this type thing but I don't recall.
9 If I didn't make it, I didn't make it.

10 Q Okay.

11 MS. WIYGUL: No further questions, thank you.

12 CROSS-EXAMINATION

13 BY MS. RATIGAN:

14 Q After you were appointed I assumed you filed
15 discovery motions, Mr. Sullivan?

16 A Yes, it's quite extensive. I think most of this
17 stuff is related to it.

18 Q And once you got those materials, did you review them
19 with Mr. Kelly?

20 A Yeah, he had a complete -- well he mentioned that he
21 found it in his discovery. He had a complete set. When I
22 go to trial I always give everybody everything.

23 Q And the issue about the boots, Mr. Kelly now states
24 that these Timberland boots in police custody matched Sean
25 Edwards -- that they were Sean Edwards' boots. Is that

TIM SULLIVAN-CROSS BY MS. RATIGAN

1 something you ever believed was an issue?

2 A According to all the statements, Albert gave a
3 statement, they were all three at the scene. So, it
4 didn't matter. I don't see how the boots would help him
5 or hurt him, if wore them or Sean wore them. They put
6 that person at the scene. Then, they all admitted that
7 they were there. Even Mr. Kelly.

8 Q So, he gave a statement that he was at the scene, did
9 he also make some kind of oral statement when he was
10 arrested in Atlanta?

11 A He was arrest in Atlanta at by a Atlanta deputy. He
12 made the statement that, I guess you want me, I shot a guy
13 in the head, I've been on run ever since.

14 Then, when he was being held in Atlanta, an officer
15 from Geer went down and Albert gave a statement to him in
16 the presence of an Atlanta police man that they were going
17 to rob the guy, nobody was supposed to get shot. And in
18 the struggle, the fella got shot but Albert said he didn't
19 do the shooting. I tried to keep both those out. And
20 they were admitted in both trials.

21 Q And in that first trial it went all the way to a hung
22 jury?

23 A It we down to six/six, then they made the offer.

24 Q And that was a 15 year offer, is that correct?

25 A The other two boys, I think Sean was the shooter. I

TIM SULLIVAN-CROSS BY MS. RATIGAN

1 mean, they got 15. And then Albert was struck with 45. I
2 didn't they that was fair. I thought what happened is
3 that the Greer police cut a deal real quick with those two
4 since they had them and Albert wasn't there. And so he
5 got hung with the worst part of it.

6 Q But it was his decision after you gave him that 15
7 year offer, he was the one that decided to roll the dice
8 and go to trial?

9 A Try it again, yes. We tried it the first time, I
10 think, in August. Then went back to trial, I think, in
11 October.

12 Q Okay.

13 May I approach the witness, Your Honor?

14 THE COURT: Certainly.

15 BY MS. RATIGAN:

16 Q I'm going to show you -- you actually have your own
17 copy. If you can turn to the trial transcript, Page 489.

18 A (The witness complies.)

19 Q You and Mr. Moyer and The Court had a very brief, I
20 guess you'd call it a charge conference. The Court asks
21 if there were any specific charges that you're requesting.
22 And I believe Lines 12 to 16 you state that you're going
23 on all or nothing type of strategy, do you recall that?

24 A Yes. No self-defense, yeah. That he's guilty or not
25 guilty.

TIM SULLIVAN-CROSS BY MS. RATIGAN

1 Q Would that have explained why you did not ask for a
2 alibi charge, that you were going for all or nothing?

3 A I don't remember why I didn't request a alibi charge.

4 Q Okay.

5 A I thought that this case, the way it was presented,
6 that he was going to be found guilty or not guilty of it.
7 I guess we had some hope from the six/six hung jury
8 wasn't. . .

9 MS. RATIGAN: Beg the Court's indulgence. That's all
10 I have, Your Honor.

11 THE COURT: Redirect?

12 MS. WIYGUL: No redirect, Your Honor.

13 THE COURT: Okay. Thank you, very much. Thank you,
14 Mr. Sullivan, I appreciate it, sir. You may step down.

15 Anything further from the State?

16 MS. RATIGAN: I believe --

17 Unless you have another witness to call.

18 MS. WIYGUL: No other witnesses, Your Honor.

19 THE COURT: Okay.

20 MS. RATIGAN: If she rests, then I'll rest as well
21 just based on Mr. Sullivan's testimony and the record
22 before the Court.

23 MS. WIYGUL: We would rest also, Your Honor. We
24 would simply ask the Court, just briefly in closing,
25 consider the fact that no jury instruction for a alibi was

1 requested. Although, there was a alibi witness put forth.
2 And the lack of an expert to compare those bullets.

3 THE COURT: Okay. Let me ask you this, was the alibi
4 issue an issue on appeal? Went to the Court of Appeals?

5 MS. RATIGAN: Your Honor, I believe it was filed as
6 a Anders brief.

7 THE COURT: Okay. All right.

8 MS. WIYGUL: It was a Anders brief, Your Honor.

9 THE COURT: Okay, good enough. I will take it under
10 advisement.

11 Thank you, Mr. Kelly, good luck to you, sir.

12 (WHEREUPON, the proceedings were concluded.)

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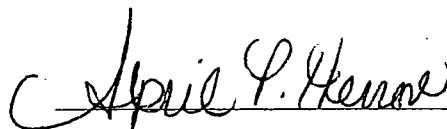
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 15th day of November, 2013.

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

March 26, 2014



APRIL P. HERRON, Court Reporter

B-2
EXHIBITGreenville County Forensic Division
CRIME SCENE INVESTIGATION REPORTAGENCY: Greer Police Department
AREA: CJ-11

CASE NUMBER: 3-04-004209

INCIDENT TYPE:	Death Investigation (follow up)	INCIDENT LOCATION:	942 S. Main Street Greenville, SC
VICTIM:	Delgado, Ignacio	ADDRESS:	Westgate Trailer Park #35 Greer, SC
COMPLAINANT:		ADDRESS:	
INV. OFFICER	Arterburn	UNIT NUMBER	504

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 1

On 3/3/04 the R/O's were requested to respond to 942 S. Main Street by the investigating officer, for purposes of processing a vehicle involved in a death investigation. Upon arrival the vehicle was located outside of the impound lot. The investigating officer was not on scene.

Technician Orlando secured photographs of the interior and exterior of the vehicle. The vehicle was processed for latent prints with positive results. The following items were collected from the victim's vehicle.

The below listed items were collected from the interior of the vehicle:

DCO1- Brown wallet located in glove box of vehicle containing Florida Identification Card and South Carolina Identification Card (1117)

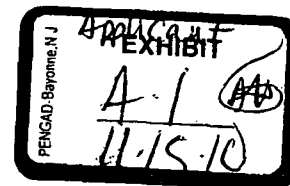
DCO2- Tape lifts from victim's vehicle, front driver's seat, front passenger's seat, and backseat (1139)

Technician Orlando conducted a Phenolphthalein Presumptive Blood Test on suspected blood on the driver's front seat, which showed negative results. No further action was taken.

Upon returning to the LEC, the digital images were scanned into the photo database under call id # 9958.

The retrieved latent prints were forwarded to the DPS Latent Division. All collected items were released back to the investigating agency.

Received and En Route: 1000 Arrived: 1032 Cleared: 1156 LEC: 1210



REPORTING OFFICER	Orlando D.C. <i>DCO</i>	STAR #	8839	UNIT #	930	DATE	3/5/04
REPORTING OFFICER	Lt. Petersen	STAR #	8565	UNIT #	912	DATE	
APPROVING SUPERVISOR	<i>Sgt. D.L. Shaw</i>	STAR #	<i>8561</i>	UNIT #	<i>921</i>	DATE	<i>3/5/04</i>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Albert Santanio Kelly,	)	C.A. No. 2008-CP-23-7212
S.C.D.C. No. 277334,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	ENTERED COMPUTER
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 25, 2008. The Respondent made its return on December 3, 2008. An evidentiary hearing into the matter was convened on November 15, 2010 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Elizabeth P. Wiygul, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, C. Timothy Sullivan, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the August 2004 term of the Greenville County Grand Jury for murder (2004-GS-

23-5966) and at the July 2005 term for armed robbery (2005-GS-23-2024, count 1) and possession of a weapon during commission of a violent crime (2005-GS-23-2024, count 2). He was represented by C. Timothy Sullivan, Esquire.

After the State called the case to trial, the Applicant was found guilty. On October 12, 2005, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of forty-five (45) years for murder, fifteen (15) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Kelly, Op. No. 2008-UP-530 (S.C. Ct. App. filed September 11, 2008).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to false testimony given by Investigator Arterburn.
 - b. Failed to object to false testimony given by Shaun Edwards and Charlene Edwards.
 - c. Failed to object to comments in the State's closing argument.
 - d. Failed to request exculpatory evidence:
 - i. Failed to request the brown wallet found in the victim's car.
 - ii. Failed to request the .380 bullets purchased by Shaun Edwards before the murder.
2. Trial issues:
 - a. State witness Donna Wentz lied under oath.
 - b. The confession should have been void.
 - c. Trial judge should have instructed the jury on alibi.

The Applicant filed pro se amendments to the PCR application on December 4, 2008,

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

December 11, 2008, and December 12, 2008. In these amendments, the Applicant further explained the issues raised in the PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).



The Applicant stated trial counsel failed to obtain exculpatory evidence from police and present it at trial. The Applicant stated trial counsel should have obtained the brown boots because they matched the shooter's boots (who the Applicant believed to be Shaundrecus Edwards). The Applicant stated trial counsel should have obtained a brown wallet because, while the State argued the Applicant took this wallet, police found it in the victim's car. The Applicant stated trial counsel should have obtained the .380 bullets that Edwards purchased two days before the shooting. The Applicant testified trial counsel should have hired a ballistics expert for the bullets and another expert witness regarding the boots and wallet. The Applicant testified he presented an alibi witness (Joyce Gordon) but that his alibi was destroyed because trial counsel failed to object to testimony from Edwards and Marcus Parks. The Applicant testified trial counsel should have requested an alibi charge.

Trial counsel testified he filed discovery motions and reviewed the State's evidence with the Applicant. Trial counsel testified the Applicant's two co-defendants had confessed first and pointed to the Applicant as the shooter. Trial counsel testified the Applicant had given a statement that he, Edwards, and Parks were all at the scene. Trial counsel testified the Applicant – upon being arrested in Atlanta – stated to police that he had shot someone. Trial counsel testified he did not recall asking to look at the boots, but that it did not matter because the Applicant had stated all three of them were at the scene. Trial counsel stated he did not recall an issue with the wallet, but that he probably looked at it if it was mentioned in the report. Trial counsel confirmed he did not hire an expert regarding the .380 bullets. Trial counsel stated he did not request an alibi charge because his strategy at trial was "all or nothing."

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with

the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained the boots, wallet, and bullets for presentation at trial. This Court finds the Applicant has failed to show any error in trial counsel's failure to either procure or examine these items. Regardless, this Court finds it is speculative to discuss whether further examination of such items would have impacted the Applicant's trial because they were not entered into evidence at the PCR hearing. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have hired a ballistics expert for the .380 bullets. This Court notes the Applicant failed to articulate what benefit such an expert would have had upon his case. Regardless, as a ballistics expert did not testify at the PCR hearing, this Court cannot speculate about the possible outcome that ballistics evidence would have resulted at trial. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to his co-defendants' testimony because it destroyed his alibi witness. This Court finds that, while trial counsel did object to the co-defendants' actual testimony, he did vigorously cross-examine these witnesses about the details of the incident. In returning a guilty verdict, the jury merely found the State's witnesses to be more credible. See Craven v. Cunningham, 292



S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."); see also Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant's account of what transpired).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested an alibi charge. During the charge conference, the trial judge specifically asked trial counsel if he wanted a charge of alibi. (Trial transcript, p.489). Trial counsel declined, stating "this is all or nothing." (Trial transcript, p.489). The Applicant did not object. This Court finds trial counsel made a strategic decision not to ask for an alibi charge. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant

waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

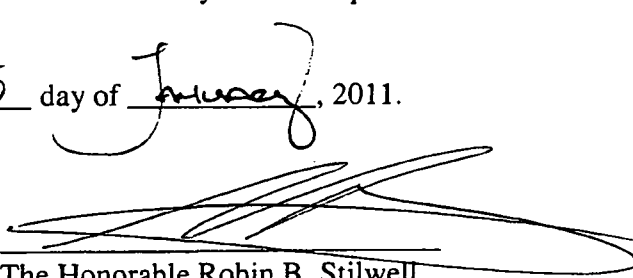
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of January, 2011.


The Honorable Robin B. Stilwell
Presiding Judge, Thirteenth Judicial Circuit

Greenville, South Carolina.

To: Paul B. Wickens, Clerk
Greenville County Clerk &
Court, 305 East North St.
Greenville, South Carolina,
29601

Copies Sent TO
ATTORNEY CLEMENS
ALSO SUPREME COURT

3-29-2012

ENTERED COMPUTER

ALBERT S. Kelly #277334
Q3A-212 Perry Corr Inst
Applicant,

V.S.
State of South Carolina,

Case # 2008-cf-23-7212 - Respondent -

Send (1) COPY
Back TO
Applicant
ASAP
AS proof -

Please Be Advised That on March 27, 2012,
I Received A paper From The South Carolina Supreme
Court Advising Me That I Had A (10) day Deadline
To File Several papers with The Court Also Attorney
Clemens office - As I understand The law After
Being Dismissed on post conviction, The Appointed
Attorney Is The officer of The Court with The
Responsibility in filing All Appeals with The
Supreme Court which will be in form of
CERTIORARI - with Are you And your office
Shifting The Responsibility on me To file These
Documentations knowing That I'm A layman of
The law, This Attorney Elizabeth WYGUL Has
Not informed me That She Have filed Any petitions
To Be Relived As my counsel, Therefore I'm Her

SCANNED

Duty Also Responsibility to ~~Assure~~ Assure me
 A proper Appeal or CERTIFICATION IS FILED AND ALL
 ISSUES ARGUED ON POST-CONVICTION RESERVED - PLEASE
 BE INFORMED, ALSO INFORM ME ~~THE~~ WHAT IS GOING
 ON BECAUSE AS OF NOW YOU ARE PLACING MY CASE LIMBO,
 YOU ARE SHIFTING THE RESPONSIBILITY OF THE ATTORNEY
 ON ME, THIS ATTORNEY ELIZABETH WYGUL HAVE
 BEEN INSUFFICIENT FROM THE START, SHE HAVE REFUSED
 TO VISIT ME OR CONTACT ME WHATSOEVER RELATED
 TO MY CASE, SHE ONLY CORRESPONDED WITH ME (1)
 ONCE AT THE COURTHOUSE IN GREENVILLE THE
 MORNING OF THE POST-CONVICTION HEARING - NO-ONE
 HAVE INFORMED ME THAT I'M PRO-SE ON
 CERTIORARI, IF NOT PRO-SE THAT MEANS I'M
 BEING REPRESENTED BY ATTORNEY ELIZABETH WYGUL,
 THEREFORE YOU NEED TO ADVISE HER TO DO HER
 JOB, IF YOU ARE NOT GOING TO ADVISE HER, THEN
 YOU NEED TO APPLY AND INFORM ME WITH A STEP
 BY STEP FORMAT ON WHAT I NEED TO DO IN
 ORDER TO RECEIVE JUDGMENT AND PROPER RELIEF
 ON MY ISSUES - THIS IS WHY MY POST-
 CONVICTION WAS DISMISSED BECAUSE THE
 ATTORNEY FAILED TO DO HER JOB - THIS IS
 VERY IMPORTANT AND SERIOUS TO ME BECAUSE,
 IF YOU ARE NOT GOING TO APPLY PROPER
 AND RIGHTEASS JUDGMENT TO PREVENT A
 MISCHIEF OF JUSTICE OR PREJUDICE ON
 BEHALF OF PLAINTIFF, ITS NO NEED FOR US TO
 GO ANY FURTHER, TURN ME DOWN ^{now} SO I CAN
 FINISH EXHAUSTING MY REMEDIES, BECAUSE
 I'VE BEEN TREATED UNFAIR AND A POLITICAL
 PRISONER WHO WAS INNOCENT, AND I'M WILLING

To Go The furthest extent to state my
 Righteousness, in all and any form shape or
 fashion - I'm tired of the system being
 unfair to me on these issues and this case -
You know I'm innocent - As I looked over
 these papers which was received March 16,
 2012 by Paul B. Wickersimer, Greenville County
 Clerk of Court it's visible that the actual
 filing date of the order of Dismissal was not
 received until March 16, 2012, and filed since
 February 1st, 2011 - This means that my
 post-conviction Attorney Elizabeth Wiggan
 refused to file my Appeal on post-conviction
 and that every one involved completely failed to
 inform Applicant of any information to
 inform him that the order had been filed
 and issued to the Attorney also Clerk of
 Court, which is also in violation of
 statute of limitation and further
 misrepresentation related to filing an
 Appeal which was the Attorney's duty -
 Also the Judge did not answer all of my
 issues, and I request a Rule 59(e)
 Motion to have every individual
 issue addressed - The Judge did not
 properly address all of my issues -

X _____ S. KO

ALBERT S. Kelly #277334
(SMUD X20) (PEARY COAR INST)
430, OAKLAWN ROAD
PELZER, S.C. 29669

2008 CP23 07212

ENTERED COMPUTER

Post-conviction #08-CP-
23-7212

MARCH, 6TH, 2012 -

TO: PAUL B. WICKENSIMON
GREENVILLE County CLERK
of Court
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA,
29601

ALBERT S. Kelly #277334

Applicant,

vs.

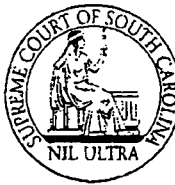
The State Greenville
County Court of
Common Pleas
Respondent.

Mailed Kelly
a copy of
OCC of 2/1/11

15 AM 10:24

Dear Clerk of Court,
Please Be Advised That I
went up for A post-conviction
Hearing November 10TH 2010,
The Judge Took The Case under
consideration to Answer At A
LATER Time - THIS IS 2012,
The case Was filed As A post-
conviction In 2008 (4) years
Ago - Who Is The Supervisor
of The Judge Who Is Handling
my case? WHAT IS The Judges
Name? Also WHAT IS The
MAXIMUM Time Limitation
on How long A post-conviction
can Be Held By The Court of
Common Pleas? Please Answer
All of The Following Questions,

Also Be Advised That Im RECEIVING NO ASSISTANCE from The
Court Appointed Attorney ELIZABETH WIGGUL, And I will
Be filing PETITIONS To BELIEVE HER AS Counsel And SCARFUEL
Continue Representation PRO-SE unless Im Appointed
A Sufficient Attorney - Also Ill Be filing state lawsuits
In your DISTRICT SOON, And VERY SOON, Against co-defendants
And state witnesses, Also I need To contact The (PCR) Judge
To Inform Him of Newly Discovered Evidence -
Truly yours,
ALBERT S. Kelly



08-7212
put in file
7-3-12

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 27, 2012

Mr. Albert S. Kelly, 00277334
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

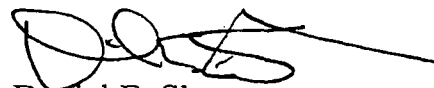
Dear Mr. Kelly:

This responds to your correspondence dated June 19, 2012. You have not provided a proof of service showing that a copy of your letter has been served on either the counsel for the State or the clerk of the circuit court.

Please be advised that this Court cannot consider *ex parte* communications about this matter. Further, any issue regarding the failure of the circuit court clerk to respond to your requests or to file your action will most likely have to be raised in and resolved by the circuit court rather than this Court. *See* Rule 245, SCACR.

Finally, I have enclosed a copy of a PCR application form along with a civil action cover sheet.

Sincerely,



Daniel E. Shearouse

Enclosures

cc: Office of the Attorney General
The Honorable Paul B. Wickensimer (with copy of letter)

CAROLINA

TO: DANIEL E. SHEARouse
 Clerk of Court
 BRENDA F. SHEALY
 Chief Deputy Clerk
 1231 GERVAIS STREET
 Columbia, South Carolina
 29201

DATE: June 19TH 2012

Ref: ALBERT S. Kelly

RECEIVED

JUN 25 2012

S.C. SUPREME COURT

FROM: ALBERT SANTANIZO Kelly
 # 271334 (SMUBX 1) PERRY C.I.
 4301 OAKLAWN ROAD -
 PELZER, SC 29669 -

① DEAR CLERK OR APPROPRIATE OFFICIAL, Please Be
 ADVISED THAT I RECEIVED your REMITTUR
 Regarding Case # 2012-211086 THAT was Related To
 Post-conviction Case # 2012-211086 - I ALREADY FILED
 A NEW POST-CONVICTION IN Greenville County WITH THE
 CLERK, PAUL B. WICKENSIMER, I REQUESTED SEVERAL TIMES
 FROM MR. WICKENSIMER TO SEND ME A POST-CONVICTION
 APPLICATION, HE NEVER DID AFTER 3 SEPERATE ATTEMPTS -
 THEREFORE I DREW OUT MY OWN APPLICATION AND FILED
 THE POST-CONVICTION IN HIS COURT, HE REFUSES TO SEND
 ME COPIES, AFTER I WRITTEN HIM SEVERAL TIMES
 REQUESTING COPIES OF THE APPLICATION HAND MADE -
 WOULD YOU PLEASE ASK THE LATER COURT OF GREENVILLE
 TO COME IN COMPLIANCE WITH MY REQUEST(S) - THEY
 ARE DOING THIS OUT OF RETALIATION BECAUSE THEY
 KNOW I'M INNOCENT - THEY ARE DENIAL OF MY

RIGHTS TO PETIT THE COURTS WITH IN 2011

And Grievances - IN VIOLATION of 1ST ALSO 14TH Amendment
 RIGHTS - I REQUEST THE COURTS TO ISSUE A ORDER
 IN ORDER TO MAKE Greenville County COURT HOUSE COME
 IN COMPLIANCE WITH MY REQUESTS - THEY ARE INTENTIONALLY
 DEPRIVING ME OF MY RIGHTS, ALSO THEY ARE CREATING
 CONFUSION ~~AMONGS~~ AMONGS MY CASE ATTEMPTING TO HAVE
 MY CLAIMS LOST IN A BUNCH OF FALSE JUDGEMENTS, AND
 INCORRECT ANSWERS - THEY ARE MAKING IT IMPOSSIBLE FOR ME
 TO ADEQUATELY ADDRESS MY CLAIMS, I AM REQUESTING
 IMMEDIATE ASSISTANCE FROM YOUR COURT, PLEASE
 SIR! PLEASE SEND ME (1) COPY OF THIS CORRESPONDENCE
BACK WITH AN ANSWER WITHIN (5) WORKING DAYS -

Respectfully Submitted,

x Albert S. Kelly

277334 SMUBx1 (PCI)
 430, OAKLAWN ROAD
 PELZER, S.C. 29669
 ALBERT S. KELLY

The Supreme Court of South Carolina

Albert S. Kelly, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-211086

The Honorable Robin B. Stilwell
Greenville County
Trial Court Case No. 2008-CP-23-07212

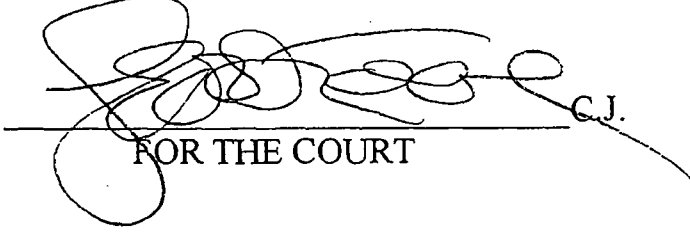
ORDER

In this post-conviction relief (PCR) case, the order of dismissal is dated January 25, 2011. The notice of appeal is not dated until March 19, 2012. Petitioner has failed to provide a proof of service showing that a copy of the notice of appeal was timely served on counsel for the respondent as required by Rule 203 of the South Carolina Appellate Court Rules (SCACR), and this Court's letter of April 13, 2012.

Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

This dismissal is without prejudice to whatever right petitioner may have to seek a belated review under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), by filing a new application for PCR in the circuit court. No action will be taken on

the application for PCR that petitioner has sent to this Court.

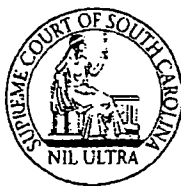


FOR THE COURT

C.J.

Columbia, South Carolina
May 17, 2012

cc: Elizabeth Patterson Wiygul, Esquire
Karen Christine Ratigan, Esquire
Mr. Albert S. Kelly, # 277334



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 14, 2012

The Honorable Paul B. Wickensimer
Clerk of Court
Greenville County Courthouse
305 E North St
Greenville SC 29601-2121

ENTERED COMPUTER

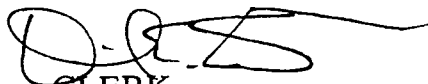
REMITTITUR

Re: Albert S. Kelly v. The State
Lower Court Case No. 2008CP2307212
Appellate Case No. 2012-211086

Dear Mr. Wickensimer:

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

Very truly yours,


CLERK

Cc: Elizabeth Patterson Wiygul, Esquire
Karen Christine Ratigan, Esquire
Mr. Albert S. Kelly, 00277334

SC-11423

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

ALBERT SANTANIO Kelly)

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

277334)

v.)

State of South Carolina)

2012-CP-23-

FILED
JUL 10 PM 3:12
CLERK OF COURT
GREENVILLE CO. S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LELOWA INST.
2. Name and location of Court which imposed sentence Greenville County
COURT HOUSE - Greenville S.C. COURT of Common Pleas
3. Name(s) of co-defendant(s) (if any) MARCUS PARKS, SHAWN EDWARDS,
DONNA LYNN WENTZ -
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2004-CS-23-005966 / 2005-CS-23-2024

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) (OCTOBER 12, 2005) 65 YEARS
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. SOUTH CAROLINA COURT of APPEALS
 ii. POST-CONVICTION Greenville Common Pleas COURT
 iii. Suprem COURT of SOUTH CAROLINA -
 (b) the result in each such Court to which you appealed:
 i. Appeal Dismissed
 ii. ORDER of Dismissal
 iii. (NO ACTION Taken) WITH INSTRUCTIONS TO file (New PCR)
 (c) the date of each such result:
 i. September 11, 2008
 ii. January 25, 2011
 iii. May 17, 2012 -
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. Supreme COURT Gave Appellant A order to file New POST-CONVICTION
9. If you answered Ano@ to (7), state your reasons for not so appealing:
 (a) X _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 14TH Amend Ment violation (Due Process)
- (b) 6TH Amend Ment violation (Ineffective Assistance)
- (c) AFTER DISCOVERED EVIDENCE -
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAPERS
- (b) Mailed on June 8, 2012
- (c) Mailed on June 8, 2012
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? A PRISON POST-CONVICTION Case # 2008-CP-23-7212
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. I Requested A Rule 59(e) Motion on PRISON POST-CONVICTION
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. I Filed THAT Motion Along With A Nat Post-conviction

(c) the disposition thereof: AT Clerk of Court Paul Wickensimer
Greenville Common Pleas Court House -

i. _____

ii. _____

iii. _____

iv. NO Responds WHATSOEVER ALSO Refuse To Send Me Copies

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. Mailed ON June 8, 2012 (As Documented)

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

i. _____

ii. _____

iii. _____

iv. _____

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

I STATED These Grounds IN Every Proceeding
BUT WAS Intentionally Denied Causing A Misscarage

15. If you answered "yes" to (14) identify: And PerJersion of Justice And prejudicial -

(a) which grounds have been presented:

i. 6TH Amendment violation

ii. 14TH Amendment violation

iii. After Discovered Evidence

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

i. DIRECT Appeal And post-conviction

ii. _____

iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

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

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. TIMOTHY Sullivan Public Defender P.O. Box 2543
Greenville S.C. 29602 (TRIAL)
 ii. JOSEPH L. SAVITZ III Chief (Appellate Attorney)
P.O. Box 11589 Columbia, S.C. 29211-1589
 iii. ELIZABETH WIEGUL 101 WHITSETT STREET
Greenville S.C. 29601 (POST-CONVICTION)

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

i. TRIAL
 ii. DIRECT APPEAL
 iii. POST-CONVICTION

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

REVERSAL OF CONVICTION AND SENTENCE, VACATED AND
DISMISSED BASED UPON (ACTUAL INNOCENCE)
IF NOT A NEW TRIAL -

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

N/A

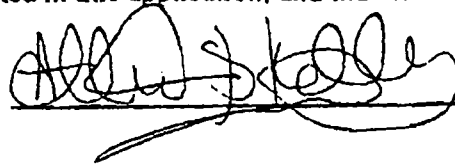
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, ALBERT SANTANILLO KEN # 277334, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 1ST
 day of July, 2012.

Dorris Curington (L.S.)
 Notary Public

My Commission Expires: May 15, 2013

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

1. ALBERT S. KELLY # 277334, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this
1 day of July, 2012.

Dorris Kurington
Notary Public

My Commission Expires: May 2013.

ALBERT S. Kelly # 277334
Applicant.

V.S.
STATE of SOUTH CAROLINA
Respondents.

REF: Case # 2008-cp-23-7212

Date: July 2nd 2012.

Greenville County Court of
Common Pleas
(Clerks Office)

Motion To Send
Copies of post-conviction
Mailed To PAUL B. WICKENSMEIER
ON June 8, 2012 - Also To
File

10 of 2

Mr Paul B Wickensmeier - I have written you several correspondences requesting copies of my hand written post-conviction Mailed on June 8, 2012 from Perry Correctional Institution under orders of the Supreme Court - you have failed to file, stamp, and send copies of those papers - I also requested post-conviction application several times, you refused to send one so I was forced to send in a hand written post-conviction on June 8, 2012 - However, after sending those documentations, along with arguments, issues, and claims, another court send me a post-conviction application - I written the Supreme Court also about these intentional actions -

I completed this application, the arguments, claims, and issues have already been sent to your office ahead of time - please stamp and file those documentations along with this application which supports #10 and #11 on the post-conviction application which will be mailed on July 3, 2012 - If you refuse to send me copies of all requested material, and continue to refuse

dot 2

Filing And Acknowledging My Applications And Claims, I will
 Be forced to write you (Administrator) Also The South Carolina
 Bar Association in form of A complaint - you And your officers
 AT Greenville Court House Including The Solicitors And Judges
 Are well Aware That In Proven Actual Innocence, you Also
 Know you will not Be Able to Re-TRIAL Me Due To Double
 Jeopardy, Therefore, you Are Intentionally Tampering With My
 Case, And, Intentionally wasting Time Hoping That I Give up -
 Send Me (1) copy of THIS Motion/ correspondence AT My
 New location, And Send Me (1) copy of The Arguments I
 Sent your office on June 8, 2012 To Support THIS Application
 I Just Received From Another Court - If you Refuse To
 Righteously file And Send copies of Motions And Paperwork,
 As Stated I will Be forced to file A complaint, And
 Request That you Be Fined or Fined from your position,
 Because you Are PERVERTING Justice, Causing Me to
 Be Prejudged, Causing A Misscarge of Justice, Also
 Violating My 1st Amendment Rights To The United
 States Constitution Which Guarantees Me My Rights
 TO PETITION The Government With Addresses of My
 Grievances Including Appeals And Filings, Also To Have
 My Freedom of Speech Documented Stamped And Filed,
 No Matter How CRITICAL My Claims Are To The
 Government - My Next Step IS To Call IN My
 Family, The Society And ~~Get Them Directly involved~~

Send All Requested Filed And Stamped Documentations,
 Including THIS Motion IN (5) working days -
 you THINK ITS funny To
 Wrongfully Convict A man,
 Keep Him locked up Almost
 10 years, Then Intentionally
 Deny Him Relief Knowing
 He IS Innocent?

Truely

M. Allen Kelly
 # 377334

STATE OF SOUTH CAROLINA
 County of Greenville
 IN THE COURT of Common
 Pleas -

1 of 2

TO: PAUL B. WICKENSIMMER
 Clerk of Court Greenville
 County Court House
 305 EAST NORTH STREET
 GREENVILLE S.C. 29601

DATE: JUNE 7, 2012 -

FROM: ALBERT S. KELLY
 #277334 (SMUC-21)
 PRAY CORR INST
 430, OAKLAWN ROAD
 PELZER, S.C. 29669 -

DEAR MR WICKENSIMMER I HAVE
 DOCUMENTATION THAT I HAVE SENT YOU SEVERAL
 LETTERS REQUESTING A POST-CONVICTION APPLICATION
 IN ORDER TO FILE THIS NEW POST-CONVICTION
 RELATED TO POST-CONVICTION 2008-CP-23-7212 -

~~YOU FAILED TO SEND ME ANY APPLICATION~~

THEREFORE I AM FORCED TO FILE MY OWN
 PERSONAL MADE APPLICATION ADDRESSING MY
 ISSUES WHICH NEEDS TO URGENTLY BE
 RULED UPON - PLEASE FILE THIS APPLICATION
 WHICH IS (12) PAGES AND THIS LETTER
 ALONG WITH THE APPLICATION WHICH IS (2)

✓

✓

✓

Pages And send Me Copies of All (12) pages
Also (2) pages of This letter So I will
Have Cops knowing THAT THE PRISON Refuses
To copy HandMade legal Documentation—
Please Send COPIES WITHIN (5) Working
Days AFTER Filing, A Please ALSO forward
A copy TO THE ATTORNEY Generals office,
And verify THEM THAT I need An
STATE Appointed or pro-Bono Appointed
Attorney TO ASSIST Me IN My
Case -

T Ruelly

X
ALBERT S. Kelly #277334

IN THE COURT of Common Pleas
County of Greenville South Carolina.

ALBERT S. Kelly
 S CDC# 277334

APPLICANT,

vs.

STATE of SOUTH CAROLINA
 (Attorney Generals Office),
 Respondents..

PAGE 1 of 12

DATE: JUNE 7, 2012 -

See ATTACHED letter TO
CLERK -

Ref: Post-Conviction

Relief Application...

Related TO Case 2008-CP-23-7212 -

THIS MATTER COMES BEFORE THE COURT IN FORM OF A POST-CONVICTION RELIEF APPLICATION. THIS MATTER CAME TO THE ATTENTION OF THE COURT IN FEBRUARY 2004 WHEN APPLICANT WAS INDICTED FOR MURDER, ARMED ROBBERY, AND POSSESSION OF A WEAPON IN THE COMMISSION. APPLICANT WAS AFFORDED A TRIAL IN AUGUST 2005 WHICH RESULTED IN A 6-6 DEADLOCK JURY. APPLICANT WENT BACK TO TRIAL OCTOBER 2005, AND ON OCTOBER 12, 2005 APPLICANT WAS FOUND GUILTY OF ALL CHARGES, GIVEN 45 YEARS FOR MURDER, 15 YEARS FOR ARMED ROBBERY, AND 5 YEARS FOR THE WEAPONS CHARGE. APPLICANT APPEARED HIS CONVICTION TO THE SOUTH CAROLINA APPELLATE COURT, ON DIRECT APPEAL, ON AN UNPUBLISHED OPINION # 2008-UP-530 SUBMITTED SEPTEMBER 2, 2008 - FILED SEPTEMBER 11, 2008 THE APPEAL WAS DISMISSED.

APPLICANT WAS REPRESENTED BY APPELLATE DEFENDER JOSEPH L. SHULTZ III OF COLUMBIA OF THE INDIGENT DEFENSE.

APPLICANT THEN PETITIONED THE COMMON PLEAS COURT OF GREENVILLE COUNTY IN FORM OF POST-CONVICTION ON SEPTEMBER 25, 2008 CASE # 2008-CP-23-7212 - THE APPLICANTS POST-CONVICTION WAS DISMISSED WITH PREJUDICE



ON JANUARY 25TH 2011 (By Judge Robert Stillwell) APPLICANT NOW BRINGS FORTH A SECOND POST-CONVICTION APPLICATION ALLEGING INEFFECTIVE ASSISTANCE OF COUNSEL, INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALSO INEFFECTIVE ASSISTANCE OF POST-CONVICTION ATTORNEY, IN VIOLATION OF 6TH AMENDMENT RIGHTS - PLAINTIFF CLAIMS 14TH AMENDMENT VIOLATIONS TO DUE PROCESS BY THE STATE, PROSECUTORIAL MISCONDUCT ALSO POLICE MISCONDUCT, APPLICANT FURTHER CLAIMS AFTER DISCOVERED EVIDENCE AFTER DISCOVERED EVIDENCE.

APPLICANT WAS REPRESENTED AT TRIAL BY GREENVILLE COUNTY PUBLIC DEFENDER TIMOTHY SULLIVAN, ADDRESS P.O. BOX 2543 GREENVILLE SOUTH CAROLINA, 29602 PHONE # (864) 246-8591. APPLICANT WAS REPRESENTED ON DIRECT APPEAL BY CHIEF ATTORNEY JOSEPH L. SAVITZ, III SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE, DIVISION OF APPELLATE DEFENSE P.O. BOX 11589, COLUMBIA, SOUTH CAROLINA, 29211-1589 PHONE # (803) 734-1343. APPLICANT WAS REPRESENTED ON POST CONVICTION BY ATTORNEY AT LAW ELIZABETH P. WYGLUC 101 WHITSETT STREET, GREENVILLE, SOUTH CAROLINA, 29601 PHONE # (864) 235-2900. APPLICANT HAVE MADE SEVERAL ATTEMPTS FROM PERRY CORRECTIONAL INSTITUTION, TO PREPARE A POST-CONVICTION APPLICATION FROM CLERK OF COURT PAUL B. WICKENSCHMIDT AT THE CLERKS OFFICE AT GREENVILLE COMMON PLEAS COURT HOUSE, BUT, MR WICKENSCHMIDT HAVE FAILED TO SEND APPLICANT A OFFICIAL APPLICATION ON (3) REQUEST THEREFORE APPLICANT IS FORCE TO MAKE OUT HIS OWN APPLICATION AND ASK THE COURTS TO ACCEPT IT IN FORM AND FASHION - APPLICANT
~~NOW BRINGS FORTH THE FOLLOWING FACTS TO SUPPORT HIS~~
 ALLEGATIONS.

11. STATE CONSIDER AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN QUESTION (10):



3 of 12

ATTORNEY AT LAW TIMOTHY SULLIVAN A TRIAL FAILED TO PRESENT THE EXCULPATORY EVIDENCE 1 PAIR TIMBERLAND BOOTS, AND 1 PAIR TIMBER BOOTS WHICH COULD HAVE COORDINATED APPLICANT'S ALIBI CLAIM AND PROVEN HIS INNOCENCE OF MURDER, ARMED ROBBERY, AND WEAPON, AT TRIAL - THE 2 BOOT PRINTS WERE FOUND AROUND THE VICTIM'S BODY, AND, LED FROM THE CRIME SCENE TO THE C#6 HOME OF SHAUN EDWARDS WHERE THE MURDER WEAPON WAS FOUND, AND OTHER CUNDS AND WETT CLOTHING, ALSO, TO MARCUS PARKS APARTMENT B#4 WHERE THE 2 PAIR OF SHOES WERE FOUND WHICH MATCHED THE BOOT PRINTS IN THE SNOW - THE PRINTS WERE POSITIVELY MATCHED, AND, MEASURED TO THE SHOES BY FORENSIC OFFICERS, AND ITS WITHOUT SPECULATION THAT THESE WERE THE SHOES WORN BY THE 2 DEFENDANTS WHO MURDERED THE VICTIM WHOM APPLICANT BELIEVED TO HAVE BEEN MARCUS PARKS AND SHAUN EDWARDS 2 CO-DEFENDANTS - THE 2 FOOT PRINTS WERE FOLLOWED THREW THE SNOW FROM THE VICTIM'S BODY TO THE BACK DOOR OF LEON IRBY WHO TESTIFIED AT TRIAL THAT IT WAS MARCUS PARKS AND SHAUN EDWARDS ~~WHO CAME BY HIS HOME ASKING FOR DRINKS OF ALCOHOL AND TRANSPORTATION,~~ THEY LEFT WALKING OUT HIS FRONT DOOR TOWARDS SHAUN EDWARDS MOTHERS APARTMENT C#6, MR LEON IRBY ADVISED THE POLICE WHEN HE QUESTIONED HIM MINUTES LATER THAT THEY COULD FOLLOW THE FOOT PRINTS THEY WOULD LEAD TO CHARLEAN EDWARDS HOME WHERE THE 2 DEFENDANTS WENT. See: TRIAL Page 383 - Page 384 Line 18-24 And Line 3-7 (Page 383 line 18-24, Page 384 line 3-7)

Also LEON IRBY TESTIFIED ALBERT KELLY APPLICANT NEVER CAME TO HIS HOUSE WHICH WAS LOCATED IN THE BUILDING OF THAT APARTMENT COMPLEX. ALBERT KELLY PRESENTED ALIBI WITNESS THREW WITNESS JOYCE GORDON WHO TESTIFIED APPLICANT WAS HOME WITH HER FROM 11:00 PM FEBRUARY 26, 2004 - 6:00 AM FEBRUARY 27, 2004, THE MURDER TOOK PLACE AT 1:10 AM ON FEBRUARY 27, 2004. ONLY 2 FOOT PRINTS WERE FOLLOWED AWAY FROM THE MURDER SCENE, WHICH LEAD TO THE ARREST OF BOTH MARCUS



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PARKS And Shaun Edwards, Also Confiscation of Murder
~~Weapon~~ Weapon, A 92 HandGun, Also Confiscation of Both
 PAIR SHOES THAT Matched THE FOOTPRINTS AT Marcus PARKS
 And Shaun Edwards Home APT#C6 And APT#B-4 -

Marcus PARKS Testified THAT ALBERT Kelly NEVER came
 TO HIS Apartment WHERE THE SHOES WERE FOUND by Police,
 (See TRIAL page 141 line 23-25) And (TRIAL page 142
 line 1-8) See EXHIBIT Marked A-5 forensic

PICTURES OF THE FOOTPRINTS IN THE SNOW AROUND THE
 VICTIM ALSO AT THE Home of Shaun Edwards #C6
 And Marcus PARKS #B4 WHERE THE FOOTPRINTS ENDED -
 ALSO police Gave Testimony About following THE 2
 FOOTPRINTS See (TRIAL page 273 line 13-22) ALSO
 THAT THE SNOW WAS THE KEY TO SOLVING THE CRIME
 Real Quick Because of THE FOOTPRINTS See (TRIAL
 page 274 line 15-19) AT THE post-conviction

HEARING TRIAL Counsel Timothy Sullivan STATED
 THAT ALBERT Kelly APPLICANT Had SAID All 3 of
 Defendants WERE AT THE Scene WHICH IS untrue,
 causing THE Judge TO Mis Rule ON THIS ISSUE,
 THIS IS SULLIVAN'S EXCUSE FOR NOT PRESENTING THE
 2 PAIR BOOTS AT TRIAL, WHICH IF SOLVED THE CRIME
 Fast. COULD HAVE PROVEN APPLICANT'S INNOCENCE Fast..

TIMOTHY Sullivan Did NOT Present These Boots
 AT TRIAL, NEITHER WHERE APPLICANT Allowed TO
 Present THEM AT post conviction HEARING BUT

SUBMITTED A PICTURE by forensic of Greenville
 County Showing THE 2 FOOTPRINTS ALSO THE

TIMBERLAND BOOTS WHICH MARK THE TRIGGER Man
 Found INSIDE of Apartment B-4 Marcus PARKS,
 Along WITH Timber Boots WHICH Marcus PARKS
 Still Had on See: (EXHIBIT A-5) And (EXHIBIT A-2)

A RETURN TO THE SEARCH Warrant conducted
 AT APT# B-4 Marcus PARKS Apartment,

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Also kept in mind that Marcus Parks testified Applicant had on Timber boots when the Timberland boots were found, the Timberland boots were the boots worn by the trigger man and Marcus Parks had on Timber boots which matched the second person at the scene, also Marcus Parks still had on these boots when arrested by police -

If the Timberland boots also Timber boots were presented at trial they would have proven its no way Applicant was present at the scene, that Applicants Alibi were true, and that it was more than likely Shawn Edwards and Marcus Parks were the defendants who actually committed this crime and not Albert Kelly - Had this evidence been presented at post-conviction as they were by documentation all that Plaintiff has, Exhibit A-5 and Exhibit A-2 See: they are included... The Judge would have not ruled falsely on this claim and have likely have likely reversed Applicants convictions and vacated Applicants sentence - certainly Had this evidence been presented at trial Applicant would likely have been found not guilty -

Applicant was further on trial for Armed Robbery, the Prosecution tried to say Applicant

~~work the victims wallet which contained items~~
Money and ID cards - see trial page 561 lines 5-7
Also lines 8-15 (Exhibit # A-3)
Exhibit # A-3 proves that no wallet were taken,
its a forensic report that Brown White

containing a Florida and South Carolina ID
belonging to the victim were found inside
the victims car on 3-3-2004 several days
after the robbery murder therefore its



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NO WAY APPLICANT COULD HAVE TAKEN VICTIMS WALLET AS PROSECUTOR ARGUED THREW THE WHOLE TRIAL AND CLOSING ARGUMENTS - IF THE WALLET HAD BEEN PRESENTED BY DEFENSE COUNSEL AT TRIAL THESE EXCULPATORY EVIDENCE, A DIFFERENT RESULT WOULD LIKELY HAVE HAPPENED AT THE TRIAL, AND COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING THAT HE HAS ALWAYS THOUGHT THE APPLICANT WAS INNOCENT ON MURDER AND COMMITTING THIS CRIME SEE! TESTIMONY OF TIMOTHY SULLIVAN AT POST-CONVICTION EVIDENTIARY HEARING NOVEMBER 2010. THEREFORE, ITS NO WAY, OR NO EXCUSE FOR NOT ~~presenting~~ ^{presenting} SUCH HIGH QUALITY EXCULPATORY EVIDENCE WHICH COULD HAVE PROVEN APPLICANTS INNOCENCE, AND EXONERATED HIM OF THESE CRIMES - IF THE BRAIN WALLET CONTAINING IDENTIFICATIONS OF THE VICTIM HAD BEEN PRESENTED AT TRIAL A DIFFERENT OUTCOME WOULD LIKELY HAVE HAPPENED, ALSO, FURTHERMORE, THIS PIECE OF EVIDENCE COULD ALSO HAVE CORROBORATED APPLICANTS ALIBI CLAIM AS THE BOOTS AND FURTHERMORE, PROVEN APPLICANT WAS NOT PRESENT AT THE SCENE OF THE CRIME AS HE TRIED TO SAY AT TRIAL, AND TIMOTHY SULLIVAN MADE A FALSE ACCUSATION AGAINST APPLICANT WHEN HE SAID AT THE HEARING APPLICANT HAD STATED HE WERE PRESENT - THEN LATER SULLIVAN TESTIFIED HE NEVER THOUGHT APPLICANT COMMITTED THIS CRIME, IN WHICH APPLICANT HAD TO HAVE BEEN PRESENT TO BE THE TRIGGERMAN IN WHICH HE WERE ACCUSED AS BEING - THIS EVIDENCE COULD HAVE PROVEN APPLICANT INNOCENT OF ARMED ROBBERY, THE UNLAWFUL TAKING AWAY OF PROPERTY BY FORCE -

"380 Bullets" were found wrapped with the murder weapon, A 380 High Point Hand Gun under Shaun Edwards sofa in Apartment C-6, Shaun Edwards purchased these bullets from Walmart 2 days before the murder, Shaun Edwards testified at trial he was planning to buy a 380 Hand Gun and that

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 IS WHY HE BUY THE BULLETS, ALSO MR EDWARDS TESTIFIED HE DID NOT
 BY NO BULLETS OR GUN FOR OR FROM (AM) THE APPLICANT ALBERT KELLY -
 SEE TRIAL PAGE 170 LINE 17 - PAGE 171 LINE 12 - THEREFORE IF
 SHAWN EDWARDS TESTIFIED THAT HE NEVER GAVE APPLICANT THE BULLETS,
 IT SHOWS THAT SHAWN EDWARDS HAD TO KNOW THE MURDER WEAPON
 WAS IN HIS HOME UNDER HIS SOFA WRAPPED WITH THE MURDER
 WEAPON, AND THAT APPLICANT NEVER KNEW OR COULD HAVE POSSESSED
 THE WEAPON IF IT WAS FOUND WRAPPED WITH CODEFENDANT
 EDWARDS BULLETS THAT KELLY NEVER HAD AND THAT EDWARDS
 BUY FROM WALMART 2 DAYS BEFORE THE MURDER BECAUSE HE
 WAS ABOUT TO PURCHASE A "380" HANDGUN - IF THE "380"
 BULLETS WERE PRESENTED A TRIAL BY ATTORNEY TIMOTHY SULLIVAN
 THESE FACTS ARGUED, IT WOULD HAVE BEEN A DIFFERENT RESULT
 IN THE VERDICT AND RESULT IN THE TRIAL, A APPLICANT
 WOULD LIKELY HAVE BEEN FOUND NOT GUILTY OF POSSESSION
 OF A FIRE ARM IN COMMISSION OF A ROBBERY, WHICH
 RESULTED IN A MURDER OF THE VICTIM -

FURTHERMORE, CHARLENE EDWARDS AND SHAWN EDWARDS
 TESTIFIED THEY KICKED MARCUS PARKS (CODEFENDANT)
 ALSO ALBERT KELLY APPLICANT OUT OF APARTMENT C-#6
 AT 3:00 AM ON FEBRUARY 27, 2004 MORNING OF THE
 MURDER AND THAT POLICE ARRIVED 15 MINUTES LATER -
 SEE TRIAL PAGE 880 LINE 3-25) ALSO, SEE TRIAL
 PAGE 163 LINE 18-25) PROSECUTOR ARGUED IN

CLOSING ARGUMENTS POLICE ARRIVED AT THE EDWARDS
 APT #C6 AT 3:30 AM WHICH IS ALL FALSE AND IN
 AN ATTEMPT TO DEGRADE AND DESTROY APPLICANTS ALIBI

TESTIMONY - SEE TRIAL PAGE 545 LINE 17-19)

ALSO (PAGE 547 LINE 2-9) - POLICE GAVE INDEPENDENT

TESTIMONY THEY ARRIVED AT APPROXIMATELY 2:30 AM
 ON 2-27-2004 THREW 4 AM APPROXIMATE TIME FRAME,
 SEE TRIAL PAGE 314 LINE 7-25) - THIS FALSE TESTIMONY
 TAINTED THE MINDS OF THE JURORS BECAUSE IT WAS
 FALSE, MADE APPLICANTS ALIBI TESTIMONY LOOK FALSE AND

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As if it was no way the Alibi could be true and resulted in the conviction of an innocent man the Applicant - these & false evidence or testimony were not objected and corrected and furthermore, prosecutor argued the false evidence about these time frames in his closing argument causing a miscarriage of justice and prejudice to the Applicant's Alibi claims which were actually true -

See TRIAL Testimony of Joyce Gordon TRIAL Page 385 line 5-25)

Furthermore, Due process rights under the 14th Amendment of the United States Constitution gives the Defendant in a crime the right to a jury trial and to present his defense by way of evidence, testimony and instructions by the judge, and that no man shall be deprived of his life or liberty without this due process - OVERALL,

Defendant presented Alibi testimony AT TRIAL
See TRIAL Page 385 line 5-25 Joyce Gordon) BUT

was not allowed to get an Alibi instruction on Alibi by the judge because defense counsel did not ~~request~~ request such instruction

AT TRIAL, when asked by the judge were there any self defenses, Alibi, or any of those kind of things, defense counsel responded "THIS IS ALL OR NOTHING, NO SELF DEFENSES - HOWEVER, AT THE PCR HEARING ATTORNEY SULLIVAN TESTIFIED HE COULD NOT RECALL ANY REASON FOR DECLINING ALIBI

INSTRUCTION, AND THAT HE HAVE ALWAYS THOUGHT APPLICANT TO BE INNOCENT - APPLICANT CONTENDS THIS IS IN VIOLATION OF DUE PROCESS 14TH AMENDMENT BY NOT ALLOWING APPLICANT TO PROPERLY PRESENT HIS DEFENSE; ALSO IN VIOLATION OF 6TH AMENDMENT WHICH CONSTITUTED INEFFECTIVE ASSISTANCE OF DEFENSE COUNSEL.

90412

THE failure to Give An Alibi charge, Where Defendant Presents Alibi Testimony, And Where Defendant Claims to be in Another place is REVERSIBLE Error, See STATE v. Robbins, 275 S.C. 373, 271 S.E. 2d 319 (1980). Sullivan's Rejection of the charge AT TRIAL CONSTITUTES Inadequate legal Representation - THE PREJUDICE OF THIS ERROR WAS COMPOUNDED BY THE FOLLOWING REMARKS OF THE SOLICITOR IN CLOSING ARGUMENTS:

LET'S START THE ALIBI WITNESS. I WANT TO SAY JUST A COUPLE OF WORDS ABOUT THAT, JOYCE GORDON, WHO STOOD BEFORE YOU, AND MY COMMENT ABOUT THAT, LADIES AND GENTLEMEN, THAT ANYONE WHO IS DESPERATE ENOUGH TO KILL SOMEBODY AND IS DESPERATE ENOUGH TO RUN AWAY AND LIVE IN ANOTHER CITY AND STATE FOR TWO AND A HALF MONTHS, IS DESPERATE ENOUGH TO TRY TO GET SOMEBODY TO SAY WHAT HE WANTS THAT PERSON TO SAY FOR THEM —

SUBSEQUENTLY, THE ABSENCE OF A CHARGE ON ALIBI GAVE RISE TO A CONCLUSION BY THE JURY THAT IT WAS IMPERMISSIBLE FOR THEM TO CONSIDER ALIBI AS A DEFENSE — See: Riddle v. STATE, 308 S.C. 361, S.E. 2d 308 (1992). ALSO SEE JURORS QUESTION IN DELIBERATION TRIAL TRANSCRIPT ABOUT PRESENCE See (TRIAL page 585 line 4-87)

SUBSEQUENTLY, HAD DEFENSE COUNSEL HAD REQUESTED AN ALIBI INSTRUCTION A DIFFERENT OUTCOME WOULD HAVE PRESENTED IN THE VERDICT, AND APPLICANT WOULD MORE THAN LIKELY HAVE BEEN FOUND NOT GUILTY, KEEP IN MIND THAT ATTORNEY TIMOTHY SULLIVAN TESTIFIED AT TRIAL THAT HE ALWAYS THOUGHT APPLICANT WAS INNOCENT, THEREFORE, THIS ADMITTANCE ALONG PROVE AN ALIBI INSTRUCTION SHOULD HAVE BEEN GIVEN AND REQUESTED, AND WITHOUT SUCH DUE PROCESS WAS VIOLATED WITH, ALSO WITH THE EFFECTIVE ASSISTANCE OF COUNSEL - APPLICANT WAS NOT

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Allowed To Adequately Present His Defense Which Resulted
In The Conviction of An Innocent Man Also Violation of
The United States Constitution -

Furthermore, After The Applicant Evidentiary Hearing
Co-defendant Marcus PARKS Contacted Applicants Mother
By letter, Also Applicants 1st Cousin Mrs Angela
CAPell By phone And letter And Advised Them That
He Is Sorry For Playing A Role In The Wrongful
Conviction of Applicant, That He Marcus PARKS Lied
In order To Receive The lower End, That Everything
He Marcus PARKS Said THE Greer Police Force
And Investigators forced Him To say And That
It Was Actually Him And Shaun Edwards Who
Committed The Crime - Marcus PARKS Received
35 years, He Also ~~also~~ Advised Applicants
Family To Inform Applicants lawyer To
Come VISIT Him At Lebra Correctional
Institution So He Can Write A New Statement,
A True Statement To Correct The false
Testimony By Him And Exonerate Applicant
Of These false charges. Applicants Family
Also Applicant Have called And wrote letters
To Attorneys Timothy Sullivan And Elizabeth
Wiggall Also Attorney Generals And Prosecutor,
All Attorneys Have failed To Respond Including
The Judges, Few, Also Stilwell -

Furthermore, Donna WENZ Another Co-defendant
Who Testified AT TRIAL To Convict Applicant
Who Is Free, Also Called Applicants 1st
Cousin Angela CAPell And Advised Her
That THE Greer Police forced And
Pressured Her To Make false statements
And Testimony Against Applicant AT TRIAL -

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THIS CONVERSATION WAS RECORDED - BY MRS ANGELA CAPELL - BOTH DONNA WENTZ AND MARCUS PARKS ARE WILLING TO COME FORTH AND GIVE THIS TESTIMONY, AND IF A JURY HEAR THIS TESTIMONY IF APPLICANT IS AFFORDED A NEW TRIAL A NEW RESULT IS LIKELY TO HAPPEN IN THE VERDICT - AN APPLICANT IS LIKELY TO BE RELEASED FROM THE UNLAWFUL CUSTODY OF THE RESPONDENTS, WHO IS ALSO AWARE, AND IS INTENTIONALLY ATTEMPTING TO CONFUSE APPLICANTS CASE ALONG WITH THE JUDGE MR STILWELL BY NOT TRUTHFULLY ANSWERING OR RESPONDING TO APPLICANTS CLAIMS, BRINGING CONFUSION IN APPLICANTS CASE AND CREATING A FALSE PAPER TRAIL - THIS IS AFTER DISCOVERED EVIDENCE, APPLICANT REQUEST THE COURT TO SUBPEONA BOTH MARCUS PARKS AND DONNA WENTZ TO TESTIFY AT A NEW POST-CONVICTION HEARING, ALSO ANGELA CAPELL AND JOYCE DENNIS WHO RECEIVED THESE CORRESPONDENCES AND PHONE-CALLS -

FURTHERMORE, ATTORNEY ELIZABETH P.

WYGUL POST-CONVICTION ATTORNEY FAILED TO APPEAL APPLICANTS 1ST POST-CONVICTION ON FILE A RULE 59(e) MOTION ADVISING THE JUDGE ALL ISSUES WERE NOT RULED UPON TRUTHFULLY A FULLY DUE TO CONFUSION TACTICS BY THE ATTORNEY GENERAL AND WHOMEVER ELSE RESPONSIBLE

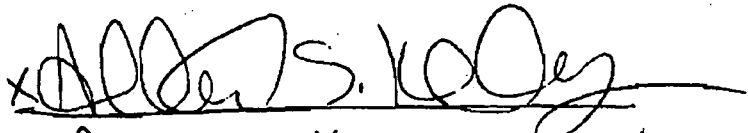
INCLUDING ISMOTHY SULLIVAN - APPLICANTS CLAIMS WERE NOT ADEQUATELY AND TRUTHFULLY RULED UPON APPLICANTS POST-CONVICTION # 2008-CP-23-7212 WERE RULED UPON JANUARY 25, 2011, AND FILED FEBRUARY 1ST 2011 - APPLICANT WAS NEVER INFORMED OF THIS RULING UNTIL MARCH 2012 WHEN HE WROTE CLERK OF COURT PAUL WICKENSIMER TO CHECK THE STATUS OF HIS POST-CONVICTION - THE

Exhibitory Hearing Was Held November 2010 - Post-conviction
 Attorney Elizabeth Wyzgul wrote Applicant A letter on
 April 20, 2012 And Have Been In Contact With Applicants
 Family Angela Capell, And Informed Applicant That
 SHE IS AWAR AN Appeal Was Never Filed, And, IT IS
 TOTALLY HER Fault To do A New post-conviction naming
 HER ineffective -

Applicant Request A New HEARING By
 A different Judge To Adequately Address His
 CLAIMS OR THIS Application Be Forwarded As
 Written To THE Supreme Court for petition, OTHERWISE,
 Applicant Request Addressal of THESE ISSUES
 WITHOUT Confusion By THE Respondents And THE
 STATE - AN Appeal Would Be Inadequate Right Now
 Because Applicant Claims Have Not been Sufficiently
 Addressed by THE Judge Due To Confusion,
 AFTER Discovered Evidence, ALSO Ineffective
 Assistance of post-conviction Counsel who
 Failed To file An Rule 59(c) Motion. OR And
 THEN AN Appeal Afterward WHICH would THEN
 Have been APPROPRIATE,

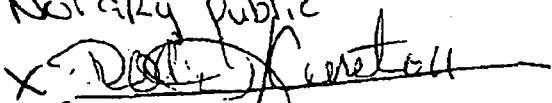
However, Applicant WAS NOT IN THE
 POSITION TO do NEITHER Because HE WAS NOT
 AWAR THAT HIS post-conviction Had Even Been
 Ruled upon - Request REVERSAL of CONVICTION,
 And VACATION of All charges on Behalf of
 Applicant -

Signature



ALBERT S. Kelly # 277334
 (SMUC-21) PERRY CAR INST
 430, OAKLAWN ROAD
 PELZER, SC. 29669 -

Notary Public



Commission Expires MARCH 29, 2016.

Mr. ALBERT SANTANIELLO KELLY
 #277334 (SMA NORTH CELL #68)
 LEE COUNTY CORRECTIONAL INST
 990, WISKEY HIGHWAY
 Bishopville, SC 29010

Mr Paul B. Wickensmeyer
 CLERK & COURT
 GREENVILLE COUNTY COURT HOUSE
 305 EAST NORTH STREET
 GREENVILLE, SOUTH CAROLINA, 29601

2012-CP-23 04466

NOTION Application
 July 3, 2012 - case # 2008-cp-23-

29601213099

LEGAL MAIL

IL
 65



Greenville County
Office of THE CLERK
Paul B. Wickensimer
Clerk of Court for
Greenville County
Greenville South
Carolina, 29601 -

OCTOBER 5TH, 2012

Motion To Amend
Case # 2012 - CP-23 -
04466 -

From: ALBERT S. Kelly
2TB34 (Smu South #177)
Lee Correctional Institution
990, WISACKY HWY
Bishopville, SC 29010

ENTERED COMPUTER

2012 OCT 15 AM 10:10

20

Ref: Case # 2012 - CP-23 -
04466 - Post-Conviction -
ALBERT S. Kelly V.S. STATE

Please Be Advised Applicant Is
Sending THIS Motion Along WITH THIS Application
And Argument To Amend His PRIOR Post-
Conviction Writ That Was filed on July 10th 2012
By your office - THIS Amended Application
Better Verifies Applicant's Claim And Give A
Better View point WITHOUT Confusion, And Is IN
THE Simplest Form -

Scanned X

Twenty years,

Albert S. Kelly

1 - 1 - 11. amended / no applicant

FORM 5

STATE OF SOUTH CAROLINA

County of GREENVILLE

IN THE COURT OF COMMON PLEAS

ALBERT SANTANISO Kelly

Full name and prison number (if any) of Applicant

#277334

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

July 11, 2012

(2012-cp-23-04466)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE COUNTY CORRECTIONAL INSTITUTION - STATE OF SOUTH CAROLINA -
2. Name and location of Court which imposed sentence GREENVILLE COUNTY COMMON PLEAS COURT HOUSE -
3. Name(s) of co-defendant(s) (if any) MARCUS A. PARKS, STANLEY EDWARDS, DONNA LYNN WENTZ -
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-23-005966
 - (b) 2005-GS-23-2024

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MURDER 65 45 years OCTOBER 12, 2005 -
- (b) ROBBERY ARMED, 15 years OCTOBER 12, 2005 -
- (c) POSSESSION OF WEAPON 5 years OCTOBER 12, 2005 -
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓✓✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes -
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS (DIRECT)
- ii. GREENVILLE COURT COMMON PLEAS (PCR)
- iii. SOUTH CAROLINA SUPREME COURT
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED WITHOUT ORAL ARGUMENT -
- ii. POST-CONVICTION DISMISSED
- iii. SUPREME COURT WITH INSTRUCTION BACK TO PCR
- (c) the date of each such result:
- i. SEPTEMBER 11TH, 2008 -
- ii. JANUARY 25, 2011 -
- iii. MAY 17TH 2012 -
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNKNOWN -
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) POST-CONVICTION ATTORNEY FAILED TO
FILE -

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 14TH Amendment Violation (Due Process)
- (b) 6TH Amendment Violation (Misrepresentation)
- (c) AFTER Discovered Evidence (Actual Innocence)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See ATTACHED papers -
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes / no
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. ATTEMPTED TO FILE A 59(c) MOTION AFTER
- iv. POST-CONVICTION AND ATTORNEY FAILED TO FILE APPEAL -
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. Greenville Common Pleas -
- iii. _____
- iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. Advised to file Another post-conviction By

iv. The Supreme Court Also Attorney Elizabeth Wiygul -

(d) the date of each such disposition:

i. _____

ii. _____

iii. May 17, 2012

iv. _____

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

i. ON Direct Appeal

ii. UNKNOWN

iii. May 17, 2012 - unknown

iv. UNKNOWN

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

Yes

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

(a) which grounds have been presented:

i. (MISREPRESENTATION) 6TH Amendment Violation -

ii. (Due Process Violation) 14TH Amendment

iii. _____

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

i. Direct Appeal

ii. Post-Conviction

iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes Rule 59(e) Motion

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. TIMOTHY Sullivan Greenville public Defender
Post office Box 2543 Greenville SC 29602
 ii. Chief Attorney Joseph L. SAVITZ III
Appellate Defense P.O. Box 11589 Columbia, SC 29211-
 iii. ELIZABETH WYQUILL 101 WHITSET ST
Greenville, SC 29601
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL TIMOTHY Sullivan
 ii. DIRECT APPEAL Joseph L. SAVITZ III
 iii. POST-CONVICTION ELIZABETH WYQUILL

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

Case Reversed And Vacated WITH A ORDER
of ACQUITTAL Based upon Actual Innocence,
And Violation of THE UNITED STATES CONSTITUTION -

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

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, ALBERT SANTANEO Kelly, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 11TH
 day of July, 2012.

[Signature] (L.S.)
 Notary Public

My Commission Expires: December 27, 2013.

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

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

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

Albert Santanico Kelly
Applicant

SWORN or affirmed to and subscribed before me this

11th day of July,
James McCall
Notary Public

My Commission Expires: December 27, 2013

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10. STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATIONS THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY: See: (Application)

11. STATE CONCISELY THE GROUNDS AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10)

(a) Appellate was Denied His Due process Rights when Appellate was NOT GIVEN A FAIR TRIAL Due To NOT BEING ABLE TO Present His Defense (ALIBI) AFTER presentation of Alibi witness Joyce Gordon who testified - further more, Defense Attorney was Inefficient in Representation when He failed to Request An Alibi Instruction - AT TRIAL WHEN ASKED BY THE Judge were there Any self Defenses, Alibi, or Any of those Kind of THINGS, Defense Counsel Timothy Sullivan Responded "THIS IS All or NOTHING, No self Defenses - If we Believe His Story He's not Guilty, If They Believe the other side, Then He's Guilty - ITS Just one shot AT murder or not, EITHER guilty or not guilty". However, AT THE Evidentiary Hearing (PCA) THIS ATTORNEY TESTIFIED THAT He Could NOT Recall Any Reason for declining THE Alibi Charge - THIS ATTORNEY went further To say He Always FELT Applicant was Innocent of THIS CRIME And NOT THE SHOOTER -

THIS ALSO CONSTITUTED Denial of Due process to present A Defense upon My Behalf, Also MISREPRESENTATION of Counsel for Failure to Request A Defense INSTRUCTION -

THE Failure to Give An Alibi charge, where THE Defendant claims to be AT Another place, IS Reversible Error, STATCH, Hobbins, 275 S.C. 373, 271 S.E.2d 319 (1980). Counsel's Projection of THE charge AT TRIAL CONSTITUTES INADEQUATE legal REPRESENTATION - THE Prejudice of THIS Error was compounded By THE following Remarks of THE Solicitor IN closing Arguments:

(Solicitor) @ LETS START THE Alibi witness - I want to say Just A Couple of words ABOUT THAT; Jake Gordon, who stood before you - And My Comment ABOUT THAT, ladies And Gentlemen, THAT Anyone who IS Desperate enough to Run Away And live IN Another city And Another STATE for Two And A Half MONTHS, IS desperate enough to TRY to get somebody to say what He wants THAT person to say for Them...

Subsequently, THE Absence of A charge on Alibi Gave Rise to A Conclusion By THE Jury THAT IT was Impermissible for THEM to consider Alibi As A defense - They Also Questioned THE Judge During Deliberation About Presence -

(continued)

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DEFENSE COUNSEL TIMOTHY SULLIVAN ALSO PROSECUTOR MARK MOYER
 WERE VERY AWARE THAT THE STATE HAD FACTUAL EVIDENCE THAT
 WOULD HAVE PROVEN APPLICANT'S INNOCENCE OF ALL CHARGES ALSO
 CONFIRM APPLICANT'S ALIBI AS TRUE - IT WAS ONLY 2 PEOPLE
 WITHIN COMMITTED THE CRIME, 2 PAIR FOOTPRINTS WAS FOLLOWED
 AWAY FROM THE SCENE APARTMENT K-30 LEON IRBY - LEON IRBY
 TESTIFIED THAT SHAWN EDWARDS AND MARCUS PARKS CAME TO HIS
 RESIDENCE SEEKING TRANSPORTATION ALSO DRINKS OF ALCOHOL -
 THIS WAS AROUND THE TIME FRAME OF THE MURDER, MR IRBY
 ALSO TESTIFIED THAT APPLICANT NEVER CAME TO HIS RESIDENCE -
 THE 2 SET OF FOOTPRINTS CAME FROM MR IRBY'S BACK DOOR,
 AND CONTINUED OUT THE FRONT DOOR, AND MR IRBY TESTIFIED
 THAT HE TOLD POLICE FOLLOWING THE TRACKS, YOU CAN CONTINUE
 FOLLOWING THE TRACKS THREW THE SNOW, THEY WILL LEAD YOU TO
 C- APARTMENT C-6 SHAWN EDWARDS - THE POLICE FOLLOWED
 THE TRACKS AND THEY ENDED AT MR EDWARDS DOOR STEPS -
 EXAMINE TRIAL PAGE 383 LINE 18-24, PAGE 384 LINE
 3-7 - WHEN POLICE ARRIVED AT THE SCENE AROUND 1:30 AM,
 AND FOLLOWED THE TRACKS, MARCUS PARKS CAME BACK TO
 SHAWN EDWARDS APARTMENT WHERE THE MURDER WEAPON,
 WAS FOUND, ALSO OTHER CUM'S INCLUDING A SKS ASSAULT
 RIFLE - MARCUS PARKS TOLD POLICE ALSO THE JURY THAT
 AFTER THE MURDER HE WENT HOME, BUT DID NOT KNOW
 WHERE APPLICANT WENT, BUT, THAT APPLICANT DID NOT
 COME TO HIS APARTMENT B-4 - THE SHOES (TIMBERLAND
 BOOTS,) ALSO (BLACK TIMBERLANS) WHERE THE 2 FOOT-TRACKS
 AT THE MURDER SCENE THAT EVENTUALLY ENDED AT
~~MARCUS~~ SHAWN EDWARDS APARTMENT - BOTH PAIR
 BOOTS WERE FOUND IN MARCUS PARKS APARTMENT
 B-4 - MARCUS PARKS TESTIFIED APPLICANT NEVER
 CAME TO HIS APARTMENT, THEREFORE THIS PROVES
 APPLICANT COULD NOT HAVE BEEN PRESENT AT THE
 SCENE OF THE MURDER AT ANY TIME WHATSOEVER,
 AND THAT APPLICANT'S ALIBI WAS TRUE
 SEE TRIAL PAGE 141 LINE 23-25 AND TRIAL PAGE
 142 LINE 1-8 -

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police officers lied AT TRIAL And Said NO Evidence was Taken From Marcus APT B-4 And NO SEARCH Ever Conducted - See (TRIAL page 5) Testimony DALE ARTERBURN - Intentionally lied To Cover up Actual Innocence Related To The 2 PAIR Boots - ITS Evident And Clear THAT Applicant Had on Different SHOES other THAN the ones found AT the murder Scene And Edwards - FURTHERMORE, ITS Evident THAT Applicant left Edwards Apartment Before the murder And Had on His own SHOES And couldn't Have Been walking IN the snow Bare footed - Parks Testified Applicant never came To APT B-4 Therefore, If 2 Boots Matching the Scene, ITS Evident They ARE Shawn Edwards And Parks Shoe PRINTS - If the 2 PAIR Boots would Have Been presented AT TRIAL likely A different outcome would Have Resulted Towards Applicants Innocence -

FURTHERMORE, The Motive For the Murder Was Armed Robbery In the Commission, ITS Was Stated By Prosecutor Mark Moyer That the VICTIM Was Robbed For His wallet And THAT Applicant SPENT the VICTIMS Money In ATLANTA Georgia - Investigator ARTERBURN Also Intentionally lied Again And Testified NO wallet was found See! TRIAL page 561 line 5-7 ALSO TRIAL page 349 line 12-16 - Applicant Have presented Evidence AT PRIOR POST-CONVICTION THAT An Affidavit Was Given And A Search Warrant ISSUED To Search the VICTIMS Car Related To A Robbery - FORENSIC TECHNICIANS Searched the Car And found 1 Brown wallet CONTAINING the VICTIMS South CAROLINA Also Florida IDENTIFICATION CARDS - If this wallet was presented It would Have proven Applicants Claim of Innocence the Taking Away of the VICTIMS wallet And spending His Money In ATLANTA G.A. AS the Prosecutor Said - The motive For the murder Was Armed Robbery Taking Away the VICTIMS property -

Shaun Edwards Gave Testimony That He did not Give or Buy Any Bullets for Applicant, The Box of "380" Ammunition was found in Defendant Edwards Apartment under His Sofa wrapped up in A black Stocking Hat, WITH the "380" Highpoint Handgun - This proves that Edwards and Parks had to be the Trigger Man and was both present at the scene - Its no way Applicant possessed the murder weapon at anytime knowing that Edwards testified Applicant never had the bullets, See TRIAL Page 170 line 17 - Page 171 line 12 - Edwards also testified he was going to buy a Gun - 380 Handgun - The bullets were purchase 2 days before the murder by Shaun Edwards - From Walmart - They had the Receipt -

Further More, prosecutor Mark Moyer, also Defendant and ~~prosecutor~~ ^{prosecutor} witness intentionally lied about the time frames in order to discredit and destroy Applicant's (True) Alibi Testimony - Charlene Edwards, ~~prosecutor~~ ^{prosecutor} and co-Defendant ~~prosecutor~~ ^{prosecutor} Shaun Edwards testified that they kick Marcus Parks and Applicant out of their Apartment at 3:00 AM Morning of the murder, and that police arrived at 3:30 AM to search is what prosecutor Mark Moyer said - See TRIAL Page 280 line 3-25. Also TRIAL Page 163 line 18-25, Also see prosecutors closing Argument about this on Page 545 line 17-19 Also Page 547 line 2-9 - The prosecutor also state witnesses intentionally lied about these time frames because they were related to Applicant's Alibi witness and Testimony - This tactic was used by the state to destroy Alibi and paint a false picture in the minds of the jury - Police have given testimony they arrived way before 3:30 AM - The police arrived approximately 2:30 AM until 4 AM approximate Time frame See TRIAL Page 314 - line 7-25 -

A different Result would Have likely Happened, And THIS
 Rigged up false Testimony By THE STATE Prosecutor And
 Witnessed prejudured Applicants Defense, And cause An
 Innocent Man To Be Sentenced To 65 years - THIS
 false Testimony Painted false Pictures In THE minds of
 THE Jury THAT Applicant was present When THE Police
 Minutes Before They Arrived - Also After WHICH Is
 Impossible -

on the otherhand, STATE witness Marcus PARKS Also
 Donna Lynn Wentz Have Recently Contacted Applicants
 family Joyce Gordon Also Angela CAPREL Witham Recorded
 These Conversations By phone, Also Save letters By These
 State Witnesses THAT THE Greer Police Forced And
 Coerced them To write false statements on
 Applicant About THE murder, THIS Is After discard
 Evidence - Co-defendant Marcus PARKS Have Been
 Attempting To Have My post conviction Attorney
 ELIZABETH Wrygul To Get A Amended Statement
 From Him To exonerate Applicant on All charges,
 I made THIS Attorney Also Several TRIAL Judges
 Also THE Clerk(s) Awarer of THIS Situation By letter,
 Also My family Angela CAPREL Have contacted THE
 Attorney Generals office Several Times Advising
 THEM of THIS Situation, THE STATE Refuse
 To Acknowledge THIS Situation - THIS
 Newly Discarded Evidence would change THE
 Result of THE verdict If A NEW TRIAL was
 Had WHICH Is impossible Due To Double Jeopardy,
 Is Already Been TRIED Twice on THIS charge,
 Once Resulted 66 Deadlock Jury - THIS Evidence

802 By Exercise of Due Diligence Have Been Discovered Not Before The Trial Due To The 2 Defendants Being Under Threats of Retaliation Also Force And Promises By The Prosecutor And Career Police Department As They Have Stated, And These Police Also Coerced Applicant By Force To Write False Confessions, Also By Reward And Promises To Have Charges Dropped Applicant Had In Atlanta Georgia - This After Discard Evidence Is Directly Related To The Guilt Or Innocence Of Applicant, This Newly Discovered Evidence Is Not merely Cumulative Or Impairing - I want Both Co-defendants Donna Lynn Wentz, Also Marcus Parks, And Joyce Gordon Also Angela Cappel Subpeana To The Evidentiary Hearing To Have on Record There Newly Discard Testimony About The Career Police - Also Exonerating Applicant -

Furthermore, I notified ELIZABETH WYGGUL THAT I would like to Appeal My post-conviction PRISON, IF I WAS Denied Relief - THE post-conviction Judge Stillwell Inadequately Answered my post-conviction WITH false Accusations And Not Fully Answering All claims, Denied THE PRIOR post-conviction Filed January 25, 2011, And Applicant Did not Find out About IT UNTILL 2012 APRIL over 1 year later By Questioning THE Clerk PAUL WICKENSIMER About THE Results of THE Hearing - post-conviction ATTORNEY ELIZABETH WYGGUL Gave NO Reply As TO WHY SHE did not file THE Appeal In THE Supreme Court, Other Than To say Name Her Ineffective In A new post-conviction for A

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Belated Appeal - Applicant Request A Rule 59(e) Motion To Have All His Claims Adequately Responded To By The Judge - Before Any Further Steps Are Taken, Unless, This Application And Its Claims Be Forwarded As Written On Certiorari With The Supreme Court - I Seek To Have These Claims And Issues Taken Care Of In The Court My Sentence Was Given, And That Further Confusion And Intentional Prejudice By The State Be Taken Away - If An Belated Appeal Is Granted And The Prior Application Is pushed forward, It would only bring more confusion and prejudice due to the states intentional tampering with this case - This have been a on going situation which is going eventually end up reversing back on the state - The state finality must be realized at some point, in order to achieve a semblance of effectiveness in dispensing justice, at some point juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendants imprisonment without review would amount to a gross miscarriage of justice see, After discredited evidence, infra).

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2012-CP-23-4466

Albert Santanio Kelly,)
S.C.D.C. No. 277334,)

Applicant,)

**RETURN AND PARTIAL MOTION
TO DISMISS**

v.)

State of South Carolina,)

Respondent.)
_____)

In response to the post-conviction relief application filed July 10, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the August 2004 term of General Sessions for murder (2004-GS-23-5966) and at the July 2005 term for armed robbery (2005-GS-23-2024, count 1) and possession of a weapon during commission of a violent crime (2005-GS-23-2024, count 2). C. Timothy Sullivan, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 12, 2005, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of forty-five (45) years for murder, fifteen (15) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz,

III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Kelly, Op. No. 2008-UP-530 (S.C. Ct. App. filed Sept. 11, 2008).

The Applicant filed a PCR application on September 25, 2008 (2008-CP-23-7212). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to false testimony given by Investigator Arterburn.
 - b. Failed to object to false testimony given by Shaun Edwards and Charlene Edwards.
 - c. Failed to object to comments in the State's closing argument.
 - d. Failed to request exculpatory evidence:
 - i. Failed to request the brown wallet found in the victim's car.
 - ii. Failed to request the .380 bullets purchased by Shaun Edwards before the murder.
2. Trial issues:
 - a. State witness Donna Wentz lied under oath.
 - b. The confession should have been void.
 - c. Trial judge should have instructed the jury on alibi.

An evidentiary hearing was convened on November 15, 2010 at the Greenville County Courthouse. Elizabeth P. Wiygul, Esquire represented the Applicant. The Honorable Robin B. Stilwell denied and dismissed the application by order filed February 1, 2011.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the prior PCR records.

II.

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

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

1. Ineffective assistance of PCR counsel:
 - a. Failed to file a notice of appeal.
2. Ineffective assistance of trial counsel:
 - a. Failed to present exculpatory evidence (a pair of boots, a wallet, bullets).
 - b. Failed to object to solicitor's closing argument.
 - c. Failed to request alibi charge.
3. Due process violation:
 - a. Trial judge did not provide an alibi charge because it was not requested by trial counsel.
4. After discovered evidence:
 - a. Co-defendant Parks contacted the Applicant's family after the first PCR hearing to say he was "sorry for playing a roll [sic] in the wrongful conviction of Applicant and that he . . . lied in order to receive the lower end."
 - b. Co-defendant Wentz contacted the Applicant's family to say the police "forced and pressured her to make false statements and testimony against Applicant at trial."

III.

The Applicant alleges he was denied the right to an appeal from the denial of his first PCR application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. Therefore, the Respondent requests an evidentiary hearing solely on this ground for relief. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

As to all other issues, the Respondent submits they should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower

court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offenses he challenges in this Application on October 12, 2005 and his convictions were affirmed by the South Carolina Court of Appeals on September 11, 2008. The Applicant was therefore required to file his application before September 11, 2009. This Application was filed on July 10, 2012, which was beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

As to all other issues, the Respondent submits they should be dismissed because the current application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other

proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

VI.

The Respondent submits the Applicant's claim of after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

The Applicant has not shown that the alleged evidence meets any of the requirements for

after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. The Respondent submits the Court should summarily dismiss this allegation.

VII.

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

VIII.

WHEREFORE, having made its Return, the Respondent requests that: (1) counsel be appointed to represent the Applicant solely on the belated appeal issue and (2) all other issues be dismissed as having been alleged after the expiration of the one-year statute of limitations and because they could have been raised in the prior PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

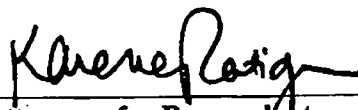
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

~~Oct.~~
September 8, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-4466

ALBERT SANTANIO KELLY, 277334)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

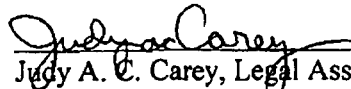
STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Albert Santanio Kelly, 277334
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 8th day of October, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2012-CP-23-04466

ALBERT KELLY,

APPLICANT,

vs.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.

ORIGINAL

June 19, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

CAROLINE M. HORLBECK, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is case 2012-CP-23-4466, Albert S. Kelly v. State of South Carolina. He is here in the courtroom with his attorney, Ms. Horlbeck.

And, yes, ma'am, Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is Albert Kelly v. the State of South Carolina. We're here today on the State's return and partial motion to dismiss. Mr. Kelly was indicted for murder, armed robbery, and possession of a weapon. He was represented by Tim Sullivan. He was found guilty after a jury trial in 2005. Judge Welmaker levied a consecutive sentence of 45 for murder, 15 for armed robbery, and five for the weapons charge. He had an appeal. It was dismissed because it was an Anders appeal.

Mr. Kelly then filed a PCR application in 2008. We had a hearing in November of 2010 before Judge Stilwell. He was represented by Ms. Wiygul at the time. Judge Stilwell issued an order in February of 2011 dismissing the application. There was no appeal.

He's filed this PCR application. I filed a return and partial motion to dismiss. The State's allegations are that everything, except for the belated appeal issue, should be dismissed as untimely and successive.

1 We, however, do consent to a belated appeal from his
2 first PCR hearing. I've spoken to his first PCR attorney,
3 Ms. Wiygul, and she advised me, actually, about two months
4 after the original hearing that she had neglected to file
5 an appeal. I advised her to get Mr. Kelly to file a new
6 PCR application. And I spoke again with her this morning,
7 and she admitted to me that she was deficient and did not
8 file an appeal.

9 So the State is willing to consent to a belated
10 appeal to his first PCR, provided all his other issues are
11 dismissed and untimely.

12 THE COURT: Yes, ma'am, Ms. Horlbeck.

13 MS. HORLBECK: Judge, I've spoken to Mr. Kelly about
14 this. He wants this matter to -- he wants me to file an
15 appeal. But he wants his -- a ruling today. I explained
16 to him that that would not happen, that if he allowed me
17 to file the appeal that the appellate court would have to
18 rule on his issues, and he would be represented by the
19 Office of Appellate Defense. And that's just kind of how
20 we left it, Judge.

21 So I'm not quite sure whether he consents or not to
22 the appeal.

23 THE COURT: All right. Well, I'll grant the motion
24 for the belated appeal.

25 And, Mr. Austin, you'll -- excuse me, Mr. Kelly,

1 you'll have to go through the appeals process. And you
2 can't have your appeal going on at the same time as the
3 PCR.

4 Do you understand that?

5 MR. ALBERT KELLY: No. I don't understand.

6 THE COURT: Sir?

7 MR. ALBERT KELLY: What I don't understand is the
8 success -- the prior post conviction, the first from 2010
9 to the one that I just did recently going to be in
10 together, or reviewed by the appellate defense, or is you
11 dismissing?

12 THE COURT: No, no. I'm not -- we're not --

13 Correct me if I'm wrong, Ms. Ratigan.

14 But all I'm doing is saying you can appeal your
15 conviction and your sentence.

16 MR. ALBERT KELLY: Okay. Well, what I'm telling you
17 is I understand that Ms. Wiygul, Elizabeth Wiygul, didn't
18 file that appeal.

19 THE COURT: Right.

20 MR. ALBERT KELLY: And I understand that, therefore,
21 I was notified by Karen Ratigan to file another appeal.
22 So I filed the other appeal on the post conviction. And
23 what I'm trying to tell you is, both of those going is to
24 be up for review in front of the appellate court, and
25 after the appellate court to the Supreme Court with Jean

1 Toal and all of them, like Joe [inaudible] at the
2 appellate defense office? Is both of them going to be up
3 for review?

4 THE COURT: What do you mean by "both of them"?

5 MR. ALBERT KELLY: I've got two post convictions.
6 One of them was unrighteously ruled upon because she
7 wouldn't do her homework, or math. Now, I've got this one
8 as recently -- in the 4466, which is the case I'm trying
9 to have reviewed. Because during the time of the process
10 of post conviction, I discovered newly [sic] evidence
11 where the co-defendant, Marcus Parsons -- well, to
12 exonerate me of those crimes. And I've proven actual
13 innocence.

14 MS. RATIGAN: Judge, I think what Mr. Kelly is trying
15 to argue is if you look at the return, he, actually,
16 raised numerous issues in this second PCR application that
17 he believes he wants the Court to rule on. However, this
18 all kind of -- all of these issues, two, three, and four
19 all fall under the category of our partial motion to
20 dismiss as being untimely and successive.

21 So the State's position would be that if this case is
22 appealed right now, he'll get to appeal all the issues
23 from his first PCR application and -- but then all of
24 these would be untimely.

25 MR. ALBERT KELLY: And if I have my post conviction

1 dismissed, the last one, that means I won't be able to
2 raise those issue in a subsequent application. And that
3 ain't going to happen.

4 THE COURT: All right. Let me make sure I've got the
5 chronology straight.

6 MR. ALBERT KELLY: It's geometry.

7 THE COURT: Sir?

8 MR. ALBERT KELLY: I'm just saying I heard your
9 terminology, or whatever. I'm just saying geometry.

10 THE COURT: I'm not sure what you mean by that. But
11 I'm going to see if I can find out what the chronology is
12 based on the record.

13 (Pause.)

14 THE COURT: Why couldn't the -- his allegations in
15 this PCR case, 4466, be stayed until this appeal is
16 decided?

17 MS. RATIGAN: First of all, most of the issues
18 raised, the issues about ineffective assistance of trial
19 counsel by the exculpatory evidence, closing argument, and
20 alibi charge, those were, actually, all raised in the
21 first application.

22 THE COURT: Right.

23 MS. RATIGAN: So they will be reviewed on appeal.
24 And the after-discovered evidence, he hasn't met his -- he
25 hasn't met a showing. And, honestly, the way that his

1 after-discovered evidence argument is laid out, I think
2 it's,, actually, more properly a Rule 29 motion in General
3 Sessions.

4 But in terms of mechanically speaking, the courts,
5 they used to bifurcate belated appeal cases in PCR -- they
6 used to bifurcate. They would have there be a ruling on
7 the appeal issue, and then hold all the PCR stuff in
8 abeyance. That was about maybe 10 or 12 years ago.
9 They've gotten away from doing that just because it gets
10 too complicated when one issue will go down a certain
11 path -- one issue will go down a certain path and the
12 other one just gets forgotten about.

13 THE COURT: Right.

14 MS. RATIGAN: So they prefer it to be -- to do
15 everything at once. But, again, our position is the
16 issues that he's raising were, actually, all issues --
17 they're raised in the first hearing. They're, actually,
18 all -- I double-checked it this morning. They are phrased
19 in the order of dismissal from the first hearing that will
20 be the focus of the appeal.

21 So our contention is that he's going to get his bite
22 at the apple. He'll have all of these issues reviewed.
23 And then any of the new issues he's raised today are just
24 barred as untimely.

25 MR. ALBERT KELLY: Well, there's, obviously -- and I

1 don't know about the co-defendants and what they did.
2 They've got to carry their own weight like I carried mine.
3 I'm a man. If I kill somebody, if I do anything
4 unrighteously and unjustified, I take full responsibility
5 for what I did. But I know I committed no crime in the
6 capacity of my hand, nor in physical form. The hand of
7 one the hand of all ain't right here. Because I didn't
8 know it was Marcus Parsons that killed that man, if
9 they're the ones that killed him. Because I've got alibi
10 witnesses that was really the truth.

11 THE COURT: Well --

12 MR. ALBERT KELLY: And what I'm saying --

13 THE COURT: And you're --

14 MR. ALBERT KELLY: My case is supposed to be my case.
15 I'm not speaking for Marcus Parsons, or my co-defendants.
16 Even though they got newly discovered evidence that the
17 police set them up or whatever. That's their problem.
18 When I went to trial, it wasn't nothing but two people
19 behind me, my mother and my grandfather. They was on the
20 witness stand telling lies. So they've got to hold their
21 own weight.

22 THE COURT: Okay. I understand what you're telling
23 me. And I understand about the alibi issue and about your
24 co-defendants.

25 MR. ALBERT KELLY: I've got, actually, proof. The

1 only -- pardon me for a minute, Your Honor.

2 But the only thing I expressed about the last post
3 conviction that I filed that -- on the first post
4 conviction, those issues was raised, but inadequately
5 raised.

6 THE COURT: Right.

7 MR. ALBERT KELLY: They went all the way -- it wasn't
8 all the way ruled upon right by Judge Stilwell and Timothy
9 Sullivan, this and that, and that. You know what I'm
10 saying?

11 So I don't play on both sides of the fence. I play
12 one side of the fence. I try to be righteous and exact in
13 everything I do. And if I'm not, I'll have to take that
14 up with God. Because, really, only God can judge me in
15 the end.

16 So I consent now that I heard what Ms. Wiygul got to
17 say. But I want justice, man. I'm not going to be doing
18 this too much more longer. I've been in these prisons,
19 the worst prison at SCDC. I got stabbed recently. I got
20 stab wounds all over my body. And I had to stab. I had
21 to fight. I'm not going to keep going through this stuff
22 at Perry, at Leiber, and at Lee County. I'm at Lee County
23 right now just on lockup and been on lockup for a year and
24 a half. That's what causes mental problems being caged in
25 a cell like that.

1 THE COURT: Are you on the east side or the west
2 side?

3 MR. ALBERT KELLY: I'm on the side -- I've been in
4 Chesterfield and I've been at Kershaw. Now, I'm on lockup
5 on the south side.

6 THE COURT: South. Okay.

7 MR. ALBERT KELLY: In 177. That's where I was at.
8 And, now, I'm at GPH.

9 THE COURT: All right, sir.

10 MR. ALBERT KELLY: And I got discharged. I'm
11 supposed to be leaving there going back to Lee County.

12 THE COURT: Okay. Going back to Lee?

13 MR. ALBERT KELLY: Yeah.

14 THE COURT: Okay. Well, Mr. Kelly, your appeal is
15 going to go forward. And I'm going to study up on the
16 other matters. And I'll let you know my decision as soon
17 as I can.

18 MR. ALBERT KELLY: All right. Because I've got
19 papers right here I can show you if you want to see what
20 I've been -- the recent correspondence that I got from
21 Paul Wickensimer.

22 THE COURT: I don't need to see that right now.

23 But thank you, sir.

24 Good luck.

25 *****END OF TRANSCRIPT OF RECORD*****

CERTIFICATE OF REPORTER

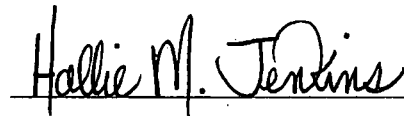
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of June, 2013.

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

November 13, 2013

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Albert Santanio Kelly,)
S.C.D.C. No. 277334,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-4466

**ORDER OF DISMISSAL
GRANTING AUSTIN V. STATE
BELATED PCR APPEAL**

ENTERED COMPUTER

FILED - CLERK OF COURT
GREENVILLE
2013 AUG -7 PM 3:39

gn

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 10, 2012. A hearing into the matter was convened on June 19, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the August 2004 term of General Sessions for murder (2004-GS-23-5966) and at the July 2005 term for armed robbery (2005-GS-23-2024, count 1) and possession of a weapon during commission of a violent crime (2005-GS-23-2024, count 2). C. Timothy Sullivan, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 12, 2005, the Honorable G. Edward Welmaker sentenced the Applicant to consecutive terms of

MIT

SCANNED

forty-five (45) years for murder, fifteen (15) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Kelly, Op. No. 2008-UP-530 (S.C. Ct. App. filed Sept. 11, 2008).

The Applicant filed a PCR application on September 25, 2008 (2008-CP-23-7212). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to false testimony given by Investigator Arterburn.
 - b. Failed to object to false testimony given by Shaun Edwards and Charlene Edwards.
 - c. Failed to object to comments in the State's closing argument.
 - d. Failed to request exculpatory evidence:
 - i. Failed to request the brown wallet found in the victim's car.
 - ii. Failed to request the .380 bullets purchased by Shaun Edwards before the murder.
2. Trial issues:
 - a. State witness Donna Wentz lied under oath.
 - b. The confession should have been void.
 - c. Trial judge should have instructed the jury on alibi.

An evidentiary hearing was convened on November 15, 2010 at the Greenville County Courthouse. Elizabeth P. Wiygul, Esquire represented the Applicant. The Honorable Robin B. Stilwell denied and dismissed the application by order filed February 1, 2011.

ALLEGATIONS

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

1. Ineffective assistance of PCR counsel:
 - a. Failed to file a notice of appeal.
2. Ineffective assistance of trial counsel:
 - a. Failed to present exculpatory evidence (a pair of boots, a wallet, bullets).
 - b. Failed to object to solicitor's closing argument.
 - c. Failed to request alibi charge.
3. Due process violation:
 - a. Trial judge did not provide an alibi charge because it was not requested by trial counsel.
4. After discovered evidence:
 - a. Co-defendant Parks contacted the Applicant's family after the first PCR hearing to say he was "sorry for playing a roll [sic] in the wrongful conviction of Applicant and that he . . . lied in order to receive the lower end."
 - b. Co-defendant Wentz contacted the Applicant's family to say the police "forced and pressured her to make false statements and testimony against Applicant at trial."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A.

At the hearing, counsel for the Respondent stated she had spoken to the PCR attorney who represented the Applicant at the hearing on his first PCR application. Counsel for the Respondent stated the first PCR attorney admitted she failed to file a timely notice of appeal and had then instructed the Applicant to file this second PCR application. As such, counsel for the Respondent noted there was no objection to a belated appeal from the denial of the Applicant's first PCR application.

This Court finds the Applicant's allegation that he is entitled to a review of the issues from the denial of his first PCR application. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d

[Handwritten signature]

200 (2002). Where a post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).² See also King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992). The Applicant's denial of an appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State.

B.

As to all other issues, this Court finds they must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

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

The Applicant was convicted of the offenses he challenges in this Application on October 12, 2005 and his convictions were affirmed by the South Carolina Court of Appeals on September 11, 2008. The Applicant was therefore required to file his application before September 11, 2009. This Application was filed on July 10, 2012, which was beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to

² Even where the PCR judge makes this finding, he may not grant relief on this basis. The Applicant must petition the Supreme Court for a belated review. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

“grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

C.

This Court also finds all other issues must be dismissed because the current application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of

showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

D.

This Court finds the Applicant's allegation of after-discovered evidence must be summarily dismissed. The Applicant failed to present any testimony or argument related to this issue at the hearing. As such, he has failed to meet his burden of proving this allegation. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.").

CONCLUSION

All allegations except the belated appeal pursuant to Austin v. State are barred because they are untimely and successive. The Applicant has proven by a preponderance of the evidence that he did not knowingly and voluntarily waive the appeal of the denial of his first PCR application. Any grounds for relief that are not specifically addressed in this Order are denied for failure to meet the requisite burden of proof.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR for the appropriate procedure for a belated appeal.

3. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of August, 2013.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Gaenville, South Carolina.

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2304466

2013 AUG - 7 PM 3:39
 CLERK OF COURT
 GREENVILLE CO SC

Albert Santanio Kelly vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
 SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 7th day of August, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 7th day of August, 2013, and a copy mailed first class this 7th day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Caroline M.W. Horlbeck 101 Whitsett Street
 Greenville, SC 29601

Karen Christine Ratigan PO Box 11549 Columbia,
 SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

WITNESSES

DALE A. ARTERBURN

GREER PD

05/13/04

ARREST WARRANT NUMBER

1535134

ACTION OF GRAND JURY

W. L. McSwain
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Jury of 12-05
Foreperson of Petit Jury Date: 10-12-05

5-107000
DOCKET NO. 2004-GS-23-05966

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

AUGUST TERM 2004

THE STATE

GUILTY

vs.

ALBERT S. KELLY

Indictment for

0116

MURDER

VIOLATION § 16-3-10

2001

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on AUGUST 17, 2004 the

Grand Jurors of Greenville County present upon their oath:

That ALBERT S. KELLY did in Greenville County, on or about the 27th day of February, 2004, unlawfully and with malice aforethought kill Ignacio Delgado by means of shooting him, and that Ignacio Delgado died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Albert Kelly

AKA: _____

Race: B Sex: M Age: 24

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]
Greer, SC 29651

DL#: [REDACTED] SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2004GS2305966

A/W#: 1535134

Date of Offense: 02-27-2004

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

☐ CASE RESTORED
SENTENCE

☐ PLEA ☒ TRIAL

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Murder

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant Sullivan

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv Surcharg

§ 14-1-211(A)(2) (DUI Surcharg

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding

§ 33.7, 1B TP (Drug Court Surcharg

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment

3% to County (if paid in installments

TOTAL

Paul B. Wickens
Clerk of Court/ Deputy Clerk

Court Reporter: Watto

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 21 13 17

Sentence Date: 10-12-05

WITNESSES

DALE A. ARTERBURN *DALE*

GREER PD

5/13/2004

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOE 4M SSI

ACTION OF GRAND JURY

TRUE BILL

H. David Pickel

FOR AN GRAND JURY

Forfeiture of Grand Jury

VERDICT

Guilty on all charges

David Pickel 10-12-05

Foreperson of Petit Jury Date:

DOCKET NO. 2005-GS-23-002024

AMENDED INDICTMENT LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

GUILTY

VS.

ALBERT S. KELLY

§139 Indictment for

0549

ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE ATTEMPT TO COMMIT A VIOLENT CRIME

VIOLATION § 16-11-330

§ 16-23-490

595

Indictment amended by
Court Order to change
"knife" to "firearm" in
Count Two.
8/2/5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ARMED ROBBERY AND POSSESSION OF A WEAPON
) DURING THE COMMISSION OF OR THE ATTEMPT TO
) COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on JULY 26, 2005 the
 Grand Jurors of Greenville County present upon their oath:

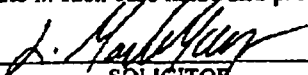
COUNT ONE - ARMED ROBBERY

That ALBERT S. KELLY did in Greenville County, on or about the 27th day of February, 2004, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believed to be a deadly weapon, take by means of force or intimidation, goods or monies from the person or presence of Ignacio Delgado. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE
 ATTEMPT TO COMMIT A VIOLENT CRIME**

That ALBERT S. KELLY did in Greenville County, on or about the 27th day of February, 2004, possess or visibly display a ~~knife~~ **Fire arm** during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Albert Kelly

A:

Race: B Sex: M Age: 24

DOB:

Address:

DL#:

SID#:

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

in violation of § 16-11-030(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant Sullivan

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 10/12/05 2004 GS 23-5966☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Paul B. W. Lickmiller

Clerk of Court/ Deputy Clerk

Court Reporter:

Watto

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2005GS2302024

A/W#: 2005GS2302024

Date of Offense: 02-27-2004

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIAL☒ CONVICTED OF or ☐ PLEADS

PTUP:

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Oct 12 2005 4:40PM THE COPY CTR 7

578652

P. 1

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Albert Kelly

CA: _____

Race: B Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]Greer, SC 29651DL#: [REDACTED] SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2005GS2302024AA/W#: 2005GS2302024ADate of Offense: 11-27-2004S.C. Code § : 16-23-0490CDR Code #: 0549☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIAL☒ CONVICTED OF or ☐ PLEADS #6In disposition of the said indictment comes now the Defendant who was
TO: Poss. weapon during violent crimein violation of § 16-23-0490of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
SolicitorAlbert S. Kelly
Defendant[Signature]
Attorney for Defendant SullivanWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.CONCURRENT or ☒ CONSECUTIVE to sentence on: 10/12/2005 2005GS23-2024A☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment \$40/ea) \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Paul B. Wickens
Clerk of Court/ Deputy ClerkCourt Reporter: Watts

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2171317Sentence Date: 10-12-05