VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
NOV 19 2014
S.C. Supreme Court

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

SHAWN PHILLIPS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014- 000304

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

> will excuse criminal act the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm. The fear of injury must be reasonable. Further, ladies and gentlemen, I charge you that duress is not a defense to the charge or the crime of murder.

Tr. p. 809, line 8 – p. 810, line 1.

The South Carolina Supreme Court found it was not error to charge the jury that the defendant had the burden of proving his defense of duress by a preponderance of the evidence in State v. New, 371 S.C. 523, 640 S.E.2d 871 (2007). In reaching that conclusion, the Supreme Court noted that unlike self-defense, the defense of duress does not negate any element of the crime because although duress may allow a defendant to avoid criminal liability, the crime is still knowingly committed. Id., 371 S.C. at 526, 640 S.E.2d at 873.

The jury instruction was a correct statement of law; thus, trial counsel's performance was not deficient, nor was Applicant prejudiced by the alleged deficiency.

(7) Malice Charge

Applicant complains that the trial court's malice instruction was unconstitutional in reliance on State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). The Belcher opinion was issued after the trial. The South Carolina Supreme Court expressly stated that Belcher is not to be applied retroactively. Further, counsel is not required to be clairvoyant and anticipate changes in the law. Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994). Accordingly, Applicant has failed to prove ineffective assistance of counsel.

(8) Involuntary Statement

Applicant contends that trial counsel should have challenged the voluntariness of Applicant's statement. Counsel testified that his strategy was to not argue that the statement was

involuntary, but instead use the statement to support Applicant's defense of duress. Counsel noted the statement put Applicant in the car at the hotel, but not in the hotel room that was robbed. This Court finds counsel's strategy was reasonable given the evidence in this case. Further, this Court finds Applicant was not prejudiced as this Court does not believe there is a reasonable likelihood that the jury would be convinced that the statement was involuntary. Furthermore, ample evidence in the record supports the jury's verdict even without the statement.

Applicant also contends appellate counsel was ineffective for not raising the issue of voluntariness of the statement on appeal. However, the standard of review on appeal of the judge's admission of a statement is under the abuse of standard discretion. The trial court's ruling will be upheld if supported by any evidence. State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). The trial court, although concerned about consistencies on the timing of the statement, ultimately concluded there was no evidence of any pressure or coercion placed on Applicant, or that Applicant had any difficulty in understanding what was happening or with what he was doing. Tr. p. 146. The findings are supported by the record, and the trial court's ruling would most likely be upheld if an issue of voluntariness had been raised on appeal.

Further, although not dispositive, this Court notes that the appeal was submitted for an Anders review. Had the Court of Appeals considered the issue to be meritorious after it reviewed the entire record, the Court of Appeals would have required the issue to be briefed.

This Court finds that Applicant has failed to prove either prong of Strickland.

(9) Closing Argument – Bolstering

Applicant complains that the following portion of the prosecution's argument constitutes bolstering:

DPM 10

> And Angela Agagas, well, let's talk about her. We know that her relationship with Shawn is that she's the mother of his child. She had a close relationship with him. She loved him, may still love him, I don't know. She's got a baby with him. And she's been in jail because of Shawn Phillips. He got her into this whole mess. And did she want to say anything in the very beginning about Shawn? Heck, no. She wanted to protect him in every way possible, and she never said anything. And that's because she loved him, that's because he was the, her baby's daddy. But when it comes down to it, she's been in jail two years now. She has pending charges, and she's telling you what happened, because Sandra and Alan had already said that Angela's boyfriend was in the room at the travel lodge, and he was the one who went over there with Lennie Mickey to go commit this crime. **Well, Angela, was he or not? Yeah, he was, of course, he was. She tells the truth. And that is the truth.**

Tr. p. 382, line 16 – pl. 383, line 9 (emphasis added).

Applicant complains that the bolded portion of the above passage was impermissible bolstering. This Court finds that it was not. "A solicitor's argument concerning the credibility of the State's witness based on the record and its reasonable inferences is not error." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 823 (1990). However, "[a] solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002).

In the instant case, the prosecution's comments do not indicate personal information or information outside the record. Instead, although in isolation the statement may be conclusory, when put in context, it is merely the prosecution's view of the evidence presented and not impermissible bolstering. Counsel's performance was not deficient for failing to object. In any event, Applicant was not prejudiced by the failure to object as this was an oblique comment and not violative of the Matthews rule.

OPM 11

CONCLUSION

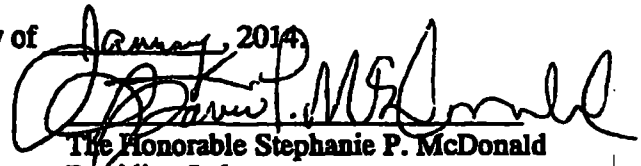
Based on the foregoing, this Court finds and hereby concludes that the Applicant has not established any constitutional violation or deprivation that would require this Court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13th day of January, 2014.



The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
STATE VS. SHAWN PHILLIPS
AKA:
Race: B Sex: M Age: 28
DOB: [redacted] SS#: [redacted]
Address: [redacted]
North Charleston, SC 29418
DL#: [redacted] SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1003459
A/W#: DIRIND0120
Date of Offense: 11/7/2006
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Criminal Conspiracy
in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

DuRant, D. Bruce | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited 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: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms:
☐ set by SCDPPPS
Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 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	$ 25.00
§ 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)		$
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 130.00

PTUP
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
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: DEFERRED SENTENCE
Judge: James E. Lockemy
Date: Aug 7 2008

☐ Appointed PD or appointed other counsel §35.13 TP Requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Cherie J. Graham, Dorchester County
Court Reporter: Walker, Harry Dot
PRESIDING JUDGE James E. Lockemy
Judge Code: 0141
Sentence Date: 9-24-08

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 7, 2008, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL CONSPIRACY

That in Charleston County, South Carolina, on or about November 7, 2006, the Defendant, **Shawn Demetrius Phillips**, did combine, conspire, confederate, agree or have tacit understanding with others, for the purpose of committing a crime; to wit, Armed Robbery, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20061204375

WITNESSES

JAMES HILL
North Charleston Police Department

AGENCY CASE NUMBER

2006042671

ARREST WARRANT NUMBER
DIRIND0120

DATE OF ARREST
March 13, 2008

ACTION OF GRAND JURY

TRUE BILL

Eddie Cochran
Foreperson of Grand Jury
Date: APR 07 2008

VERDICT GUILTY

Keith A Wilson 8/7/08
Foreperson of Petit Jury Date:

INDICT.DOT

1008

DOCKET NO. 2008GS1003459

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April 2008 Term

THE STATE

Vs.

SHAWN DEMETRIUS PHILLIPS
[redacted]
B/M

Indictment for

CRIMINAL CONSPIRACY

FILED
2008 APR 11 PM 4:09
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2006042671

Personally appeared before me, a magistrate of this County, one Det. J. Hill who first being duly sworn, deposes and says that

SHAWN PHILLIPS

did within this County and State on the 8th day of November, 2006 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
MURDER
VIOLATION OF SECTION 16-3-10

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on November 8th, 2006 between 0000-0300 hrs. while at 6155 Fain Street, Budget Inn Motel, room 244, located in the City of North Charleston, County of Charleston, State of South Carolina the defendant, one **Shawn Phillips, AKA "Pitts"**, did commit the offense of **MURDER**, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976 as amended. In that the defendant, acting ing in concert with three accomplices, did willfully, unlawfully, and feloniously rob then shoot and mortally wound Robert Vargo.

The body of Robert Vargo was discovered by employees of the Budget Inn Motel at approximately 1130 hrs. on November 8, 2006. It was determined that Vargo died as a result of a single gunshot wound to the head. Motel records showed that Vargo rented room 244 on November 7, 2006 and information obtained from employees was that he arrived with a white female who was not registered in the room with him. Detectives of the North Charleston Police Department learned that Vargo was employed at the Coastal Carolina Fair, which had operated in the Charleston, SC, area over the previous two weeks and that Vargo was paid a large sum of money on or about November 4, 2006.

By his own statement and the statements from accomplices, Alana Ponce Niesen, AKA "China Doll" and Sandra Campbell Barnes, AKA "BG", the defendant and Lennie Franklin Mickey, AKA "Brooklyn", have been identified as the individuals who robbed and shot Vargo. Niesen has stated she identified Vargo to Mickey and Phillips as someone who would have money and to pointing out his motel room to them. Barnes has stated she accompanied Mickey and Phillips to Vargos room and knocked on the door, allowing them to enter. It is believed that Vargo was robbed of currency in the amount of $50 to $100.00.

These facts are true and believable based on the aforementioned statements and identifications and through an investigation conducted by Det. J. Hill and Det. E. Jourdan of the North Charleston Police Department, who are witness to prove same.

Sworn to and Subscribed before me

this 14 day of December 2006

Signature of Judge

(AFFIANT) J. M. Hill

Address: 4900 Lacross Ave
N Chas SC 29405

Phone: 843 554 5700

1011

BAIL set by

Judge _____

on DEC 14 2006

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol pros., etc.)

Disposition: _____

Sentence: _____

JURORS

CHECKLIST

M. CRT. CASE # 12306

W CASE # 7390

REPORT GROUP 0176

SP CODE _____

FILED
2006 DEC 27 PM 3:12
JULIE ARMSTRONG
CLERK OF COURT

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

NOTICE TO DEFENDANT

YOU MUST REPORT FOR ARRAIGNMENT OR PLEA ON THE CHARGE HEREIN TO THE COURT OF GENERAL SESSIONS LOCATED IN THE CHARLESTON COUNTY JUDICIAL CENTER, 100 BROAD STREET, CHARLESTON AT 2pm ON MAR 30 2007 IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSUED FOR YOUR ARREST

CODEFENDANTS

ARREST WARRANT

K- 218141

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

CHARLESTON

THE STATE

against

SHAWN PHILLIPS DEMETRIUS

Address: [redacted] CT

NORTH CHARLESTON [redacted] 29406

Phone: [redacted] SSN: [redacted]

Sex: M Race: B Height: 506 Weight: 170

DL State: SC [redacted]

DOB: [redacted] Agency ORI#:

Prosecuting Agency: NCPD

Prosecuting Officer: HILL

Offense: MURDER

Offense Code:

Code/Ordinance Sec: 16-3-10

This Warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant _____ on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
CHARLESTON)

AFFIDAVIT

Personally appeared before me the affiant DET. J. HILL who being duly sworn deposes and says that defendant SHAWN PHILLIPS did within this county and state on 11-08-2006 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant J K Hill Jr.

Affiant's Address: 4900 LACROSS RD NORTH CHARLESTON, SC 29405

Affiant's Telephone: 843-554-5700

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
CHARLESTON)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 11-08-2006 defendant SHAWN PHILLIPS did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE: MURDER 16-3-10

Having found probable cause and the said affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on December 14, 2006)
_____ (L.S.))
Signature of Issuing Judge)
Judge Code: _____

Judge's Address: 3870 LEEDS AVENUE, SUITE 106 N. CHARLESTON, SC 29405

Judge's Telephone: 843-746-9822

Issuing Court: [ ] Magistrate [X] Municipal [ ] Circuit

5638/HRC

ORIGINAL

1012

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE)
VS.)
SHAWN PHILLIPS)
AKA:)
Race: B Sex: M Age: 28)
DOB: [redacted] SS#[redacted])
Address: [redacted])
[redacted], SC 294060000)
DL#: [redacted] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1005565
A/W#: K218141
Date of Offense: 11/8/2006
S.C. Code § : 16-03-0010. 0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS 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 ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

DuRant, D. Bruce | Defendant | Mark Peper (Attorney for Defendant) | SC Bar#

WHEREFORE, the Defendant is commited to the ☑ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 40 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 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	$ 25.00
§ 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)		$
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 130.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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: DEFERRED SENTENCE
Judge: James E. Williams
Date: Aug 7, 2008

☐ Appointed PD or appointed other counsel §35.13 TP Requires $500 be paid to Clerk during probation.

Cheryl Graham, Dorchester County
Clerk of Court/ Deputy Clerk

Court Reporter: Walker, Harry Det

PRESIDING JUDGE James E. Williams
Judge Code: 01141
Sentence Date: 9-24-08

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2007 the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about November 8, 2006, with malice aforethought and in concert with others, the defendant, **Shawn Phillips a/k/a Pitts,** did kill and murder Robert Vargo by means of shooting him, and that Robert Vargo did die in Charleston County as a proximate result thereof on November 8, 2006; in violation of Section 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.

Scarlett Wilson

SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

SAW20061204375

WITNESSES

JAMES HILL
North Charleston Police Department

AGENCY CASE NUMBER

2006042671

ARREST WARRANT NUMBER

K218141

DATE OF ARREST

December 14, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT GUILTY

Foreperson of Petit Jury
Date: 8/7/08

INDICT.DOT

DOCKET NO. 2007GS1005565

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April 2007 Term

06-7390(1)

THE STATE

vs.

SHAWN PHILLIPS
A/K/A PITTS

Indictment for

MURDER

SC Code: 16-03-0010, 0020

FILED

APR 24 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

1016

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2006042671

Personally appeared before me, a magistrate of this County, one who first being duly sworn, deposes and says that Det. J. Hill

SHAWN PHILLIPS

did within this County and State on the 8th day of November, 2006 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
ARMED ROBBERY
VIOLATION OF SECTION 16-11-330

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on November 8th, 2006 between 0000-0300 hrs. while at 6155 Fain Street, Budget Inn Motel, room 244, located in the City of North Charleston, County of Charleston, State of South Carolina the defendant, one **Shawn Phillips, AKA "Pitts"**, did commit the offense of **ARMED ROBBERY**, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976 as amended. In that the defendant, acting ing in concert with three accomplices, did willfully, unlawfully, and feloniously rob then shoot and mortally wound Robert Vargo.

The body of Robert Vargo was discovered by employees of the Budget Inn Motel at approximately 1130 hrs. on November 8, 2006. It was determined that Vargo died as a result of a single gunshot wound to the head. Motel records showed that Vargo rented room 244 on November 7, 2006 and information obtained from employees was that he arrived with a white female who was not registered in the room with him. Detectives of the North Charleston Police Department learned that Vargo was employed at the Coastal Carolina Fair, which had operated in the Charleston, SC, area over the previous two weeks and that Vargo was paid a large sum of money on or about November 4, 2006.

By his own statement and the statements from accomplices, Alana Ponce Niesen, AKA "China Doll" and Sandra Campbell Barnes, AKA "BG", the defendant and Lennie Franklin Mickey, AKA "Brooklyn", have been identified as the individuals who robbed and shot Vargo. Niesen has stated she identified Vargo to Mickey and Phillips as someone who would have money and to pointing out his motel room to them. Barnes has stated she accompanied Mickey and Phillips to Vargos room and knocked on the door, allowing them to enter. It is believed that Vargo was robbed of currency in the amount of $50 to $100.00.

These facts are true and believable based on the aforementioned statements and identifications and through an investigation conducted by Det. J. Hill and Det. E. Jourdan of the North Charleston Police Department, who are witness to prove same.

Sworn to and Subscribed before me

this 14 **day of** December **2006.**

Henry W. Gerrard
Signature of Judge

(AFFIANT) Jim Hill

Address: 4900 LACROSS Ave
N Chas SC 29405

Phone: 843-554-5700

1019

BAIL set by

Judge _____

on DEC 14 2006

Type and Amount: 100,000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

CHECKLIST

IM. CRT. CASE # 12306 CT 2

W CASE # 7390

SPORT GROUP 0139

SP. CODE _____

FILED
2006 DEC 27 PM 3:
JULIE ARMSTRONG
CLERK OF COURT

WITNESSES

Name: _____
Address: _____
Telephone: _____

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Address: _____
Telephone: _____

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Telephone: _____

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR PLEA ON THE CHARGE HEREIN TO THE COURT OF GENERAL SESSIONS LOCATED IN THE CHARLESTON COUNTY JUDICIAL CENTER, 100 BROAD STREET, CHARLESTON AT 2pm ON MAR 30 2007 IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSUED FOR YOUR ARREST

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

ARREST WARRANT

K- 218142

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

CHARLESTON

THE STATE

against

DEMETRIUS

SHAWN PHILLIPS

Address: [redacted]

NORTH CHARLESTON SC 29418 29406

Phone: [redacted] SSN: [redacted]

Sex M Race: B Height: 506 Weight: 170

DL State: SC DL#: [redacted]

DOB: [redacted] Agency ORI#:

Prosecuting Agency: NCPD

Prosecuting Officer: HILL

Offense: ARMED ROBBERY

Offense Code:

Code/Ordinance Sec: 16-11-330

This Warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant _____

on _____

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
CHARLESTON)

AFFIDAVIT

Personally appeared before me the affiant DET. J. HILL who being duly sworn deposes and says that defendant SHAWN PHILLIPS did within this county and state on 11-08-2006 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant J M Hill J.

Affiant's Address 4900 LACROSS RD NORTH CHARLESTON, SC 29405

Affiant's Telephone 843-554-5700

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
CHARLESTON)

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 11-08-2006 defendant SHAWN PHILLIPS did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330

Having found probable cause and the above affidavit having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on December 14, 2006)
Henry L. Gravely (L.S.))
Signature of Issuing Judge)
Judge Code: 5638/HRC

Judge's Address 3870 LEEDS AVENUE, SUITE 106 N. CHARLESTON, SC 29405

Judge's Telephone 843-746-9822

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

1020

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE)
VS.)
SHAWN PHILLIPS)
AKA:)
Race: B Sex: M Age: 28)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
NORTH CHARLES, SC 294060000)
DL#: [redacted] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1005567
A/W#: K218142
Date of Offense: 11/8/2006
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO: Armed Robbery
in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☑ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

DuRant, D. Bruce | Defendant | Mark Peper Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 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	$ 25.00
§ 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)		$ 0
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$ 130.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender First
Other: DEFERRED SENTENCE
Judge: Jenny Williams
Date: Aug 7, 2008

☐ Appointed PD or appointed other counsel §35.13 TP Requires $500 be paid to Clerk during probation.

Chris J. Graham, Dorchester County
Clerk of Court/ Deputy Clerk
Court Reporter: Walker, Harry Dot

PRESIDING JUDGE Jenny Williams
Judge Code: 0174
Sentence Date: 9-24-08

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2007 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about November 8, 2006, in Charleston County, South Carolina, at Budget Inn Motel, 6155 Fain Street, North Charleston, by use of force, threats or intimidation, while armed with a deadly weapon, and in concert with others, the Defendant, **Shawn Phillips a/k/a Pitts**, did take and carry away goods and/or monies from the person or immediate presence of Robert Vargo with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) 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.

Scarlett Wilson

SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

SAW20061204375

WITNESSES

JAMES HILL
North Charleston Police Department

AGENCY CASE NUMBER

2006042671

ARREST WARRANT NUMBER

K218142

DATE OF ARREST

December 14, 2006

ACTION OF GRAND JURY

APR 10 2007
TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT GUILTY

Foreperson of Petit Jury
Date: 8/7/08

INDICT.DOT

DOCKET NO. 2007GS1005567

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April 2007 Term

06-7390(2)

THE STATE

vs.

SHAWN PHILLIPS
A/K/A PITTS

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)

FILED
APR 24 2007
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

1024