VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JAN 21 2015

S.C. Supreme Court

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

DARRELL BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000779

APPENDIX

LARA M. CAUDY
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 WALT WHITMIRE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

Q -- as a witness?

He got your side of the story on that; is that correct?

A No. If he -- if I tell him that there was no search warrant served, how can you argue that the warrant was not executed properly?

Q Isn't that a credibility issue or an issue for the Judge to make at that point; is that correct?

A Actually that issue -- yeah, it is.

Q And you don't have copies of these warrants with you?

A The warrants? What kind of -- the search warrant? It's in the record.

Q Regarding your case as a whole, didn't James Johnson testify he watched you shoot both victims?

A That's what he said.

Q Page 333?

THE COURT: What page is it?

MR. WHITMIRE: 333.

BY MR. WHITMIRE:

Q And you had told him they couldn't be trusted?

A That's what he said.

Q Page 347?

A Yes.

Q Then you told him to take it to the grave, page 348?

A That's what he said I said.

Q And he gave a statement I believe within a week or two of the murders; is that correct?
A I don't -- I'm not sure how long it was. He gave a statement after he had been arrested for selling crack cocaine to the police.
Q And your attorney reviewed that statement with you; is that correct?
A Say that again.
Q Your attorney reviewed that statement with you; is that correct?
A James Johnson's statement?
Q Uh-huh.
A I mean, he may have reviewed it with me.
Q And your attorney had a private investigator, too; is that correct?
A He said he did. I never saw him. I also asked Counsel to go speak with the other State witness and Counsel told me that he couldn't do that. So if he had an investigator, I imagine he would have sent the investigator to speak with him.
Q The other statement was Michael Wise. He was your co-defendant; is that correct?
A I don't know whether you would classify it as a co-defendant.
Q He had an attorney?

A Yeah, he had an attorney.
Q And didn't he plead guilty the Monday before your trial?
A Yeah, he pled guilty to something. It might have been on Saturday, I think.
Q And didn't your attorney attend that guilty plea hearing?
A As far as I know.
Q And he made a pretty damaging statement against you; is that correct?
A All of it was damaging.
Q And your attorney shared that with you; is that correct?
A His statement.
Q Uh-huh.
A I think I had copy of it or something like that at one point. I don't really recall whether he -- I'm pretty sure we talked about it.
Q Mr. Wise testified --

MR. WHITMIRE: On page 406, Your Honor.

BY MR. WHITMIRE:
Q -- that he drove you to the victim's house on Wedgewood Court. Do you recall that?
A He testified that he drove me in the area.
Q And Mr. Wise testified that he had made numerous

phone calls to you from his car while he was waiting on you; is that correct?

A Correct. It was a couple of calls.

Q And Mr. Wise's story was corroborated by his phone records; is that correct?

A I wouldn't say his story was corroborated by the phone records because the phone records are just phone records.

MR. WHITMIRE: Page 624, Your Honor.

THE COURT: What page?

MR. WHITMIRE: 624.

THE WITNESS: They don't signify that any --

THE COURT: 624?

MR. WHITMIRE: 624.

THE COURT: Go ahead.

THE WITNESS: Phone records don't signify that anyone was on the phone or answered the phone or anything like that. It just showed that his phone hit off a certain cell tower and that his phone called my phone based on printed out phone number that his call -- his phone dialed that number, that's all. It doesn't mean that I was anywhere committing any crime.

BY MR. WHITMIRE:

Q Thank you Mr. Burgess.

And didn't Mr. Wise tell the police that he

witnessed you throw the murder weapon out on I-77 on Bluff Road?

A That's what he said.

Q Page 407.

And didn't Mr. Wise take the police to the weapon?

A He sure did. That's what they said.

Q And your attorney reviewed all this with you; is that correct?

A Yeah.

Q The SLED ballistics expert testified at trial that all the bullets matched that gun found?

A Yeah, as far as I know.

Q 491.

Wise also testified that you guys ended up in downtown Columbia about 4 or 5 a.m.; is that correct?

A I don't remember the time.

Q 409.

And the police traced both your phones to downtown Columbia, that at least did not show that he was lying; is that correct?

A Yeah, the phone records showed it, yeah.

Q Page 625.

And Wise told the police that you had bought a gallon of gasoline from a gas station on Elmwood. Do you

recall that?
A Wise testified that he had brought gas from the gas station.
Q He testified that you bought gas to start a burn pile?
A No, Wise testified that he bought gas.
Q Didn't the gas station employee testify at trial?
A Yes, she sure did. Her testimony was --
MR. WHITMIRE: Page 433, Your Honor.
THE APPLICANT: Her testimony was real shifty.
BY MR. WHITMIRE:
Q And your attorney made lots of motions for you during the course of trial, correct?
A I mean, lots of motions? He made several motions. But, I mean, objections and things like that he didn't.
Q Didn't Judge McMahon specifically say your attorney made every motion and more on page 109 that he could have?
A Well, yeah, of course he's going to say that. He was trying to sentence me.
Q This was during pretrial motions.
A I mean, at the same time I was trying to -- I was trying to relieve Counsel before the trial even started. Once he didn't properly preserve the suppression issue I asked the Judge to get him off my case.
Q Didn't you make a motion to relieve Counsel because

you didn't like the outcome of the rulings or the way he argued those motions that were preserved?

A No, I asked him to relieve Counsel because he argued the wrong issue. That's why I tried to relieve him as counsel.

MR. WHITMIRE: Your Honor, page 110 of the record.

THE COURT: 110, okay.

BY MR. WHITMIRE:

Q And lastly on this line of questioning, when Judge McMahon denied Counsel's motion for directed verdict, didn't he state that there was clearly enough direct evidence along with substantial circumstantial evidence of your guilt? Do you remember that?

A When he denied the motion?

Q Uh-huh.

A Which motion?

Q The motion for directed verdict at the end of trial, page 795?

A Right, I remember that.

Q And regarding the phone records, didn't your attorney make a motion to suppress testimony from the phone people?

A Did he make a motion to suppress the testimony?

Q Uh-huh.

A Well, the thing is he did, but at the same time he

didn't even know what they were going to be testifying to, so...

Q Do you recall what the basis was on Rule 5 in the discovery?

A What the basis was for Rule 5?

Q The basis was he made a motion because he had yet to hear or speak -- to hear these people or speak with them?

A Right. Yeah. And he -- he made that motion because he didn't -- because the prosecutor withheld the contact information from him until the day of trial.

Q Didn't the prosecutor put all the contact information and everything regarding this on the record?

A No. That was the reason for the motion, because he didn't.

Q Inevitably didn't Judge McMahon allow Counsel the time he needed to cross-examine those witnesses?

A Five minutes.

Q And wasn't Counsel successful in keeping them from testifying to specific locations where they could pinpoint your phone?

A No. Believe me, they testified to everything they could have possibly testified to. There was no holding anything back. Why would they not?

Q You seem familiar enough with the Court of Appeals opinion in your case?

A Right.
Q Do you recall the Court of Appeals said that the judge acted within his discretion?
A Yes.
Q Do you recall the Court of Appeals said the Judge cited the right case, he just made an ambiguous comment?
A Well, they said they couldn't -- they couldn't distinguish between what he meant by the comment.
Q But inevitably he acted within his discretion; is that correct?
A That's what -- that's what the Court ruled.
Q Do you have any evidence from this juror, from the judge or anyone to say that it would have been abuse of discretion?
A I don't follow you.
Q Did you have any evidence to say that the Judge did not do the right thing?
A Sure I have evidence. I have State versus Elmore.
Q And Mr. Dudek argued that for you, didn't he?
A Well, my appellate lawyer, he -- I think he did a real good job on arguing that issue, but evidently the Court didn't think so. I mean, I don't think it was even Mr. Baker's fault, but --
Q He even took the extraordinary measure to petition for rehearing; is that correct? Do you remember this?

A Yeah, rehearing and writ of certiorari.
Q And your opinion was published?
A Right.
Q There were other grounds that the Court of Appeals found preserved, correct?
A There was -- well, he argued third party guilt which was preserved, but he only raised like two issues.
Q And didn't your attorney present multiple witnesses to at least preserve that argument for you on third party guilty?
A Yeah, sure.
Q And didn't your attorney explain to you the importance of Wise's testimony for the State's case?
A He didn't -- he didn't have to explain that. He may have, but...
Q Your attorney spent probably hundreds of hours in that case. Are you aware of that?
A I have no idea. He probably -- he may have.
Q And did you offer him any information on your childhood friend Michael Wise that could have helped your case?
A I don't know what happened with Michael Wise, man. I asked Counsel to go speak with him and find out the source of why he was doing what he was doing, but he advised me that he couldn't go speak with him or whatever, so I just

left it alone.

Q Did you give your attorney any information on his background that could have helped him in cross-examination?

A I don't know. I mean, the guy tried to kill himself; I saved his life one time. I don't know, maybe it's a mental problem or something.

Q You guys were real, real close friends?

A Yeah, I thought we was, you know.

MR. WHITMIRE: Beg the Court's indulgence.

(Pause.)

BY MR. WHITMIRE:

Q Didn't your attorney object to all the crime scene photos coming in?

A Oh, yeah. Yeah, of course.

Q And your attorney renewed those objections?

A Right.

Q One last question. When your attorney was cross-examining the State detectives, didn't he bring up that they never found fingerprints, your fingerprints in the victim's home?

A Yeah, he -- he asked questions surrounding my fingerprints being at the crime scene and things like that. But as far as any -- anybody fingerprints being at the crime scene, no. And there's documentation that there

were fingerprints lifted from the crime scene that were inconsistent with -- with anyone involved in the case, in the trial. He didn't present this evidence.

Q But two eye witnesses put you at the scene doing this?

A Sure.

MR. WHITMIRE: No further questions, Your Honor.

THE APPLICANT: Well, one eye witness -- one witness put me at the scene and the other placed me in the area of the scene, so...

BY MR. WHITMIRE:

Q One more question. Did Mr. Wise testify he heard gunshots from the house?

A Yeah, he said he thought he heard a gunshot. He didn't say from the house, but he said he thought he heard a gunshot. I mean, they had -- they had a diagram -- they had a diagram during the trial with an arrow pointing to it, and he testified yeah, this is where. It was crazy.

MR. WHITMIRE: No further questions, Your Honor.

THE COURT: Redirect?

MR. BROOKS: No, sir.

We would call Mr. Baker.

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

THE CLERK: Raise your right hand.

J. BRADLEY BAKER, after being duly sworn,

testified as follows:

THE CLERK: Have a seat.

DIRECT EXAMINATION

BY MR. BROOKS:

Q Mr. Baker?

A Yes, sir.

Q How are you today?

A Doing okay.

Q Did you represent Mr. Burgess?

A I did.

Q You were court appointed?

A That's right.

Q You know how long you were on his case before it went to trial?

A I believe I was or we were -- I was working for Brett Salley at the time and I think maybe Brett may have been originally appointed and I did all the criminal work for the firm. I think we were appointed in I want to say November of 2005.

Q Now, can you give a brief summary of what the evidence was against Mr. Burgess in this case?

A Yes. There was a handwritten statement of a James Johnson -- I think his nickname was Tony Red -- who indicated that he was an eye witness and had actually witnessed the murders. And then there was a statement

from a Michael Wise, who was an associate of Mr. Burgess and a friend, who indicated that he had been with Mr. Burgess on this evening and had taken him to this area or location. Those were obviously the two biggest pieces of evidence or witnesses in this case. And then there was the cell phone testimony. There was no -- as Mr. Burgess said, and we tried to do everything I could to point this out during the trial -- there was no physical evidence linking Mr. Burgess to this location, no fingerprints, no blood residue on any of his clothing or any of that type of forensic evidence that you would have, but that was it.

Q Now, those two other individuals, they pled guilty to somewhat lesser charges; is that correct?

A That's correct, yes.

Q Additionally, there was an issue at the outset of the trial about a supervisor of one of the -- or a relative of the victim, a Mr. Emanuel if I'm not mistaken?

A That's correct, a juror, yes.

Q And that person -- it's a situation that that person did not disclose that during the voir dire?

A That's correct. As the Judge was questioning the panel, we didn't have that information. As I recall, and I've looked back through the transcript, this gentleman was actually impaneled and a part of the jury, and I can't recall if we had argued some motions or something and then

at some point he comes are forward and says he recognized some of the family or one of the family members, I believe.

Q And he had already been seated as a juror?

A That's correct.

Q And you had some strikes left? When he was picked for the jury, you had some strikes left; is that correct?

A Sir, I honestly cannot recall. I'm not going to say I did or didn't because I do not remember whether we had strikes. I can tell you this, and I said it on the record: Obviously if I had known that information, I would have -- had I had a strike I would have struck the individual.

Q And, of course, it's been several years, it's been about four or five years since the trial?

A We tried this case in I think 2008.

Q So there may be certain aspects of your memory that you may not be totally accurate on, you would rely on the transcript; is that correct?

A Absolutely, yes.

Q Okay. Now, additionally to that, you recall them taking his cell phone from this drug arrest?

A That's correct.

Q And you recall them establishing that this was his cell phone and having these witnesses from the phone

company talk about where these calls had to take place in relation to the tower; is that correct?

A That's correct.

Q And this is information that you had not been given prior to the trial?

A I knew that -- I mean I knew from talking to the prosecutor that that -- I expected or anticipated what these individuals were going to say. And as I remember, and I think I made some motions or at least arguments to the Court about this, these individuals were extremely hard to get. And I think the prosecutor even --

Q Let me interrupt you. When you say these individuals --

A I'm talking about the phone company people.

Q Okay. Go ahead.

A I think the prosecutor maybe even alluded to it a little bit on the record. You know, you would call them and you just couldn't get them. And I think maybe -- as I recall, at the time the trial was starting, I don't know that I'd ever been able to speak directly to either one of the individuals. And I made -- I think I brought to the Court's attention, and may have even made a motion, I don't recall, and he instructed the prosecutor to make sure that I would have adequate time to talk with them prior to the trial once they got into town. And I did

talk to them, you know, prior to them testifying.
Q You feel you had adequate time to talk to them?
A I mean, sure. I mean, I don't know what was going to change. I mean, I was able to find out what they were going to say and try to prepare appropriate cross-examination for them.
Q Were they -- the things that they told you prior to taking the stand, did they testify accurately?
A I mean, as I recall, yes.
Q Now, if the cell phones had been suppressed, is it logical to think that these phone company people would not even have been able to testify?
A That would have certainly been -- yeah, I think that would have been the case. If there had been suppression of the cell phones I don't know that -- now, it may have been these individuals -- one of them may have been testifying about Michael Wise's cell phone. I don't recall exactly. But I guess as far as Mr. Burgess, that would be correct.
Q If they didn't have his cell phone, then their testimony, "their" being both the phone company people, their testimony would have only been related to where Michael Wise cell phoned called?
A Yes. I mean, that would be my assumption, yes.
Q Okay. And it obviously would have minimized the

testimony of them as it related to him?

A Correct.

Q Darrell Burgess; is that correct?

A Yes.

MR. BROOKS: Beg the Court's indulgence, Your Honor.

THE COURT: All right.

(Pause.)

MR. BROOKS: No other questions, Judge.

MR. WHITMIRE: Beg the Court's indulgence, Judge.

THE COURT: Yes, sir.

(Pause.)

THE COURT: Mr. Whitmire.

CROSS-EXAMINATION

BY MR. WHITMIRE:

Q Mr. Baker, just a few preliminary questions.

How much time did you spend preparing this case?

A It was -- I mean I spent a lot of time on this case. Obviously it was a serious case; it was a double homicide. I would say hundreds of hours, numerous meetings with Mr. Burgess.

It was set for trial I want to say at least one time before this particular date that it actually went to trial. So, I mean, it was a matter of preparing for the

trial on multiple occasions. I think the first -- one of the first times it was about to go to trial was the State was trying to -- they never could get everything straightened out with Mr. Wise. I think Mr. Wise the first time it was going to go to trial maybe had terminated his counsel, so it had to be continued. I mean I -- I honestly feel like I did everything I possibly could in this case. I mean, we did have an investigator who went out and tried to interview a lot of these individuals that, you know, the names would come up in the file as potential -- you know, who might have some knowledge about what happened or at least knowledge about the victims. I spent a tremendous amount of time on this case.

Q What was, just generally speaking, was Mr. Burgess's theory of the facts that led to his arrest?

A I'm sorry, what? I'm not sure I follow you.

Q What were Mr. Burgess's theory of the facts that led to his arrest?

A I mean, I don't know what his version was, but, I mean, it was a matter of -- I think the way that this all -- or the way they got to Mr. Johnson, who was kind of the beginning of this case and the one who implicated Mr. Burgess, was through phone records. I think they were able to show that there were multiple phone calls between

Mr. Johnson and the actual landline of these victims. And then once they got -- I think they picked up Mr. Johnson on a warrant or something. And then once they got his statement, the eventual statement -- he gave -- initially I think he indicated he didn't know anything about this situation, but once he implicated Mr. Burgess, I think that was the basis for a search warrant for Mr. Burgess's house.

Q You investigated Mr. Burgess's theory of the non-service of the search warrant?

A Yeah, we did. We filed a motion and actually had Ms. Burgess, Mr. Burgess's mother, testify about, you know, whether or not the warrant was properly served on her. And her testimony was it was not served on her when they searched his home.

Q Regarding jury selection, do you remember the issue that popped up of the first juror realizing that he knew somebody that knew the victims?

A Yes, the individual who -- you're speaking about the one who got put on the actual jury?

MR. WHITMIRE: Page 144, Your Honor.

THE WITNESS: Yes, he indicated that I think the brother-in-law of the -- let me see if I recall this correctly. Yeah, the brother-in-law I think of Mr. Slice worked for him.

BY MR. WHITMIRE:

Q Do you recall how he made that connection during the course of trial?

A Maybe he recognized somebody, I think, in the family.

Q And didn't the Judge review his testimony in context of any questions asked of the venire panel?

A He did.

Q You still made a motion to have him removed for cause?

A I did.

Q And do you recall he told the Judge that he could be fair and impartial?

A He did.

Q That he had no notice that this crime had occurred?

A Yeah, that's what he said.

Q And you understood the substance of the Judge's ruling?

A I did. I mean, it was basically that -- as I understood it at that time, it was this man is telling me he can be impartial.

Q Did you take that to mean that's the be all, end all, no more?

A I mean, keep in mind I'm looking at this in hindsight now. You know, at the time we're in the heat of battle. Of course now I've read the Court of Appeals' opinion.

And Judge McMahon, I think he cited State v Elmore when he denied my motion, which apparently was the correct ruling, and the language that was picked out, you know, I didn't even recall it until I looked at it in the Court of Appeals' opinion.

Q So according to the Court of Appeals you're supposed to know the precise language --

A Well, he cited the right case, but I think their issue was I didn't point out to the Judge that he had made -- he cited the right case but made the wrong statement about maybe the law.

Q And I know we discussed this, but did you note that they just said it was unclear what we meant, that it wasn't preserved because there was no follow-up?

A I think that was their statement, yes.

Q But the Judge had already taken all these measures prior to saying that, correct?

A Right, he had heard from the juror, heard the arguments, that's correct.

Q Had a chance to question the juror?

A Right.

Q Didn't the Court of Appeals say that under the correct law he acted within his discretion?

A Right.

Q And during this trial I know you made, what, ten

pretrial motions?
A There were several. There were a lot, yes.
Q Made numerous objections?
A As I recall, yes.
Q Did you see a need at that point during the selection of Juror Emanuel -- or, I'm sorry, potential removal to stop the trial to a halt and go on on that issue?
A Well, I mean, I -- you know, there are also rules that obviously once a judge rules that you can't continue to argue, so I mean, frankly, I was a little bit perplexed by that language, but -- I mean, I truly felt like the juror should have been removed, but, I mean, that was my -- you know, and I stated that on the record and the Judge ruled on that motion.
Q You did everything to the best of your ability?
A I sincerely feel like I did, yes.
Q Just a few background questions for the record.

How involved was Mr. Burgess in his defense?

A Very much so. I mean, he and I talked a good bit. He would -- and I would meet with him. We -- you had to sign some sort of agreement, I think, where he could call collect. He would call me. I mean, you know, we talked a good bit about this case.
Q Did you explain to him the critical importance of Wise's testimony and Johnson's testimony in the State's

case?
A Sure, yeah.
Q Did he offer you any additional witnesses to investigate or help your case in impeaching them?
A No, I mean, other than what he mentioned here today. It was the obvious stuff. I mean, they had given inconsistent statements. Johnson was a -- by his own admission a heavy drug user, had been for many years, a drug dealer. Wise had a criminal record. Nothing that was not already known and obvious, you know, based on the discovery we got.
Q Did you explain to Mr. Burgess that in all probability these two witnesses would testify against him at trial?
A Sure, yeah. I think it was that, you know, if these individuals come to court, and you never know what somebody's going to say until they get on the stand, but if they were going to say what they had said in their statements, it was going to be tough. I mean, they were damning statements to say the least.
Q Did you take every possible or employ every possible strategy to try to mitigate those statements?
A I thought so, yeah, with cross-examination.
Q Did you investigate an alibi defense for Mr. Burgess?
A We discussed it and, of course, you know, I knew -- I

explained to him that look, if we're going to have an alibi, if we've got an alibi, we've got to notify the State, and that was never presented to me.

Q Wasn't it Mr. Burgess's intention it wasn't me, wasn't there?

A That's right.

Q Did you review all the State's discovery with Mr. Burgess --

A Yes.

Q -- regarding the phone numbers, the BP employee?

A Right, the Hess station, yes.

Q Hess?

A Yes.

Q Did he offer any timeline evidence or anything that could have helped you in your cross-examination of those two State witnesses regarding the Hess employee, the gun?

A Nothing other than, you know, what I cross-examined. It would be in the record. I mean, it was nothing concrete.

Q I know -- I think Mr. Burgess alluded to it today. Did you make attempts to speak with Michael Wise or his attorney?

A I mean, I -- it was my understanding that I couldn't speak to Mr. Wise, he was represented, and I told Mr. Burgess that.

As far as speaking to his attorney, I'm sure I probably did speak to his attorney. Of course I had his statement, and I guess -- I don't know if Mr. Burgess maybe just felt like he might not -- he really wasn't going to testify. I don't know.

Q You attended Mr. Wise's guilty plea?

A I did. In fact, I think it was right before the start of this trial.

MR. WHITMIRE: Beg the Court's indulgence.

(Pause.)

BY MR. WHITMIRE:

Q I believe one last issue that Mr. Burgess has brought today at the end of his testimony regarding the fingerprints. Did you investigate all the physical evidence that was collected by the State regarding the victims' deaths?

A I certainly reviewed everything that was provided to me. And I honestly cannot recall. I mean, I knew there were no -- there was no physical evidence linking Mr. Burgess to the scene. I don't know, frankly, this other stuff about the other fingerprints. Honestly, I do not recall.

Q One last question. You renewed your Rule 5 and Brady motion during the course of trial; is that right?

A I did, right before we started.

Q Did everything to protect Mr. Burgess on appeal and protect his rights during the course of trial?

A I tried to, yes.

MR. WHITMIRE: No further questions, Your Honor. Thank you.

THE COURT: Redirect?

MR. BROOKS: No, sir.

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

Any reason why Mr. Baker cannot be excused?

MR. WHITMIRE: No, Your Honor.

THE COURT: Thank you. You may be excused.

MR. BROOKS: Judge, that's the applicant's case.

THE COURT: Any witnesses from the State?

MR. WHITMIRE: State rests, Your Honor. If you would like me to address any of the arguments made, I'd be happy to. The issue regarding the juror has been exponentially addressed.

THE COURT: Hang on one second. I'm going to let Mr. Brooks argue -- go ahead -- and then I'm going to let you argue.

MR. BROOKS: Judge, basically -- and I'll be brief -- you've got a situation where if the cell phones had been suppressed from his drug arrest, then obviously it would minimize the cell phone testimony of these phone employees, that they could only relate to Michael Wise who

was not the person on trial. The fact that they could tie Michael Wise's phone calls to a certain cell phone that the police had from the search related to Darrell Burgess, that actually serves to bolster Mr. Wise's testimony during the trial, so that should have been taken away, and obviously it prejudiced my client.

In addition to that, Judge, to go back to the juror issue in regards to this supervisor or family member of the deceased, that obviously should have been -- there should have been greater clarification as indicated by the Court of Appeals, and as such, these two issues together prejudiced my client and we submit to the Court that this ineffective assistance of counsel changed the outcome of the case.

If these things had been done properly, then therefore my client would have had a different outcome with his case. As such, Judge, we're asking the Court to grant his post-conviction relief and give him a new trial.

THE COURT: Thank you, sir.

MR. WHITMIRE: I'm just going to address the juror issue.

Looking at the record as a whole, Judge McMahon didn't just say the jurors had to be impartial, that's fine. He examined the juror. The connection was brought out, he looked at the four voir dire questions that could

have related to the nondisclosure found. It was not the result of nondisclosure, it was just innocent inadvertence. All the right measures were taken. He just so happened to make a comment saying that he had to take him at his word after all of this. The Court said he clearly acted within his discretion, it's just that clarification of that comment, but he cites the right case, and I believe, you know, looking at the context of this hearing, and specifically in the trial, Mr. Baker had made countless motions, objections, and did everything to preserve this record for appeal. The Judge had ruled, it was final, there was a basis to support it. The Court of Appeals had no issue with it, it was just this argument brought up on appeal that he ruled by the wrong standard. Inevitably he still cites the right case and the right standard by State v Elmore. It's a very small, sort of almost minuscule weird issue, and by Mr. Baker's testimony was reasonable. The judge ruled, it was a complex trial, lasted four full days, that's it, the issues were preserved for appeal.

The other issues addressed I would argue for summary judgment that Mr. Baker made a motion to suppress the fruits of that search warrant and did exactly what he had said here today, presented his mother at trial and, furthermore, the detectives testified regarding the arrest

warrant. Every possible step or measure would have been taken to preserve this record for appeal. This was a flawless job by this attorney.

I rest, Your Honor.

THE COURT: All right, gentlemen, I've got a long record and I'm going to read all the submissions, including the submissions today, and I'll give you my decision when I get a chance to read everything.

It's a pleasure seeing you again.

MR. WHITMIRE: Thank you, Your Honor.

MR. BROOKS: Thank you, Your Honor.

(The proceedings were concluded.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th 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 Lexington County, South Carolina, on the 12th day of November, 2013.

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

August 7, 2014

CAROL M. THUEME, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)
) Case No. 2012-CP-32-2813
Darrell Burgess,)
S.C.D.C. No. 265544,)
)
Applicant,)
)
v.) **ORDER OF DISMISSAL**
)
State of South Carolina,)
)
Respondent.)

This matter reaches the Court by way of an Application for Post-Conviction Relief (PCR) filed July 9, 2012. Respondent made its Return on June 12, 2013. An evidentiary hearing was conveyed on November 12, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Charles T. Brooks, III. Esq. Respondent was represented by Walt Whitmire, Esq. of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the December 2005 term of the Court of General Sessions for Lexington County for two counts of murder (2005-GS-32-4561; -4563) and possession of a knife during the commission of violent crime (2005-GS-04-4564). Applicant was represented by Jack Bradley Baker, Esq. On February 1, 2008, Applicant proceeded to trial where he was convicted as indicted. He was sentenced by the Honorable R. Knox McMahon to confinement for a term of life imprisonment for both murder convictions and five (5) years imprisonment for possession of a knife during the commission of violent crime conviction. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Robert M. Dudek, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in a published opinion filed on December 15, 2010 (State v. Burgess, 391 S.C. 15, 703 S.E.2d. 512). A Petition for Writ of Certiorari to the South Carolina Supreme Court was filed on Applicant's behalf. The Petitioner was denied on May 25, 2012. The Remittitur soon followed. At the PCR hearing, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
   a. failure to make a Batson motion;
   b. failure to make a motion for a change of venue;
   c. failure to adequately present a suppression defense;
   d. failure to object to State's presentation of prejudicial photographs from the investigation;
   e. failure to make a timely motion for continuance based upon a discovery violation;
   f. failure to properly preserve the objection regarding the Trial Judge's ruling to not disqualify juror Emanuel.

SUMMARY OF TRIAL TESTIMONY

Johnson testified at trial to he was at the scene when Applicant executed the victims. (Trial Tr. p.333). Applicant told Johnson that the Victim David could not be trusted. (Trial Tr. p.347). Wise testified he drove Applicant to the victim's residence but remained in his vehicle and listened to music when Applicant committed the murders. (Trial Tr. p.624). Wise phoned Applicant several times after he spent an unusual amount of time at the victims' residence. (Trial p.406). Telecommunications records corroborated Wise's testimony here along with the timeline on the night of the murder. (Trial Tr. p.624). Wise gave a statement to police that Applicant disposed of a gun while in route on Interstate 77 near the Bluff Road exit. (Trial Tr. p.407). A gun was recovered at the location. (Trial Tr. p.488). Ballistics testing revealed the gun was the

murder weapon. (Trial Tr. p.491). Wise testified that he accompanied Applicant into a filling station on Elmwood Street where Applicant purchased a gallon of diesel gasoline. (Trial Tr. p.409). The attendant on the night of the murders put two black males at the station buying a gallon or so of diesel. (Trial Tr. p.433). She also corroborated Wise's account of the approximate time. (Trial Tr. p.433). Wise testified Applicant utilized the gasoline to burn evidence. (Trial Tr. p.409). Police discovered remnants of clothing at a discarded burn pile at a nearby location. (Trial Tr. p.444). In denying counsel's motion for directed verdicts, the Trial Judge stated that "there was clearly enough direct and circumstantial evidence to convict Applicant." (Trial Tr. p.795).

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective

assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra.* 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the transcripts and exhibits from the prior proceedings, Applicant's appellate records, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant received the benefit of counsel's exceptional performance and finds counsel's testimony at the PCR hearing to be compelling. Counsel testified he spent hundreds of hours on this case and employed an investigator to aid his efforts. Counsel met with Applicant numerous times where he discussed the State's evidence and relevant developments in the case with Applicant. Counsel explained the prospect of success at trial would be a difficult proposition because the State's two critical witnesses, Johnson and Wise, Applicant's close childhood friends, were credible witnesses. Counsel noted that Applicant had unrealistic expectations regarding the gravity of Johnson and

Wise's testifying against him. Furthermore, Applicant never explained his version of the facts in manner that could reasonably refute Johnson and Wise's statements. Applicant never provided an alibi. Counsel prepared for trial and investigated witnesses and defenses at Applicant's will. He further attended the guilty plea of a co-defendant and investigated various avenues to attack the credibility of the two main witnesses. As a result, counsel mounted a suppression defense based upon Applicant's version of the facts surrounding the original arrest warrant. He also proffered testimony in an attempt to establish a third-party guilt claim. Counsel made over ten pre-trial motions that included: motion to quash defective indictments; motion to suppress photographs from the crime scene; motion to suppress letters from defendant to a State witness grounded in an authenticity argument. (Trial Tr. p.50; p.55; p.118). The Trial Judge told Applicant that counsel filed credible motions and was a seasoned attorney in response to Applicant's belaboring over losing several of the pre-trial motions. (Trial Tr. p.109). This Court agrees with that assessment. Counsel's diligence yielded beneficial results. The trial judge limited the admissibility of Applicant's statement and ordered the police to locate an evasive defense witness. (Trial Tr. p.69; p.132). This Court finds the majority of Applicant's allegations are facially without merit.

A.

This Court grants Respondent's motion for summary judgment on Applicant's allegation that counsel was ineffective for failing to make a Batson[1] motion. A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter

[1] Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

of law." Young v. S. Carolina Dep't of Disabilities & Special Needs, 374 S.C. 360, 365, 649 S.E.2d 488, 490 (2007) (citing Rule 56(c), SCRCP). This Court finds that there was a lack of evidence in the record to support a merited review on jury selection here. See State v. Haigler, 334 S.C. 623, 628, 515 S.E.2d 88, 90 (1999) ("The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race."). At the outset of the PCR hearing, Applicant completely provide additional evidence or argument from the pleadings that raised a dispute of a material fact at issue here. See State v. Shuler, 344 S.C. 604, 615-16, 545 S.E.2d 805, 810-11 (2001) ("Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and 'evaluation of the prosecutor's mind lies peculiarly within a trial judge's province.' "). Therefore, this allegation is summarily dismissed.

For similar reasons to those announced above, this Court finds Applicant's allegation that counsel was ineffective for failing to make a motion for a change of venue to also be without merit. "The moving party bears the burden of proving actual juror prejudice, and the trial court's ruling on the venue motion will not be reversed on appeal absent an abuse of discretion." State v. Gardner, 332 S.C. 389, 392, 505 S.E.2d 338, 339 (1998). Applicant failed to provide any credible justification to show counsel was deficient for failing to make the motion. Therefore, this allegation is summarily denied and dismissed.

B.

This Court finds Applicant's allegation that counsel was ineffective for failing to adequately present a suppression defense is without merit. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence

introduced by the State." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). Applicant testified at the PCR hearing that he was not served a search warrant on an unrelated narcotics charge until several days after he was booked at the Lexington County Detention Center. Applicant testified that the execution of the search warrant served as a pretext to search for evidence related to the murders. As a result, Applicant stated that the police unlawfully obtained phones and other personal effects that were used against him at his murder trial. He claimed that he was specifically prejudiced because the police use information from the cellular phone to bolster Wise's trial testimony. Applicant testified that he was untimely served the arrest warrant. This Court finds Applicant's testimony that the police engaged in misconduct not credible. Regardless, this Court finds counsel's performance in presenting Applicant's theory and Nezzie Burgess' testimony at the pre-trial suppression hearing to be reasonable based upon Applicant's version of facts conveyed to counsel during their consultations. See Strickland, 466 U.S. at 690, 104 S.Ct. 2052 ("The court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case."); see also Strickland, 466 U.S. 691, 104 S. Ct. 2052 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant."). This Court finds the Trial Judge soundly denied the motion and finds Applicant's PCR testimony was cumulative.

Applicant also alleged that counsel was ineffective for failing to make a motion to suppress the fruits of the search based upon a defective search warrant. This Court finds this allegation lacks merit. Applicant claimed the affidavit that accompanied the warrant was

insufficient. Applicant cited Code Section 17-13-140 in support.[2] This Court finds Applicant failed to meet his burden to prove counsel's investigation and trial performance here to be deficient. Furthermore, this allegation rested upon mere speculation where Applicant failed to present the arrest warrant or credible testimony in support of the allegation. See Porter v. State, 368 S.C. 378, 385, 629 S.E.2d 353, 357 (2006) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."). Therefore this allegation is denied and dismissed.

C.

Applicant alleged counsel failed to object to inadmissible photographs of the victims found at the crime and pictures of the victims from the autopsy. This Court summarily dismisses both allegations where the objections were raised and ruled upon by the Trial Judge. First, Counsel made a timely objection that resulted in an in-camera hearing on the matter where the Trial Judge sustained the objection. (Trial Tr. p.275). Second, counsel objected to other photographs of the victims at the crime scene. See Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) ("PCR is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."). Therefore, these allegations are denied and dismissed.

D.

[2] "A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division." S.C. Code Ann. § 17-13-140

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to make a more timely motion for continuance based upon State's failure to properly disclose discovery related to the telecommunications custodians. "The court first noted the general rule that the denial of a motion for a continuance rests within the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant." Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 131 (1997). "This was no "reversible error in denial of motion for continuance, where appellant could not point to any specific testimony or other evidence he could have produced had his motion been granted." State v. Motley, 251 S.C. 568, 164 S.E.2d 569 (1968). "Compliance with Rule 5, SCRCrP is a fact-based inquiry." Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012). Counsel made a timely motion for continuance and preserved the issue for appeal. See Drayton, 312 S.C. at 4, 430 S.E.2d at 517. This Court find Applicant failed to produce any credible testimony or evidence of what possible defense counsel could have pursued had the case been continued and counsel had time in the interim to further investigate. Furthermore, this Court notes counsel's stellar performance here at trial. Counsel exhibited great skill and dexterity in the manner in which he handled the relevant evidentiary issues. (Trial Tr. p.526; p.533; p.564; p.584; p.588). In addition, This Court finds counsel exhibited a keen understanding of underlying methodology and science employed to triangulate the location of a phone call in his performance on cross-examination. Therefore, this allegation is denied and dismissed.

E.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to tailor his motion to disqualify juror Emanuel in a manner to preserve advanced by appellate counsel on appeal. In viewing the entire the bench colloquy with juror Emanuel, this

Court notes that the Trial Judge rendered his judgment pursuant to the correct legal framework. "The ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court." State v. Nelson, 331 S.C. 1, 6 n. 6, 501 S.E.2d 716, 718 n. 6 (1998). In order to preserve an error for appellate review, a defendant must make a contemporaneous objection on a specific ground. State v. Holliday, 333 S.C. 332, 338, 509 S.E.2d 280, 283 (Ct. App. 1998). Rule 103(a)(1), SCRE states "**Objection**. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context." Counsel made the objection and properly preserved the issue of whether the trial judge's ruling constituted an abuse of discretion. The creative logic employed by Appellate counsel to further extend Applicant's argument on appeal does not reflect poorly on counsel's effective performance here when the Court of Appeals found the argument to be unpreserved. Neither does this Court finds appellate counsel's performance deficient. On the contrary, this Court finds appellate counsel's performance in pushing the envelope constituted vigorous adversarial representation warrant the underlying issue lacked sufficient merit to warrant a reversal of Applicant's conviction. See State v. Bailey, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989) (a party cannot argue one theory at trial and a different theory on appeal). Counsel testified that once a judge makes an adverse ruling and his objection has been properly preserved, it is his general practice to refrain from belaboring over the ruling at the risk of antagonizing the judge. This Court agrees. See Drayton, 312 S.C. at 12, 430 S.E.2d at 522 ("[counsel] was ineffective in the sense that all criminal defense lawyers whose clients are found guilty are ineffective. That any more argument or different contentions might possibly have altered this result would be sheer

speculation."). Last, this Court notes that our judicial system would collapse if trial judges were required to recite treatises before announcing every single discretional ruling.

Regardless, this Court finds Applicant failed to meet his burden to prove Strickland's prejudice prong. "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). "To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). The trial judge is charged with the duty to determine if a juror's concealment of delayed disclosure of a *voir dire* matter was intentional along the surrounding circumstances of a case by case manner. State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 02 (Ct.App.2004). "Concealment is considered unintentional where the *voir dire* question posed is ambiguous or incomprehensible to the average juror or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." Id. (internal quotations omitted). "[T]he qualification of a prospective juror is addressed to the sound discretion of the trial judge, whose decision will not be disturbed unless wholly unsupported by the evidence." State v. Elmore, 279 S.C. 417, 420, 308 S.E.2d 781, 784 (1983). This Court finds juror Emanuel did not incorrectly answer the trial judge's preliminary question to the *venire panel*. While the trial judge did ask whether any venireman or a member of the venireman's "immediate family were ... close personal friends of the victims," neither this question nor the trial judge's other inquiries asked whether any venireman had a business or working relationship with either victim's family members. This Court finds that there is nothing in the record to refute juror Emanuel's representations that he did not know anything about the case and that he did not even know that the murders had

occurred. There is no indication that the victim possessed a name known in Lexington County. Subsequent to a thorough colloquy, the Trial Judge ruled within the ambit of his discretion. Therefore, this allegation is denied and dismissed.

E.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice

has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 27 day of March, 2014.

R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

FILED
2014 MAR 31 A 11:49
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

1045

WITNESSES

LCSD
Baumgardner, SE

DOCKET NO. 05 -GS-32- 4561

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

December TERM 2005

THE STATE
vs.
Darrell Burgess
AKA Darryl Burges

A-2005-32-03354 11/8/2005 10:20 AM

ARREST WARRANT NUMBER

J075234

ACTION OF GRAND JURY

TRUE BILL

Lisa M. Kerns

FORELADY

Foreperson of Grand Jury

Date: 12-5-05

VERDICT

Guilty

Willis J McCoy 2/11/2008

Foreperson of Petit Jury *Date:*

CDR# 0116

Indictment for

Murder

§16-3-10, 20

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Murder

§16-3-10, 20

At a Court of General Sessions, convened on December, 2005, the Grand Jurors of Lexington County present upon their oath:

That Darrell Burgess along with Michael T. Wise did in Lexington County on or about September 05, 2005,unlawfully kill one David Slice with malice aforethought, either express or implied, to wit: by means of shooting the victims with a handgun, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

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

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

ASSISTANT SOLICITOR

1047

WITNESSES

LCSD
Baumgardner, SE

DOCKET NO. 05 -GS-32- 4563

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

December TERM 2005

THE STATE
vs.
Darrell Burgess
AKA Darryl Burges

A-2005-32-03354 11/8/2005 10:23 AM

ARREST WARRANT NUMBER

J075240

ACTION OF GRAND JURY

TRUE BILL

Lisa M. Kerns

FORELADY

Foreperson of Grand Jury
Date: 12-5-05

VERDICT

Guilty

William J McCoy 12/12/2005
Foreperson of Petit Jury *Date:*

CDR# 0116

Indictment for

Murder

§16-3-10, 20

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Murder

§16-3-10, 20

At a Court of General Sessions, convened on December, 2005, the Grand Jurors of Lexington County present upon their oath:

That Darrell Burgess along with Michael T. Wise did in Lexington County on or about September 05, 2005,unlawfully kill one Kim Fauscette with malice aforethought, either express or implied, to wit: by means of shooting the victim with a handgun, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
Lex. Co. C.C.P., G.S. & F.C.

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

ASSISTANT SOLICITOR

1049

WITNESSES

LCSD
Baumgardner, SE

DOCKET NO. 05 -GS-32- 4564

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

December TERM 2005

THE STATE
vs.
Darrell Burgess
AKA Darryl Burges

A-2005-32-03354 11/8/2005 10:16 AM

ARREST WARRANT NUMBER

J075235

ACTION OF GRAND JURY

TRUE BILL

Lisa M. Kraus

FORELADY

Foreperson of Grand Jury
Date: 12-5-05

VERDICT

Guilty

William J McCoy 2/11/2008

Foreperson of Petit Jury *Date:*

CDR# 0549

Indictment for

Possession of Firearm or Knife during Commission of Violent Crime

§16-23-490

DONALD V. MYERS, SOLICITOR

1050

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of Firearm or Knife during Commission of
COUNTY OF LEXINGTON	)	Violent Crime
		§16-23-490

At a Court of General Sessions, convened on December, 2005, the Grand Jurors of Lexington County present upon their oath:

That Darrell Burgess along with Michael T. Wise did in Lexington County on or about September 05, 2005, knowingly and willfully possess a firearm, or visibly display what appeared to be a firearm, or visibly display a knife during the commission of a violent crime, to wit: handgun, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

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

ASSISTANT SOLICITOR