

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

RECEIVED

MAR 25 2015

S.C. Supreme Court

MARK MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO.2014-001253

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	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	
	)	2005-GS-43-033
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Mark A. McCoy	)	)
DEFENDANT	)	

September 24-25, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING.

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1 (REPORTER NOTE: A different court reporter took the
2 first two days of trial September 22-23, 2008.)

3 (WHEREUPON, Court's Exhibit No. 1 was marked for the
4 record.)

5 THE COURT: All right, back on the record with regard
6 to the matter of The State vs. Mark McCoy. The two
7 matters I want to address before the jury comes and we'll
8 get into those. First of all, let's go into the matter we
9 did yesterday involving the interview which I permitted by
10 defense counsel with one of the State's witnesses, that
11 witness' name again, Ms. Fant, is what?

12 MS. FANT: Robyn Dukes.

13 THE COURT: All right. The issue that came up with
14 regard to that was that he was asked in that interview by
15 Mr. Johnson whether he had pending criminal charges his
16 answer to that was no. The State was taking the position
17 that the reason that he answered that was because he had
18 been told that they could not go into that on direct
19 examination or cross-examination. The defense contends
20 that that is a lie and he should be allowed to impeach it
21 with that. The ruling of the Court is that that cannot be
22 used. The question could not have been asked and so the
23 answer is not admissible. I permitted the interview so
24 that the defendant could learn what the witness would say
25 not set him up for impeachment on a question that could

1 not have been asked in court. To allow the question and
2 the answer opens up Pandora's box, a 609 issue regarding
3 his detention and the prejudicial effect outweighs the
4 probative value, so that could not be asked.

5 Now, Ms. Fant, I'm ready to go forward with the
6 matter concerning the seizure and the proposed
7 introduction of certain documents taken from the defendant
8 in this case here at this courthouse as I understand it at
9 a previous hearing. You may present whatever testimony
10 you wish to present in that regard.

11 MR. JOHNSON: Your Honor, may my objection to your
12 ruling be preserved.

13 THE COURT: I think that goes without saying in the
14 rules, Mr. Johnson.

15 MS. FANT: Your Honor, at this time, the State would
16 call Lieutenant Freddie Bradshaw.

17 THE CLERK: Place your left hand on the Bible, raise
18 your right hand. State your name please.

19 THE WITNESS: Freddie Bradshaw.

20 THE CLERK: Do you solemnly swear or affirm the
21 testimony you give in this court should be the truth, the
22 whole truth, and nothing but the truth so help you God?

23 THE WITNESS: Yes, sir, I do.

24 THE CLERK: Have a seat right there please. State
25 your full name and spell your last name please, sir.

1 THE WITNESS: Frederick L. Bradshaw, B-R-A-D-S-H-A-W.
2 WHEREUPON,

3 Frederick L. Bradshaw,
4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION IN-CAMERA

6 BY MS. FANT:

7 Q Lieutenant Bradshaw, where do you work?

8 A Sumter police department.

9 Q And what division of the department do you work in?

10 A I'm the lieutenant of narcotics invice (sic).

11 Q Do you recall when the defendant, Mark McCoy, was
12 brought here for a bond hearing an incident that occurred
13 in the well of the holding area behind the courtroom?

14 A Yes, ma'am, I do.

15 Q Can you tell us what you remember about that day?

16 A Mr. McCoy come out of the main area of the courtroom
17 and entered the secure area in the back of the courtroom.
18 I was standing by the prison door and at that time, I
19 noticed that he had an envelope and some yellow legal
20 papers in his hands. He was then approached by a female
21 correctional officer and then gaged in some type of
22 conversation. I couldn't hear what they were saying, but
23 it lasted for just a couple of minutes. And then he was
24 taken into the secure room into the back area. At that
25 time, I went back there, I had concerns of him coming out

1 of the courtroom with these papers and talking to this
2 other person who I did not know other than uniform
3 correctional guard because the conversation they had. So
4 I asked him about the papers and he said they were legal
5 papers. Well, there were some yellow legal pads kind of
6 like you had back there, Your Honor, on the outside of the
7 envelope and they weren't marked legal. At that time some
8 other officers came in ---

9 MR. JOHNSON: I didn't hear what he said.

10 THE COURT: He said they weren't marked legal.

11 MR. JOHNSON: They were or were not?

12 THE COURT: Were not?

13 A Were not. The other officer, A.T.F. Richard Brown,
14 Detective Kim Coker, we looked through these ---

15 MR. JOHNSON: Excuse me, Your Honor, Mr. Brown in the
16 courtroom?

17 MS. FANT: He's right there.

18 MR. JOHNSON: Your Honor, we ask that he be
19 sequestered.

20 THE COURT: I agree. I think in proving his point we
21 have to -- the sequestration applies to the non-jury
22 matter outside the presence of the jury as well as a
23 matter within the presence of the jury any witnesses in
24 this matter must be sequestered.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: Go ahead.

2 BY MS. FANT:

3 Q I forgot where we were. I believe you were telling
4 us who else was there.

5 A The two officers just left the courtroom A.T.F. Agent
6 Richard Brown and Detective Kim Coker.

7 Q And what happened next?

8 A Just went through some of the papers and I noticed
9 some of the papers there's a letter and some names on it I
10 did not read all the information, nor did I read any of
11 the information that was clearly marked legal. At that
12 time, A.T.F. Agent Brown took the papers and from what I
13 know now made copies of them and they were returned over
14 as evidence. I never saw them again.

15 Q Did you later learn who the correctional officer that
16 the defendant was talking to was?

17 A No, ma'am, I do not recall her name.

18 Q Okay. But the papers that you saw were they numerous
19 papers or was it just one set?

20 A No, ma'am, there was a stack of -- there were
21 numerous papers. Maybe, an inch or so thick. Some of
22 them are white, some of them were the yellow legal pad
23 variety. Some of them were clearly marked legal and some
24 of them were just -- if I remember correctly, one of them
25 as like a letter, a handwritten letter. And some names

1 and addresses on a yellow sheet of paper.

2 Q And were any of these items in a large brown manila
3 envelope?

4 A Some of them were and weren't when I first saw them.

5 Q Were the writings on the yellow pad that you're
6 talking about in that envelope?

7 A No, ma'am. When he first came out of the courtroom,
8 he had a manila type envelope like a brown one and he had
9 several of the yellow legal pad papers that were loose on
10 the outside of that envelope.

11 MS. FANT: Please answer any questions Mr. Johnson
12 may have.

13 THE COURT: Mr. Johnson.

14 CROSS-EXAMINATION IN-CAMERA

15 BY MR. JOHNSON:

16 Q Mr. Bradshaw, you do recall that this occurred inside
17 the Sumter County courthouse?

18 A In the backroom right there, yes, sir.

19 Q But when you described the back room, that is the
20 room behind where the judge sits; is that not correct?

21 A To his right.

22 Q To his right. And what would you estimate the
23 distance to be?

24 A I have no idea.

25 Q No idea about distance?

1 A No, sir.

2 Q All right, sir. Were you present in the courtroom
3 during the bond hearing?

4 A No, sir.

5 Q Where were you doing the bond hearing?

6 A Standing right outside that door there.

7 Q Standing right outside the door?

8 A Yes, sir.

9 Q Near where the judge sits?

10 A Yeah, outside the door.

11 Q And, Mr. Bradshaw, is it not true that my client was
12 in shackles?

13 A I believe so.

14 Q Do you recall that there were in excess of about 10
15 or to 12 police officers inside the courtroom and outside
16 the courtroom where the holding cell is?

17 A There were numerous police officers, I don't know how
18 many I didn't count.

19 Q There were numerous. But you are aware based on
20 custom that a defendant who is in custody is shackled or
21 his movement is restrained. He was in some type of
22 restraints; isn't that true?

23 A What custom are you referring to?

24 Q The practice with the Sumter police department, with
25 the sheriff's department that when the defendant's are in

1 custody, restraints are put on them?

2 A Normally, yes, sir, that is correct.

3 Q Normally. And do you recall if he was in restraints
4 at this time?

5 A Yes, sir.

6 Q All right, sir. Mr. Bradshaw, did you see any type
7 of weapon in possession of my client?

8 A Any types of weapon?

9 Q Yes, sir. Any illegal weapon like a gun or knife?

10 A He had a pen on him.

11 Q Beg your pardon.

12 A Pen.

13 Q A ball point pen?

14 A Yes, sir.

15 Q All right, sir. And you consider that to be a
16 weapon?

17 A Absolutely.

18 Q All right, sir. Were you in fear of your life?

19 A When?

20 Q When you came in contact with my client outside?

21 A No, sir.

22 Q All right, sir. What gave you probable cause to
23 seize my client private items?

24 A When he came out of the courtroom, he engaged in a
25 conversation with one of the security guards that I

1 thought was a little unusual.

2 Q All right. And that's the conversation you didn't
3 hear?

4 A No, sir, I did not hear it. I testified to that.

5 Q Well, how do you know it was an unusual conversation
6 if you did not hear it?

7 A Because it seem more like an friendly conversation
8 rather just a guard talking to a prisoner.

9 Q It seem like a friendly conversation?

10 A To me, yes, sir.

11 Q All right, sir. A friendly conversation between a
12 correctional officer and an inmate and does that give you
13 probable cause to seize his items?

14 A If I'm -- I'm not exactly sure where the information
15 came from at that time, but in that mind -- at that time
16 in my mind, we had or I had received or heard information
17 that Mr. McCoy might plan an escape.

18 Q All right. What did you witness Mr. McCoy do at
19 evidence to you that he was attempting to escape?

20 A To me the conversation he had with that correctional
21 officer was unusual to me.

22 Q So the conversation you didn't hear was unusual and
23 what did that evidence at an attempt to escape?

24 A It just raised my suspicion.

25 Q Raised your suspicion. His attempt to escape how did

1 that give you probable cause to seize his private items?

2 A Because I had no idea at that time if she had given
3 him something or they exchanged some information or -- I
4 didn't know, but I was going to find out.

5 Q Isn't it true that the items he had were in a manila
6 folder?

7 A Some were inside, yes, sir. And there were a couple
8 of legal bound like I testified. The yellow sheets were
9 on the outside of it.

10 Q And isn't it true that at the time that you seize
11 these items he just left the courtroom involved in a court
12 proceeding, a legal proceeding?

13 A Yes, sir.

14 Q And so again, did you see anything bulky in the
15 manila folder?

16 A No.

17 Q And isn't it true he was handcuffed?

18 A I don't remember that, I don't believe so.

19 Q You don't believe he was handcuffed?

20 A I don't remember if he was handcuffed.

21 Q But you don't believe he was handcuffed?

22 A I just said I don't remember.

23 Q Isn't it true when you examined the contents that the
24 majority of the papers in the manila folder had in bold
25 letters on the front legal work?

1 A Yes, sir, that's is correct.

2 Q All right, sir. Isn't it true a majority of the
3 papers in the folder were written out in the same hand --
4 handwriting?

5 A I'm not a handwriting expert. I don't know that.

6 Q Okay. But you do know that there was no weapon found
7 inside that manila folder; isn't that right?

8 A No, sir, I previously testified there was a ball
9 point pen there that he had.

10 Q Ball point pen?

11 A Yes, sir.

12 Q Isn't it also true that outside near the holding cell
13 that there's not sign or anything to indicate that an
14 inmate cannot have a ball point pen, it's not contraband?

15 A No, I didn't.

16 MR. JOHNSON: Thank you, sir.

17 THE COURT: All right. Anything further from this
18 witness?

19 MS. FANT: Just one minute. I do have some more
20 questions.

21 THE COURT: Let's move it along counsel come on, I
22 want to start with this jury at 9:30.

23 You finished?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: All right, yes, ma'am.

1 (WHEREUPON, a pause in the proceedings.)

2 REDIRECT EXAMINATION IN-CAMERA

3 BY MS. FANT:

4 Q Lieutenant Bradshaw, before you actually took
5 anything from the defendant's possession, did you call me
6 and ask me my advice?

7 A Yes, ma'am, I did.

8 Q And did I give you legal advice about whether or not
9 they could be seized?

10 A Yes, ma'am, you did.

11 Q Let me show you what's been marked ---

12 THE COURT: All right, Ms. Fant, let's move on. We
13 should have had this ready to do yesterday. We're running
14 behind. I told everybody I was ready to address it
15 yesterday your witnesses weren't here. Now, let's move
16 this along. I want to get this done.

17 (WHEREUPON, State's Exhibits Nos. 15-17 was marked
18 for identification only.)

19 BY MS. FANT:

20 Q Lieutenant Bradshaw, I want to show you what's been
21 marked for identification as State's Exhibits 15, 16 and
22 17. Are those the type of things -- do you recognize any
23 of it first of all?

24 A Yes, ma'am, I do.

25 Q Which one?

1 A The two that are ---

2 THE COURT: Don't show them to me tell her.

3 A The two that are in this envelope here, in these two
4 envelopes.

5 Q Thank you.

6 THE COURT: Mr. Johnson.

7 MR. JOHNSON: Nothing further.

8 THE COURT: Step down.

9 (WHEREUPON, the witness leaves the witness stand.)

10 THE COURT: Next witness.

11 MS. FANT: The State would call Special Agent Richard
12 Brown.

13 THE CLERK: Come on around please, sir. Place your
14 left hand on the Bible, raise your right hand. State your
15 name please.

16 THE WITNESS: Richard Brown.

17 THE CLERK: Do you solemnly swear or affirm the
18 testimony you give this court shall be the truth, the
19 whole truth and nothing but the truth so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Have a seat up there please, sir. State
22 your full name, spell your last name.

23 THE WITNESS: Richard Brown, last name B-R-O-W-N.

24 WHEREUPON,

25 Richard Brown,

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION IN-CAMERA

3 BY MS. FANT:

4 Q Agent Brown, where do you work?

5 A With the Bureau of Alcohol, Tobacco, Firearms and
6 Explosives also known as A.T.F. I work out of the
7 Columbia, South Carolina office.

8 Q Were you assisting in a bond hearing that involved
9 the defendant, Mark McCoy?

10 A Yes, I was.

11 Q Do you recall an incident that occurred where there
12 was some paperwork that he had on him back there near the
13 holding cell?

14 A Yes, ma'am.

15 Q How did you become involved in that?

16 A Lieutenant Bradshaw had all the paperwork and
17 envelope and started looking through it. You know, a lot
18 of the stuff is not, you know, legal and that's when we
19 tried to go through it really quickly. It was legal I
20 didn't really look at anything just kind of separate. I
21 think Lieutenant Bradshaw did most of the separating, but
22 I was there.

23 Q And what did you do with the legal paperwork?

24 A With the legal paperwork, we attempted to identify --
25 the most disinterested party we took it to Sergeant Scott,

1 which I don't know ---

2 Q Yeah, that's fine.

3 A And I gave him that packet of papers and he and I
4 went to the copy machine in the clerk of court's office
5 and I stood back a little bit and basically we just real
6 quickly went through and copied everything. And obviously
7 if it was typed, obviously an envelope from an attorney,
8 we know he didn't have access to a typewriter, so, you
9 know, we just skipped over that, but anything that was
10 questionable just from glancing at it was copied. And I
11 obviously cannot remember if we kept the copies or the
12 originals, but whichever one we kept, we placed in an
13 envelope. It was sealed with tape, both of us initialed
14 it and it was placed in the A.T.F. vault in Columbia. And
15 the purpose of that was that at some later time US
16 Attorney's office can appoint a taint attorney which is a
17 disinterested attorney from the U.S. Attorney's office,
18 that we review those items and determine if they really
19 were legal paperwork or just paperwork that he wrote legal
20 on just to try to prevent their discovery, but that would
21 be determined in a separate -- or later on. I do not have
22 the items with me and I have not reviewed them or looked
23 at them. Again, I apologize I don't recall whether I kept
24 the originals or the copies, but copies or originals
25 were given back to Mr. McCoy.

1 Q And since that time have the sealed paperwork that
2 you put in the A.T.F. vault been opened?

3 A No, ma'am.

4 Q And did you ever read any of the legal paperwork?

5 A No, ma'am.

6 MS. FANT: Please answer any questions Mr. Johnson

7 ---

8 THE COURT: Mr. Johnson.

9 CROSS-EXAMINATION IN-CAMERA

10 BY MR. JOHNSON:

11 Q Mr. Brown; is that correct?

12 A Yes, sir.

13 Q I notice that on State's Exhibit Number 17, for
14 example ---

15 MR. JOHNSON: May I approach the witness, Your Honor?

16 THE COURT: Yes, sir.

17 BY MR. JOHNSON:

18 Q At the top of the page, doesn't that show the number
19 two?

20 A Yes, sir, at the very top.

21 Q And where is page one?

22 A I'm not sure, sir. All the items that -- cause they
23 were separated, were nonlegal. I have not seen all
24 those -- any of those since that time. So if this is
25 associated with the nonlegal items, I really do not know

1 what happened to them and what was or was not done with
2 those. I know from my experience as a federal agent what
3 can be done with items that need to be determined whether
4 they truly are legal or not, so I handle those.

5 MR. JOHNSON: Your Honor, may I approach the witness?

6 THE COURT: Yes, sir.

7 BY MR. JOHNSON:

8 Q All right. Now, the State had introduced page two
9 and this is a copy of the statement that was returned to
10 me. What does it say on the top?

11 A It does say legal work.

12 Q And what number does it say over there?

13 A It appears to be a one.

14 Q That appears to be a one, doesn't it?

15 A Yes, sir.

16 Q So if page one says legal work, would you, as an
17 experienced officer, say that page two is also legal work?

18 MS. FANT: Your Honor, I would object to this. There
19 was no page one seized. They were ---

20 THE COURT: He can clarify it, it's
21 cross-examination. He has the right to ask the question.

22 MR. JOHNSON: Your Honor, as an officer of the Court,
23 this is what was turned over to me.

24 THE COURT: I understand. You have the right to ask
25 the question, Mr. Johnson. I ruled in your favor, don't

1 argue with me.

2 A If you'd like me to address that, Lieutenant Bradshaw
3 said he was the primary one that sorted this out. And one
4 thing to keep in mind, we were doing everything we could
5 not to read any of this and it was simply sorted by if it
6 had legal, it was put in a pile. If we did not see legal,
7 it was put in another pile. And I think that's a good
8 indication of how diligent we were trying to be to protect
9 his rights that this didn't have legal on it and we just
10 saw that there was no legal and that went in the nonlegal
11 stack. You see what I mean, we weren't looking for page
12 numbers, we were just glancing. If we saw legal, it went
13 here, without it, it went here to protect Mr. McCoy's
14 rights.

15 Q Well, what gave y'all probable cause to seize any
16 papers?

17 A From what I understand, there was a hand gesture
18 between one of the correctional officers and Mr. McCoy and
19 we were concerned that a message may have been passed or
20 something like that.

21 Q A hand gesture between Mr. McCoy and whom?

22 A At the same time, sir, that's what I was told, but
23 Mr. McCoy has no right to privacy as a prisoner for
24 paperwork that is nonlegal as far as I understand. Now, I
25 am not a state officer and I apologize if I don't know

1 what the laws are for state, but I can tell you the
2 federal agent I know when a person is in custody, they
3 have no reasonable expectation of privacy for anything
4 they possess. So we needed no reason whatsoever to search
5 that paperwork. But we did have -- see something that
6 occurred.

7 MR. JOHNSON: Thank you.

8 THE COURT: Ms. Fant?

9 MS. FANT: Nothing further, Your Honor.

10 THE COURT: Step down.

11 (WHEREUPON, the witness leaves the witness stand.)

12 MS. FANT: Your Honor, the State would call Jim
13 Alfred (sic).

14 THE COURT: I understand he's been in the courtroom
15 the whole time?

16 MS. FANT: I didn't realize until ---

17 THE COURT: I told him -- no, you're not going to
18 call him Ms. Fant. I'm sorry, but I told you at the
19 beginning of this hearing that anybody that's going to
20 testify on this matter had to be suppressed. He's been
21 sitting here listening to the whole testimony.

22 MS. FANT: He's the evidence custodian, Your Honor.
23 Until he brought -- that was not in evidence. What he
24 showed to him are page number one is not in evidence. We
25 never had that. And I guess I'll get Detective Rabon to

1 say that. We have our evidence box back here. That was
2 all he's going to say is we have no paperwork ---

3 THE COURT: He didn't offer that in evidence. The
4 witness will be excluded.

5 MS. FANT: But he asked ---

6 THE COURT: The witness will be excluded, Ms. Fant.

7 MS. FANT: Your Honor, at this time, I call Detective
8 Angela Rabon.

9 THE COURT: All right, Ms. Rabon.

10 THE CLERK: Place your left hand on the Bible, raise
11 your right hand. State your name please.

12 THE WITNESS: Angela Rabon.

13 THE CLERK: You solemnly swear or affirm the
14 testimony you give this court to be the truth, the whole
15 truth, and nothing but the truth so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Have a seat up there. State your full
18 name and spell your last name.

19 THE WITNESS: Angela Rabon, R-A-B-O-N.

20 WHEREUPON,

21 Angela Rabon,

22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION IN-CAMERA

24 BY MS. FANT:

25 Q Detective Rabon, are you familiar with the case of

1 State v. Mark McCoy?

2 A I am.

3 Q And are you familiar with all the evidence in this
4 case?

5 A I am.

6 Q Is there any evidence in the custody of the State
7 that -- or is paperwork from Mr. McCoy that has legal
8 paperwork or the word legal written on it at all?

9 A No, ma'am.

10 Q The correctional officer that we are talking about
11 that the hand gesture -- made the hand gesture to Mr.
12 McCoy, do you know her name?

13 A I do.

14 Q What is it?

15 A Dashelle Lucas.

16 Q And why were we concerned about that?

17 A She is the former wife, but still in close contact
18 with Michael Lucas, who is a current running partner of
19 Mark McCoy. And also he is a -- he's the brother of an
20 eyewitness to this case who is refusing to testify about
21 what he saw.

22 Q And in addition is she related to someone else?

23 A She's also related Deon Clay, that's her brother.
24 And he shot Robyn Dukes, the co-defendant, after Robyn
25 Dukes informed us of who the shooter was.

1 MS. FANT: Thank you. Please answer any questions
2 Mr. Johnson may have.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: I have no questions, Your Honor.

5 THE COURT: Step down.

6 (WHEREUPON, the witness leaves the witness stand.)

7 THE COURT: Anything further, Ms. Fant?

8 MS. FANT: One moment, Your Honor.

9 (WHEREUPON, a pause in the proceedings.)

10 MS. FANT: Nothing further, Your Honor.

11 THE COURT: All right. Counsel, I'll be glad to hear
12 from you. And I'll tell you right now, Ms. Fant, that --
13 and, Mr. Johnson, that Ms. Fant handed up to me earlier
14 the case State vs. Matthews, a 1988 case from the South
15 Carolina Supreme Court. And also, that case is cited as
16 373 S.E.2nd 587. And then a Missouri case of Smith --
17 State of Missouri vs. Smith, a 1989 case. Ms. Fant, I
18 will tell you that I am not impressed by the State vs.
19 Matthews case. That is a post-conviction case where the
20 issue before the Court was whether the defendant was a
21 threat if he did not get the death penalty. And that is
22 an entirely different issue to the one of preconviction.
23 This is one where -- the Matthews case, he had already
24 been convicted, it was in the penalty phase of a death
25 penalty case and the seized items were to determine

1 whether or not he should get death or get life. And the
2 purpose of the letters was to determine his danger to the
3 community, which was the issue in a death penalty case.
4 So that doesn't have anything to do with the issue here as
5 to whether this should be permitted. I would also be
6 interested in hearing from you, Ms. Fant, on State vs.
7 Ellefson, which holds that these type things are not
8 permissible -- are not admissible, State of South Carolina
9 Supreme Court case.

10 Do you have a copy of it?

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

12 THE COURT: I have a copy on the computer as well.

13 What about the Ellefson case, Ms. Fant?

14 MS. FANT: Your Honor, I believe this is
15 distinguishable. This was contraband.

16 THE COURT: Nobody has testified to it being
17 contraband, no one. I made a note about that, no witness
18 said that it was contraband. That was what I was
19 listening for.

20 MS. FANT: And she just walked in. I didn't have her
21 here and I knew you were angry, so I didn't ask you to
22 wait on her.

23 THE COURT: I was not angry, Ms. Fant. You knew what
24 time this hearing started. The witnesses knew what time
25 they were supposed to be here. I'm running the court, I'm

1 running on time. If you don't have the witnesses here,
2 that's not my fault. I ask you if there was anything
3 else. No one testified it was contraband. All right,
4 tell me about the Ellefson case.

5 MS. FANT: Your Honor, even if it's not, there is no
6 expectation of privacy in a jail cell. The seizure of
7 things that are nonlegal -- I think the issue here is
8 whether it was attorney-client privilege.

9 THE COURT: Are you telling me that a person in a
10 jail cell cannot keep a diary?

11 MS. FANT: But he can be searched by the officers,
12 yes, he can.

13 THE COURT: Where is the testimony in this record
14 that they can do that?

15 MS. FANT: I would ask you to take judicial notice of
16 it.

17 THE COURT: The Ellefson case says it has to be a
18 jail official for legitimate jail purposes.

19 MS. FANT: And he is in the custody of the Sumter-Lee
20 Regional detention center and those were the officers that
21 were transporting him.

22 THE COURT: But the concern was according to you, the
23 concern was that there was some relationship between a
24 employee of the Sumter Regional detention center or a
25 sheriff's deputy and this defendant. I mean, what you're

1 trying to get in is some concern about some alleged
2 communication between the prisoner and an employee of the
3 State.

4 MS. FANT: Well, Your Honor, I'm not responsible for
5 who's employed out there. I believe she is not a good
6 officer. And it is our position ---

7 THE COURT: Well, she shouldn't have been working for
8 the State.

9 MS. FANT: It is our position that he was intending
10 to give those papers to her. They were clearly nonlegal
11 in matter.

12 THE COURT: There's no evidence that he tried to give
13 them to her. It was a friendly conversation according to
14 the testimony.

15 Well, as I said, the Matthews case says a
16 correctional officer's legitimate interest in securing
17 permitted -- legitimate interest in security permitted the
18 seizure of the defendant's cell or written materials and
19 seizure of such materials following the defendant's murder
20 conviction, that's Matthews. Tell me why Ellefson is
21 distinguishable?

22 MS. FANT: Your Honor, when he was in the custody of
23 the detention center, he was being housed in Richland
24 County. The officers that brought him here were -- they
25 were in their custody at that time. They stand in the

1 shoes of the jail when he is being transported. And they
2 have a right to look through any nonlegal paperwork and
3 anything else that potentially could be a problem.

4 THE COURT: How could nonlegal paperwork potentially
5 be a problem? It's not like it was a knife. It's not
6 like it was -- you know, what you're telling me is ---

7 MS. FANT: Because he's not supposed to have it with
8 him.

9 THE COURT: Where is the testimony to that?

10 MS. FANT: Well, if you would allow me to reopen, I
11 have Sergeant Shulls, she was running late ---

12 THE COURT: No, ma'am, you had your chance.

13 Mr. Johnson, I'll be glad to hear from you.

14 MR. JOHNSON: Your Honor, I think the Ellefson case
15 on the end is right on point. The decision says that even
16 a convicted prisoner does not share the basic
17 constitutional rights at the prison gate, rather he
18 retains all rights of an ordinary citizen except those
19 expressed by necessary application taken from him by that
20 law. Searches conducted outside the judicial process
21 without prior approval by a judge or magistrate are per se
22 unreasonable under the Fourth Amendment. Warrantless
23 exploratory search and copying by detective of a pretrial
24 detainee -- and that's a distinguishing feature, Your
25 Honor, with this case. He had not been convicted. He was

1 a pretrial detainee with outgoing letters, without
2 legitimate jail purpose or probable cause exigent violated
3 detainee's First and Fourth Amendment rights.

4 Your Honor, this is a situation where there's no
5 record of probable cause. They -- my client was in
6 custody. They had ample opportunity to go to a
7 magistrate, convince a magistrate that they had probable
8 cause and to secure a warrant. As a matter of fact, the
9 judge was right here on the bench and they did this on the
10 advice of Ms. Fant. And so, Your Honor -- and he was not
11 a security risk. There was no way for him to run away
12 because, obviously, you know, he was in shackles. And
13 there's nothing in terms of his conduct that would
14 indicate that they had a right to search his private
15 papers.

16 THE COURT: All right. Thank you, sir.

17 Counsel, I had done some research on this matter
18 because I knew it was coming up and, actually, had
19 uncovered and had read that Ellefson, I guess,
20 E-L-L-E-F-S-O-N case, that is State vs. Ellefson, in 224
21 S.E.2nd 666 and 266 S.C. 494 prior to this hearing
22 beginning and was struck by the language of that case
23 which said that warrantless exploratory search, a copying
24 by detective of pretrial detainees outgoing letters
25 without legitimate jail purposes or probable cause or

1 exigent circumstances violated detainee's First and Fourth
2 Amendment rights notwithstanding that when the detainee
3 was processed into jail, he signed a card authorizing jail
4 officials to read his mail in the absence of proof of
5 voluntariness or consent. And that case even goes a step
6 further. There the defendant had signed an agreement at
7 the time that he was admitted or the time that he was
8 incarcerated authorizing jail officials to read his mail.
9 Here, we don't even have that situation. We've got a
10 pretrial detainee's own personal writings, some of them
11 legal, maybe some of them not, I don't know, but in any
12 event, no testimony that any of this is contraband or that
13 they're any exigent circumstances that would justify the
14 seizing of it. He is in custody. A search warrant could
15 have been obtained if there was probable cause where an
16 independent judicial officer could have made a
17 determination as to whether the search was appropriate and
18 that could have been accomplished very, very easily to be
19 proffered evidence to be sequest.

20 Mr. Cooper, I don't think you were in the courtroom
21 at the time of the ruling, but the Court has ruled that
22 the question regarding whether the defendant has pending
23 criminal charges and his answer in the interview is not
24 admissible. All right. I think you're representing that
25 witness?

1 MR. COOPER: Yes, sir.

2 THE COURT: All right. Anything before we bring the
3 jury in?

4 MS. FANT: Your Honor, we do have the same issues
5 that arose yesterday with criminal histories. Three of
6 our witnesses do have criminal records, so we would just
7 like to go over the impeachment issues in those.

8 THE COURT: All right.

9 MS. FANT: The first would be Stacey Brunson, Your
10 Honor.

11 MR. JOHNSON: What was that name again please?

12 MS. FANT: Stacey Brunson. The only convictions that
13 the State would condemn are -- that he is subject to
14 impeachment on is the possible distribution of crack
15 cocaine from 1994. And he is currently in federal custody
16 on drug related charges.

17 THE COURT: What's your position on that,
18 Mr. Johnson?

19 MR. JOHNSON: Your Honor, we think that applies.

20 THE COURT: I'm sorry? You think it is impeachable?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: All right. The distribution of crack in
23 1994, is it your position that is it or is not, Ms. Fant?

24 MS. FANT: Your Honor, I had Mr. Green in check. He
25 was not released from incarceration until December of

1 1998, which would make it nine years and some odd months.

2 THE COURT: That would be -- impeachment would be
3 allowed on that charge.

4 MS. FANT: He also referred to a 2000, that's not a
5 conviction, that was the federal charges -- they were
6 federal, but he was not convicted in state court of those
7 charges and that's what he was convicted on federal.

8 Also, with Mr. Brunson, we have the same issue that
9 came up with Mr. Holmes yesterday that I would intend to
10 introduce his plea agreement, which would go to show what
11 his agreement was with the government pursuant to his
12 testimony.

13 THE COURT: Has he pled guilty or is that ---

14 MS. FANT: He has. He's in the same shoes as
15 Mr. Holmes.

16 THE COURT: If you go into the issue then, it seems
17 to be, Mr. Johnson, of whether or not he was promised
18 anything or was trying to get a better deal, then the
19 right to a plea agreement would be appropriate. But
20 otherwise, if you don't go into it, I don't know that it's
21 admissible. What would be your intention with Mr. Holmes?

22 MS. FANT: Um ---

23 THE COURT: Wait a minute let me hear from
24 Mr. Johnson how he feels about that.

25 MR. JOHNSON: I don't intend to at this time, Your

1 Honor.

2 THE COURT: Okay. All right.

3 MS. FANT: In addition, the next witness would be
4 Jamie Heyward, his N.C.I.C. indicates that he would be
5 subject to impeachment on a possession of crack in the
6 year of 2000 and an unlawful carrying of a weapon in the
7 year 2001. He is also a preconviction detainee and
8 subject to a proffer letter that he has with the
9 government. And my position would be that he's in the
10 same boat as Ms. Kim Delay was yesterday. In that, he has
11 made an agreement by his proffer letter, but it is not a
12 conviction. He has not been convicted yet.

13 THE COURT: Again, I think with regard to the
14 pretrial -- I mean, with the proffer letter, it would
15 depend on the cross-examination, Mr. Johnson, as to
16 whether or not you are contending that he is seeking
17 favorable treatment as a result of agreements made with
18 law enforcement, in which case, the proffer letter would
19 be admissible. What about the possession of crack and
20 possession of the weapon? There all 2000 offenses and
21 would appear to be within 609.

22 MR. JOHNSON: Yes, sir, Your Honor.

23 THE COURT: Okay. All right.

24 MR. JOHNSON: Your Honor, all be it deceitful, I'm
25 reserving the right depending on what they testify to, I

1 might want to go to the plea agreement. And if I do, I
2 understand your ruling that they would be admissible.

3 THE COURT: Yes, sir, that's correct.

4 MS. FANT: The third witness, Your Honor, would be a
5 witness, actually, that was not on the witness list and we
6 would ask if you need to query the jury on that. We found
7 out Monday afternoon by receiving a letter from
8 Mr. McCoy's cellmate at the Richland County detention
9 center that he had information that Mr. McCoy had been
10 talking to him about. Monday afternoon, Special Agent
11 Richard Brown went to verify his information. And
12 yesterday, we made arrangements for him to be in secure
13 housing and make sure that he would be transported
14 elsewhere after his testimony. He does have, obviously, a
15 prior record.

16 THE COURT: Name?

17 MS. FANT: Pardon.

18 THE COURT: Name?

19 MS. FANT: Roland Bostic B-O-S-T-I-C. And I do have
20 the letter that I could hand up that was post-marked
21 September 19th. It was received in the sheriff's office
22 on Monday morning and Jamie Turner gave it to Captain
23 Alvin Holston, who gave it to me after the lunch break on
24 Monday afternoon.

25 THE COURT: All right. This is a letter from

1 Mr. Bostic to whom?

2 MS. FANT: Addressed to -- letter from Roland Bostic
3 addressed to the sergeant of investigation 107 East
4 Hampton Avenue, which is the law enforcement center.

5 THE COURT: And that letter does it have a date on
6 it?

7 MS. FANT: Yes, Your Honor, it is post-marked in
8 Columbia on September 19th, 2008.

9 THE COURT: Received when?

10 MS. FANT: In my hands or in law enforcement's hands?

11 THE COURT: When law enforcement receive it or both.

12 MS. FANT: Law enforcement got it, I guess, when mail
13 was delivered on Monday. And it went, from some reason,
14 to the sheriff's office. I guess they didn't know who to
15 give it to. And he, then, in turn, realized that it
16 had -- that was Captain Jamie Turner realized it had
17 something to do with this case, he gave it to Captain
18 Alvin Holston with the police department, who brought it
19 to me after lunch on Monday.

20 THE COURT: That would be noon -- or about lunchtime
21 on the 22nd, would be Monday?

22 MS. FANT: Correct, Your Honor.

23 THE COURT: And that letter was -- what does that
24 letter say, that this individual, Mr. Bostic, has certain
25 information?

1 MS. FANT: Correct, Your Honor.

2 THE COURT: Does he give the information in the
3 letter or does he just say that he has certain information
4 that prompted law enforcement to find out what it said?

5 MS. FANT: It was the latter, Your Honor, that he had
6 information and that he would like to talk to a law
7 enforcement officer to tell them about it.

8 THE COURT: All right.

9 I'll hear from you, Mr. Johnson.

10 MR. JOHNSON: Your Honor, if that letter was received
11 on Monday, it should have been under Rule 5 given to us on
12 Monday.

13 THE COURT: At that point, they hadn't talked to him.

14 MR. JOHNSON: But that's not a prerequisite, just
15 like they had an opportunity to talk to him, I had an
16 equal right to talk to him. The fact that they're now
17 disclosing that two days later here on Wednesday, that
18 client -- that witness should be precluded from
19 testifying.

20 THE COURT: When was it discussed with -- when did
21 law enforcement act on that letter and interview him?

22 MS. FANT: He was interviewed both Monday afternoon
23 and Tuesday morning. Your Honor, I do not believe this is
24 Rule 5 material. This is a witness, obviously, with a
25 statement do not have to be turned over until they

1 testify. The only issue would be that he wasn't on the
2 witness list and that reason was I didn't know he was a
3 witness at the time. I don't think there would be any
4 legal reason to exclude his testimony.

5 THE COURT: All right. I don't have any problem with
6 Rule 5 on this. It did just happen, you just got it
7 Monday during the progress of the trial. The Solicitor's
8 office was in here, Ms. Fant was in here all day Monday
9 and all day Tuesday. I am going to inquire of the jury as
10 to whether they would have any contact or know anything
11 about this individual or any reason that this witness
12 would cause them a problem in this case, the usual
13 questions, to make sure that there's no knowledge of the
14 particular witness by any of the jurors. I will ask those
15 questions. And I also will allow Mr. Johnson to interview
16 the witness before the witness is called. Is he here now?

17 MS. FANT: Your Honor, I'm not sure yet. We do
18 believe he's here, Your Honor. I don't know for a fact,
19 but he was supposed to be here.

20 THE COURT: Well, we're going to go on a few minutes
21 and we'll take some time when we take a break. Before you
22 call him, I want to allow Mr. Johnson a chance to
23 interview the witness.

24 MS. FANT: Yes, sir.

25 THE COURT: But I will ask the jury about the

1 questions regarding any conflict that they might have
2 because of this particular witness is to be called. Will
3 permit the witness to be called.

4 All right. Anything else from the State before the
5 jury comes in?

6 MS. FANT: No, Your Honor.

7 THE COURT: Anything from the defense?

8 (WHEREUPON, a pause in the proceedings.)

9 THE COURT: Anything from the defense before the jury
10 comes in?

11 MR. JOHNSON: Nothing, Your Honor.

12 THE COURT: All right. Bring the jury in.

13 (WHEREUPON, the jury entered the courtroom.)

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

15 Thank you very much, ladies and gentlemen. I
16 appreciate your promptness again for being back here on
17 time. We have been working since nine o'clock and have
18 resolved some more complex legal issues that we had to
19 deal with, but we are ready to go forward at this time.

20 Ms. Fant, you may call your next witness.

21 MS. FANT: Your Honor, at this time, the State would
22 call Lieutenant Angela Rabon.

23 THE CLERK: Place your left hand on the Bible and
24 raise your right hand. State your name please

25 THE WITNESS: Angela Rabon.

1 THE CLERK: You solemnly swear or affirm the
2 testimony you give in this court shall be the truth, the
3 whole truth, and nothing but the truth so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Have a seat up there, ma'am. State your
6 full name, spelling your last, please.

7 THE WITNESS: Angela Rabon, R-A-B-O-N.

8 DIRECT EXAMINATION

9 BY MS. FANT:

10 Q Lieutenant Rabon, could you tell us where you work,
11 please?

12 A For the Sumter police department.

13 Q And how long have you worked there?

14 A Been there since '97.

15 Q What are your -- what is your current position at the
16 department?

17 A Right now, I'm the lieutenant over the investigations
18 services division.

19 Q And what does that job entail?

20 A I'm the immediate supervisor. I sign reports to the
21 detectives, also, assist with investigations, coordinate
22 with other agencies that are needed to assist in our
23 investigations.

24 Q And did you work on this case, the case of State v.
25 Mark McCoy?

1 A I did.

2 Q Let me show what's been marked for identification as
3 State's Exhibit 5. Do you recognize that?

4 A Yes, I do. This is a ---

5 Q Before you say what it is, does it accurately reflect
6 what was on a videotape that was taken from Mr. Boney's?

7 A Yes, it does.

8 MS. FANT: Your Honor, I would offer this photo into
9 evidence at this time.

10 THE COURT: All right. Be admitted into evidence --
11 I believe there was a previous objection to it, so it will
12 be admitted over objection.

13 (WHEREUPON, State's Exhibit No. 5 was admitted into
14 evidence.)

15 BY MS. FANT:

16 Q And what is depicted in that photo?

17 A That's showing a time frame when the victim was last
18 seen alive and it is the surveillance video from Boney's
19 Liquor store.

20 Q And so this was just a still photo taken off of that
21 surveillance video?

22 A Right.

23 Q And what time does it indicate on the clock that you
24 can see in the background?

25 A 4:25, I believe, p.m.

1 Q Thank you.

2 MS. FANT: Your Honor, I see our easel has
3 disappeared from the courtroom.

4 THE COURT: All right, see if you can find it Mister
5 -- it may be in the other courtroom. Mr. Herring, see if
6 you can find it.

7 Meanwhile, go ahead and have the exhibit marked.

8 (WHEREUPON, State's Exhibit No. 18 marked for
9 identification.)

10 BY MS. FANT:

11 Q Detective Rabon, I'm going to ask you to step down
12 for a minute and take a look at State's Exhibit 18. Do
13 you recognize that?

14 THE COURT: Hold on just a minute, is that in
15 evidence?

16 MS. FANT: No, Your Honor, not yet. I was going to
17 offer it.

18 THE COURT: Well, it shouldn't be showed to the jury
19 until it's in evidence.

20 MS. FANT: Oh, sorry.

21 THE COURT: Any objection?

22 MR. JOHNSON: We have no objection.

23 THE COURT: All right. Go ahead and mark it into
24 evidence then. If there's no objection, then there's no
25 problem.

1 (WHEREUPON, State's Exhibit No. 18 was admitted into
2 evidence.)

3 BY MS. FANT:

4 Q And what is that?

5 A This is a map of the neighborhood and area where the
6 incident occurred.

7 Q Can you mark for us, and I have some stickies here,
8 if I can get them off, [REDACTED] -- the house that would be [REDACTED]
9 [REDACTED]?

10 A Put it on this side.

11 Q Just have the arrow pointing to the house, I guess
12 that would be the easiest. And whose house was that at
13 the time?

14 A That's where Kim Delay was living at the time.

15 THE COURT: Keep your voice up cause she still got to
16 be able to hear you.

17 BY MS. FANT:

18 Q And could you place this marker on [REDACTED]
19 [REDACTED]? And whose house was that?

20 A That's the house that residence where Mark McCoy had
21 and ---

22 MR. JOHNSON: Objection, Your Honor.

23 THE COURT: I couldn't hear her. You're going to
24 have to look this way.

25 A I'm sorry, that's the -- I stated that was the

1 residence where ---

2 MR. JOHNSON: That's what I object to. She state
3 that his residence ---

4 MS. FANT: Your Honor, we ---

5 THE COURT: Wait a minute. Wait a minute. Wait a
6 minute. Lay the foundation.

7 BY MS. FANT:

8 Q How do you know whose house that is?

9 A From all the witnesses that were interviewed, they
10 stated that that was Mark McCoy's house.

11 Q And what was house that the victim was killed in --
12 not in, I'm sorry ---

13 A The house that the victim was at prior to his
14 murder ---

15 Q Correct.

16 A --- was at [REDACTED], which was the house that all
17 the witnesses stated was Mark McCoy's house.

18 MS. FANT: That's this house, Your Honor.

19 THE COURT: All right.

20 BY MS. FANT

21 Q Thank you. Now, [REDACTED]. And whose house
22 is that or who was living in that house?

23 A The aunt of Latimore Holmes was residing there and I
24 don't know who was living with her there at that time.

25 Q And is the backyard that he testified that he was in

1 depicted in there?

2 MR. JOHNSON: Leading, Your Honor, leading.

3 THE COURT: Rephrase the question.

4 BY MS. FANT:

5 Q What can you tell us about the house from what you
6 see there?

7 A This is a vacant lot here on Edward Street on the
8 road where the altercation ---

9 THE COURT: Project it this way, please, Ms. Rabon.

10 A This is the vacant lot where the altercation began
11 and it backs right up to the backyard of [REDACTED]
12 [REDACTED], which is where the Latimore home was at.

13 Q [REDACTED] and whose house was that?

14 A That's the Wilson residence and that is where Vera
15 Marshall, she was sitting on the front stoop right there
16 on the corner. You see the corner of Edward Street and
17 Ken Lane where the actual shooting took place. And that
18 residence right there is where Marshal was seen.

19 Q And [REDACTED] and who lives in that house or
20 lived in that house at the time?

21 A Mr. McConico ---

22 COURT REPORTER: I'm sorry I didn't hear that.

23 A Mr. McConico, who testified previously. His wife,
24 Laura McConico as well as Laura's son, Airius.

25 Q And finally, just point to the place where the victim

1 was found.

2 A I can't put it under the tree. That's right there
3 under the tree.

4 Q And could you describe the area for us just what's in
5 that area?

6 A As far as the oak tree?

7 Q Yeah.

8 A This is -- you can see the tree. Mr. McConico said
9 that the leaves ---

10 THE COURT: Other side, please.

11 A It's a large oak tree right here, that's the tree
12 Mr. McConico was referring to the leaves blowing in his
13 yard. That's his yard right there. The victim, when the
14 incident happened, he ran toward the house where Vera
15 Marshall was. He ran and just fell right there at the oak
16 tree, right there at the corner.

17 Q Thank you. Now, Detective Rabon, I want to show you
18 some photos that have already been entered into evidence.
19 This would be State's Exhibits 8, 9 and 10. I would ask
20 you to step down, I guess, for just a little bit and talk
21 loud, please, just to hold the photos up and describe what
22 is in them.

23 A Okay. This is the corner of Kelly Street and
24 Edwards. That's the large oak tree that I was just
25 referring to and that's the stoop where Vera Marshall was

1 when the incident happened and this is the area where the
2 victim fell after he was shot.

3 Q State's 9?

4 A It's basically the same thing just a larger view of
5 the same area.

6 Q And State's 10?

7 A This is from the opposite direction looking toward --
8 that's where the oak tree is and that's the stoop where
9 Vera Marshall was sitting. And this is Edwards Street,
10 the other side of the street ---

11 COURT REPORTER: I didn't hear the last part.

12 A The other side of the street would be Mr. McConico's
13 residence.

14 Q And can you see the vacant lot in that photo?

15 A You can.

16 Q Where is it?

17 A It's right here, this is the vacant lot. This was
18 shown on the map earlier, the vacant lot that was right
19 beside Mr. McConico's residence.

20 (WHEREUPON, State's Exhibit Nos. 19, 20, 21, and 22
21 were marked for identification.)

22 BY MS. FANT:

23 Q Detective Rabon, I'll show you what's been marked for
24 identification as State's Exhibits 19, 20, 21 and 22. Do
25 you recognize these items?

1 A Yes.

2 Q Do they fairly and accurately depict what is shown in
3 them on the day in question?

4 A They do, that's right.

5 MS. FANT: Your Honor, at this time, I would offer
6 State's 19 through 22 into evidence.

7 THE COURT: Any objection?

8 MR. JOHNSON: No objection, Your Honor.

9 MS. FANT: I think he said no objection.

10 THE COURT: All right. Be admitted into evidence
11 without objection.

12 (WHEREUPON, State's Exhibit Nos. 19-22 was admitted
13 into evidence.)

14 BY MS. FANT:

15 Q Could you just start with the first one, and if you
16 don't mind stepping down again, show the jury what those
17 photographs depict?

18 A Again, as the last photograph, this is looking ---

19 THE COURT: You have to speak up. I can't hear you
20 and she can't hear you. If you have to step back some,
21 you may even have to step back this way or get in front of
22 that microphone over there and do it.

23 A This is the same view as that last photograph ---

24 THE COURT: You can keep your back to us and face the
25 jury as long as you talk in that microphone because we can

1 hear you.

2 A The (inaudible) would be this part of the area. And
3 that's looking in this direction, that's the large oak
4 tree that I referred to earlier. And that's the vacant
5 lot where Vera Marshall was sitting here and observed the
6 altercation take place. And then when the victim was shot
7 and ran and fell ---

8 MR. JOHNSON: Objection, Your Honor. Objection, she
9 has no firsthand knowledge of that.

10 THE COURT: All right. Lay the foundation, Ms. Fant,
11 just rather than just to allow her to narratively state
12 that.

13 BY MS. FANT:

14 Q Just indicate which ---

15 A What happened?

16 Q What they are, not what happened.

17 MR. JOHNSON: Your Honor, I continue my objection,
18 Your Honor.

19 THE COURT: What's your objection?

20 MR. JOHNSON: That's not a foundation. She can't
21 buttress other witnesses about what they told her. She
22 does not have firsthand knowledge, she was not there.

23 THE COURT: What was the question?

24 MS. FANT: My question?

25 THE COURT: Yes.

1 MS. FANT: I just ask her not to say what other
2 people had testified to, but just to say what they show in
3 the photo, what is shown there that she knows was there?

4 THE COURT: What's wrong with that, Mr. Johnson?

5 MR. JOHNSON: Your Honor, it's not been exploratory.
6 All she can say is about what's in the photo, not where he
7 ran or where the body was.

8 THE COURT: She's the investigating officer, she can
9 testify as to those matters and decide -- they're not
10 offered for the truth of the matter -- well, they may be
11 being offered for the truth of the matter.

12 Ask her specific questions about the photos and
13 that's what it's going to require and have to rule on each
14 question.

15 BY MS. FANT:

16 Q On State's 19, could you just tell us physically what
17 that picture shows?

18 A It shows a vacant lot and ---

19 Q Can you show the jury while you're talking?

20 A A vacant lot and that's the oak tree that I referred
21 to earlier. And this over here where this chair is,
22 that's the residence where Vera Marshall was sitting.

23 Q And on State's 20?

24 A It's a closer view of the same view that I was just
25 referring to. That's, again, a vacant lot and that's the

1 oak tree. And on this side of the road would be the
2 residence of Wilsons where Ms. Marshall was sitting.

3 Q Photo 21?

4 A That's just a closer view, the oak tree would be over
5 here on the right and that's the vacant lot and that's
6 going toward (inaudible) Street (inaudible) Street.

7 Q And 22?

8 A This is mainly just showing the oak tree, which this
9 right here would be Edwards Street, that's Kelly Lane and
10 that's the oak tree there.

11 MS. FANT: Permission to publish those photos, Your
12 Honor?

13 THE COURT: Yeah, you can publish them.

14 BY MS. FANT

15 Q Detective Rabon, could you approximate how many
16 homicide shootings and assaults ---

17 MR. JOHNSON: Objection, Your Honor. Objection.

18 THE COURT: She hasn't finished the question yet.

19 Ask the question.

20 MR. JOHNSON: But, Your Honor, the question in itself
21 is going to be ---

22 THE COURT: No, sir, the question is not evidence.

23 You can object to the question.

24 Ask the question and don't answer it until I've ruled
25 on it.

1 MS. FANT: I was just going to ask her ---

2 THE COURT: No, ask the question and I'll see if he
3 has an objection to it.

4 BY MS. FANT:

5 Q Approximately how many homicides that involved a gun
6 or a shooting and assaults involving a shooting have you
7 investigated?

8 THE COURT: All right. That objection will be
9 sustained.

10 MR. JOHNSON: Your Honor, may I reserve a motion for
11 that later on that?

12 THE COURT: Yes, sir.

13 MR. JOHNSON: For a mistrial, Your Honor.

14 THE COURT: You're reserving your motion,
15 Mr. Johnson.

16 MR. JOHNSON: Yes, sir.

17 MS. FANT: Your Honor, may we approach briefly?

18 THE COURT: Yes, sir.

19 (WHEREUPON, a bench conference was held in the
20 presence of the jury, but out of the hearing of the
21 jury.)

22 (WHEREUPON, Court's Exhibit No. 2 was marked for the
23 record.)

24 THE COURT: All right, ladies and gentlemen of the
25 jury, the parties have entered into a stipulation

1 regarding the admissibility of evidence. I am going to
2 publish for you now the stipulation that they have agreed
3 to. What this mean is that the testimony -- or the
4 evidence in this case, not testimony, but the evidence in
5 this case will come in by agreement of counsel. What
6 weight you are to give to that is entirely up to you. And
7 the fact that I have admitted it as a stipulation does not
8 mean that you must believe it or not believe it. That is
9 a matter that is solely up to you. This is simply a
10 stipulation as to admissibility.

11 But the parties have agreed and stipulate that Dr.
12 Inez Yacoub performed a post-mortem autopsy on Donald
13 Tyrone Pettis on June 9th, 2004, at the Newberry
14 Pathological Associates in Newberry, South Carolina.
15 Secondly, that Dr. Yacoub is now the chief medical
16 examiner for the State of Oklahoma in Oklahoma City and is
17 unavailable for trial due to a scheduling conflict. That
18 report FA04344 by Dr. Yacoub reflects her autopsy protocol
19 and conclusions and is therefore admitted into evidence by
20 consent. That Dustin W. Smith is a qualified forensic
21 toxicologist employed by the South Carolina Law
22 Enforcement Division commonly referred to as SLED. And
23 that SLED forensic laboratory report number L0405850 dated
24 September the 13th, 2004, accurately reflects findings
25 from a drug and alcohol screen of Donald Tyrone Pettis'

1 blood and is therefore admitted into evidence by consent.

2 So what they have consented to is the admission into
3 evidence of Dr. Yacoub's autopsy report and Dustin W.
4 Smith's lab report regarding a drug and alcohol screen.
5 And those will be admitted into evidence without
6 objection.

7 All right. Ms. Fant.

8 And as I said, the fact that the Court has admitted
9 these into evidence, the Court expresses no opinion as to
10 the weight that is to be given to them, that is totally up
11 to you.

12 All right, Ms. Fant, you may proceed.

13 (WHEREUPON, State's Exhibit Nos. 23-24 was admitted
14 into evidence.)

15 BY MS. FANT:

16 Q Detective Rabon, I'll hand up the autopsy report done
17 by Dr. Yacoub on the victim Tyrone Pettis. I'm not going
18 to have you read the whole thing, it's quite extensive,
19 but on the first -- the second page under autopsy
20 protocol, the last paragraph there, could you just read
21 the first two sentences of that?

22 A Examination of the lower extremities reveals multiple
23 scars on the front of the right thigh and leg. A
24 red-brown abrasion is observed on the left knee.

25 Q Okay. And now skip to the next page, at the top

1 where it says evidence of injury, read that and the first
2 sentence after that?

3 A The evidence of injury single fatal perforated
4 gunshot wound to the back. The gunshot entrance wound
5 measure .25 inches in diameter, appears round and does not
6 have black charred edges or gun powder tattooing or
7 stippling.

8 Q And then finally, on the last page of the report,
9 just the last paragraph.

10 A The ---

11 Q There should be another page.

12 A I'm sorry, excuse me. It is therefore my opinion
13 based on the history of this report and the autopsy
14 findings that the probable cause of death of Mr. Donald
15 Pettis, Jr., is exsanguination due to the perforation on
16 the liver due to a gunshot wound to the back. It is also
17 my opinion based on the history of this report and the
18 autopsy findings that the manner of death is best
19 classified as a homicide.

20 BY MS. FANT:

21 Q Detective Rabon, I'll show you what's been marked for
22 identification as State's Exhibit 3 -- excuse me, 2 -- 1,
23 2 and 3. Do you recognize those?

24 A Yes, I do.

25 Q And do they fairly and accurately depict what it

1 purports to show?

2 A Yes.

3 MS. FANT: Your Honor, I would offer State's Exhibits
4 1 through 3 into evidence.

5 THE COURT: Any objection?

6 MR. JOHNSON: Yes, sir, Your Honor.

7 THE COURT: All right. Let me see them.

8 Well, that's your continuing objection. The Court
9 has already ruled on these. Again, the Court will admit
10 them into evidence over the objection of the defendant and
11 the record is protected to that effect.

12 You may proceed.

13 (WHEREUPON, State's Exhibit Nos. 1, 2 and 3 was
14 admitted into evidence.)

15 BY MS. FANT:

16 Q State's Exhibit 1, could you just tell us what's
17 depicted in that photograph?

18 A It's showing the gunshot entrance wound to the back
19 of Mr. Pettis.

20 MS. FANT: Permission to publish these, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. FANT:

23 Q And State's Exhibit 2?

24 A It's a closer view of the entrance wound to the back.

25 Q And finally, State's Exhibit 3?

1 A It's the exit wound on the victim's chest area.

2 Q Detective Rabon, regarding the map that's been
3 entered as State's 18, I believe, and your indications on
4 where the various houses involved were located, are those
5 in Sumter County?

6 A Yes, they are.

7 Q And regarding the testimony that we had heard about
8 the phone call and the break-in at Ivan Sander's store,
9 did you ever arrest anyone for that crime?

10 A Yes, we did.

11 Q And who was that?

12 A Knowledge Supreme Scientific (sic).

13 MS. FANT: Please answer any questions Mr. Johnson
14 may have for you.

15 THE COURT: Cross-examination, Mr. Johnson.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q Lieutenant Rabon, referring to State's Exhibit 18 ---

19 MR. JOHNSON: Your Honor, may I move this in front of
20 the jury, please?

21 THE COURT: Yes, sir, except that ---

22 MR. JOHNSON: Would you step down, Ms. Rabon?

23 THE COURT: You have to make sure that she can be
24 heard and that you can be heard.

25 BY MR. JOHNSON:

1 Q Now, Lieutenant Rabon, to orient the jury, you show
2 here on Exhibit No. 18, this is Wright Street; is that not
3 correct?

4 A That's right.

5 Q Now, is that running east and west or north and
6 south?

7 A That would be north and south.

8 Q North and south. So this is east and west?

9 A Yes, sir.

10 Q And so parallel to Wright Street is Cell Street; is
11 not correct?

12 A Yes, sir.

13 Q And the next street over is Blanding Street?

14 A That's right.

15 Q And the next street over is Purdy Street?

16 A Edwards.

17 Q Edwards? Oh, it's up here. Edwards Street is this
18 street here and it intersects with Mark; is that correct?

19 A Uh-huh.

20 Q And the next one over is Purdy and shown here is
21 Sampson and the last one, what's that?

22 A Walker.

23 Q Walker Street. Okay. And according to your
24 knowledge you working in Sumter County, you have
25 identified that [REDACTED] Street is whose house?

1 A The aunt of Latimore Holmes.

2 COURT REPORTER: Could you speak up please.

3 BY MR. JOHNSON:

4 Q What is her name?

5 A I don't have a name right now, I'm sure someone use
6 that name. It's where he was staying with her at the
7 time.

8 Q All right. You say he was staying with her. What
9 proof do you have he was staying with her?

10 A He stated he was staying with her.

11 Q So solely based on the fact that he said that you're
12 saying that he stayed with her?

13 A I just know his relatives live there. He stated he
14 was staying with her.

15 Q He said he was there. Did anyone go and talk with
16 his aunt to confirm that he live there?

17 A I didn't do that.

18 Q Did any detective or any police officer do that?

19 A Not that I'm not aware.

20 Q Did anyone go to the house to ascertain if he had any
21 clothing in the house?

22 A (Inaudible).

23 COURT REPORTER: I'm sorry, I didn't hear that.

24 A I'm just trying to understand ---

25 Q If it's the home -- you're saying that the Holmes

1 live there ---

2 THE COURT: Don't talk over one another.

3 Q That the Holmes live at [REDACTED] [REDACTED]?

4 A See, he came forward several years later, so I don't
5 know ---

6 THE COURT: Ma'am, just answer the question.

7 BY MR. JOHNSON:

8 Q This is my question, my question is whenever he came
9 forward, did anybody go and conduct an investigation to
10 confirm that he had ever lived at [REDACTED]?

11 A No, sir, not that I'm aware of.

12 Q Did anyone ever confirm that on June 8th, 2004, that
13 he lived at that address?

14 A Just that his relatives lives there.

15 Q Name one of his relatives?

16 A Minnie Holmes. ---

17 COURT REPORTER: I'm sorry, I didn't hear that.

18 A Minnie Holmes was the last that live ---

19 Q They live in that neighborhood?

20 A Ivan Sanders.

21 Q What I'm trying to get at, Lieutenant Rabon, is the
22 manner of your investigation and confirmation of whether
23 Latimore stayed at that house at any time. And just tell
24 the jury who you interviewed with, what proof you have
25 that he lived there?

1 A He stated he live there, his relatives live there,
2 his relatives live in that neighborhood.

3 Q He known to live in the neighborhood?

4 A Yes, sir.

5 Q So you relied on what he said?

6 A And he's known to live in the neighborhood.

7 Q Now, I've seen a lot of pictures and -- on Edwards
8 Street, you will agree that there is a field in this area?

9 A That's right.

10 Q Did anyone take a picture of that field -- I see it
11 on the side of lot of these picture, did anyone actually
12 take a picture?

13 A No, they did not ---

14 COURT REPORTER: I'm sorry I didn't hear the last
15 part.

16 A I was looking at those same photographs. There's not
17 one of that view of this field.

18 Q Do you know if there's a path that exist from Edwards
19 Street onto Barkley Street going through that field?

20 A I believe you can see it in the area.

21 Q All right. Show it to me, please.

22 A (Witness complied.)

23 Q And where does it end up? Does it end up on Blanding
24 or does it end up on Barkley?

25 THE COURT: Mr. Johnson, hold on. I'm going to have

1 Mr. Herring put her on a portable mic.

2 BY MR. JOHNSON:

3 Q Does that path of the field which is shown on State's
4 Exhibit 18, does it end up on Barkley Street or does it
5 end up on Blanding Street or do you know?

6 A I mean, it's -- the path is clearly here. Now, I
7 mean, there's different ways to break through. You can
8 end up that way or on Barkley.

9 Q You can end up on Barkley ---

10 A It's not like it's a specified path that you can only
11 walk this way up here. It's definitely this is the common
12 walkway.

13 Q Now, when you are arrived on June 8th, 2008, where
14 did you go?

15 A I didn't respond to the scene.

16 Q You didn't go to the scene?

17 A No, sir.

18 Q Who was the crime scene investigator?

19 A The detective that was assigned this case was Mike
20 Morris at the time. He's no longer at our department, but
21 the whole investigation services, we work cases together.

22 Q Did he go to the scene that day, on June 8th, 2000?

23 A I believe he responded to the scene, but he may have
24 been at the police department interviewing some of the
25 witnesses, which is a number of tasks when an incident

1 like this occurs and everybody's doing different things.

2 Q Okay. Was anyone arrested on June 8th, 2004?

3 A Yes.

4 Q Who was arrested?

5 A Robyn Dukes.

6 Q Robyn Dukes was arrested on June 8, 2004?

7 A That's right.

8 Q For what reason?

9 A He was, according to witnesses, a co-defendant.

10 Q And what was he charged with?

11 A The same thing as Mark McCoy.

12 Q And what is that?

13 A Murder.

14 Q Was Mark McCoy charged with murder on June 8th, 2004?

15 A No, not at that time.

16 Q But Robyn Dukes was?

17 A Yes.

18 Q And was a warrant issued for Robyn Dukes on June 8th,
19 2004?

20 A He was arrested and a warrant was served on him while
21 he was incarcerated.

22 Q At the time that the warrant was served on Robyn
23 Dukes in 2008, for the murder of Tyrone Pettis, is it not
24 true that the only person that was charged was Robyn
25 Dukes?

1 A The only person that was charged at that time was a
2 person not (inaudible) and that was Robyn Dukes. He was
3 the only one located at that time.

4 Q Okay. Did -- was Mark McCoy -- the murder happened
5 in June, was he charged in July, for example?

6 A No, sir.

7 Q How about August?

8 A No, sir.

9 Q How about September?

10 A No.

11 Q So all this time, Robyn Dukes was charged with
12 murder, exclusively, the only one; isn't that true,
13 Captain?

14 A He was charged -- I'm a lieutenant, but I appreciate
15 that. He was charged as a co-defendant being with the
16 shooter. He was not the shooter, but he was charged
17 because he was with the shooter.

18 Q And that's what the warrant said?

19 A Co-defendant.

20 Q Co-defendant?

21 A He was charged -- he, along with another.

22 Q Okay. He was charged with murder?

23 A Yes, sir.

24 Q All right. Has he been prosecuted for the murder?

25 A I believe it is still pending.

1 A That's true.

2 Q And at that time, the pathologist that performed the
3 autopsy, he now works in Oklahoma; isn't that right?

4 A It's a lady, I believe, she ---

5 Q A lady?

6 A Yes, sir. She works in Oklahoma.

7 Q All right. And once an autopsy is performed, a
8 written report is given to law enforcement; isn't that
9 right?

10 A That's right.

11 Q And the written report, which the jury will have and
12 won't go over the entire report, describes the clothing,
13 external examination, internal organs, cardiovascular
14 system. It's a very thorough report; isn't it?

15 A It is.

16 Q And on the last page of the report, it gives a case
17 summary of the findings by the pathologist?

18 A That's right.

19 Q And a pathologist is -- and I think they call them
20 forensic pathologist. They are persons who perform
21 autopsies in connection with criminal investigations;
22 isn't that right?

23 A That's right.

24 Q Now, I call your attention to two things very
25 briefly. The first thing is, in the case summary, is it

1 not true that it says that no recent blunt trauma could
2 otherwise be identified?

3 A That's right.

4 Q All right. And it also says toxicological evaluation
5 at this time is pending. If a positive result is
6 submitted to the prosector -- and that's a synonym for the
7 pathologist; isn't it?

8 A That's right.

9 Q An amended opinion may be issued. Do you know ---

10 MS. FANT: May I object, please?

11 THE COURT: Yes, ma'am.

12 MS. FANT: May we approach?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: Proceed, Mr. Johnson.

18 BY MR. JOHNSON:

19 Q Do you know what a toxicology evaluation is?

20 A I do.

21 Q What is it?

22 A It's where they test the blood to determine the
23 alcohol level or drugs in the system.

24 Q Okay. Was one performed on Tyrone Pettis?

25 A It's standard protocol. I don't know what the

1 Q It's still pending?

2 A Yes, sir.

3 Q So 2004, five, six, seven, eight, it's still pending?

4 A Yes.

5 Q Thank you.

6 THE COURT: Have a seat back up there, Ms. Rabon.

7 BY MR. JOHNSON:

8 Q Now, Captain Rabon -- I promoted you again.

9 A Thank you, I appreciate that.

10 Q Lieutenant, State's Exhibit 5, the purpose of this
11 photograph is to show that that was the last time that
12 Tyrone Pettis was alive?

13 A Yes, sir, that we could prove that he was alive.

14 Q Okay. Now, referring to State's Exhibit No. 23, the
15 autopsy report. The autopsy report was performed --
16 autopsy was performed in Newberry; is that correct?

17 A Yes, sir.

18 Q And that's the -- the County of Sumter has a contract
19 with the pathologist up in Newberry to perform autopsies?

20 A That's right.

21 Q Isn't that correct?

22 A That's correct.

23 Q And so the bodies are transported to Newberry County
24 where the post-mortem or the autopsy is performed; isn't
25 that true?

1 results were.

2 Q You do not know what the results were?

3 A No.

4 Q And do you know if there ever was an amended opinion
5 after this was done by the pathologist?

6 A I'm not sure.

7 Q Okay.

8 MR. JOHNSON: Thank you very much.

9 THE COURT: Redirect?

10 MS. FANT: No, Your Honor.

11 THE COURT: Thank you, Lieutenant. You may step
12 done.

13 (WHEREUPON, the witness leaves the witness stand.)

14 THE COURT: Ms. Fant, you may call your next witness.

15 MS. FANT: Your Honor, at this time, the State would
16 call Jamie Heyward.

17 THE COURT: Come around please.

18 THE CLERK: Mr. Heyward, place your left hand on the
19 Bible, raise your right hand. State your name please,
20 sir.

21 THE WITNESS: Jammia Heyward.

22 THE CLERK: You solemnly swear or affirm the
23 testimony you give this court to be the truth, the whole
24 truth, and nothing but the truth so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Have a seat up here please. State your
2 full name and spell your last name, please.

3 THE WITNESS: Jammia Darrel (sic) Heyward,
4 H-E-Y-W-A-R-D.

5 DIRECT EXAMINATION

6 BY MS. FANT:

7 Q Mr. Heyward, I guess I mispronounced your name. You
8 pronounce it Jammia?

9 A Yes, ma'am.

10 Q Do some people call you Jamie?

11 A Yes, ma'am.

12 Q Where are you from?

13 A Sumter.

14 Q And how long have you known the defendant?

15 A Since probably '93.

16 Q Have you ever seen him wearing camouflage before?

17 A Yes.

18 Q On June the 8th of 2004, the day that the victim in
19 this case was killed, where were you?

20 A On Damon Street.

21 Q Is that in the area known as the west side of Sumter?

22 A Yes, ma'am.

23 Q Are you familiar with that area?

24 A Yes, ma'am, I grew up there.

25 Q Was -- did you -- do you recall seeing the defendant

1 at some point after Tyrone Pettis was killed?

2 A Couple of days later.

3 Q Okay. And where was that that you saw him?

4 A He met Stacey Brunson, we was at my mother's house.

5 Q And did you have an opportunity to talk to him at
6 that time?

7 A Yes, ma'am.

8 Q And what did he say when you were talking to him?

9 A I asked him -- he was just riding around and he came
10 to my mother's house. And I asked him how could he just
11 kill somebody and ride around like that?

12 Q And what did he say?

13 A Fuck that nigga.

14 Q Did he ask you anything or tell you anything about
15 the police being after him?

16 A No, not at that -- no.

17 Q At some time in the future or on that day, did he
18 indicate something about getting off the streets?

19 A Oh, he did say he know he was going to jail. They
20 got to get him off the streets.

21 Q And why did he say that?

22 A Because they know he killed him.

23 MR. JOHNSON: Objection, Your Honor ---

24 THE COURT: Wait a minute.

25 MR. JOHNSON: --- he can't speak for him.

1 THE COURT: He can testify as to what he was told,
2 but he can't give his subjective opinions as to why.

3 BY MS. FANT:

4 Q What did he say to you?

5 A They got to get him off the street.

6 Q And what did he say about ---

7 A They got to get him off the street because they know
8 he killed that nigga.

9 MS. FANT: Please answer any questions Mr. Johnson
10 may have for you.

11 THE COURT: Cross-examination, Mr. Johnson?

12 CROSS-EXAMINATION

13 Q Mr. Heyward?

14 A Yes, sir.

15 Q My name is I. S. Leevy Johnson and I represent Mark
16 McCoy. Tell the jury when you told the police what you're
17 telling us here today?

18 A What do you mean?

19 Q How did you know to be here today?

20 A They came and questioned me.

21 Q When did they come and question you?

22 A I got locked up by the F.B.I.

23 Q And when did they question you?

24 A Day or two later.

25 Q And give us a date that you were questioned, was that

1 last week?

2 A I mean, they came back to talk to me again this
3 weekend.

4 Q Who came and talked to you this weekend?

5 A The first time I ever talk to a Sumter detective was
6 this weekend.

7 Q The first time you talked with the Sumter police was
8 this weekend?

9 A Yes, sir.

10 Q And what did they come to talk to you about?

11 A Mr. McCoy.

12 Q Okay. So they didn't talk to you back in 2004?

13 A No, sir.

14 Q 2005?

15 A No, sir.

16 Q 2006?

17 A No, sir.

18 Q 2007?

19 A No, sir.

20 Q So last weekend -- when you say last weekend, you're
21 talking about last Friday or Saturday?

22 A Saturday gone.

23 Q Saturday gone, they came and talk to you?

24 A Yeah.

25 Q And when they came and talk to you, you started

1 telling them what you told us today?

2 A Yes, sir.

3 Q As you were -- as they were talking to you, as you
4 called it, was anybody writing anything down?

5 A What you mean, taking a statement something like
6 that?

7 Q Yeah, taking a statement?

8 A Yes, sir.

9 Q Who was it taking a statement?

10 A A.T.F. agent.

11 Q The A.T.F. agent. You remember his name?

12 A Richard, I don't know his last name.

13 Q Richard. And who was there from the Sumter ---

14 A I don't know her name.

15 Q You don't know her name, but it was a woman?

16 A Yes, sir.

17 Q And so last -- about what time of day was that?

18 A Five o'clock in afternoon, something like that.

19 Q Five o'clock in the afternoon. So they came to you
20 five o'clock last Saturday afternoon to interview you?

21 A Uh-huh.

22 Q And while they were interviewing you, they were
23 writing down what you were saying; is that correct?

24 A Yes, sir.

25 Q Were -- did you ask them to come see you, did you

1 write them and ---

2 A I was arrested previously by the F.B.I. and I had
3 already -- you know what I'm saying, basically, already
4 talked -- we already talked about that, so I guess he was
5 just coming back to finalize.

6 Q When was that?

7 A When I was arrested by the F.B.I.

8 Q When was that?

9 A I was arrested August the 6th, and it was a couple
10 days later that I was -- I don't know, just when I gave my
11 statement to the F.B.I. I couldn't tell you the exact
12 date. I got arrested August the 6th or August 7th.

13 Q Of what year?

14 A Of 2008, this year.

15 Q So last month?

16 A Yeah.

17 Q So last month?

18 A Yeah.

19 Q This is September?

20 A Yeah.

21 Q So last month. So last month is when you started
22 telling law enforcement?

23 A Yes, sir.

24 Q Was that just some coincidence?

25 A You have to ask them that.

1 Q And so -- they weren't investigating you for the
2 murder, were they?

3 A No, sir, not to my knowledge.

4 Q And so you just volunteered this information that
5 you're giving today on McCoy?

6 A I was asked about Mr. McCoy.

7 Q Oh, you were asked?

8 A Yes.

9 Q You were asked about McCoy?

10 A Yeah.

11 Q Isn't it strange you're under investigation for
12 something else and then they asking you about McCoy?

13 A You got to ask them that, sir.

14 Q I got to ask them that?

15 A Yeah, I don't know. You got to ask them why they
16 asked me about it.

17 Q Why would they ask you about McCoy, cause you -- why
18 would they ask you?

19 A You have to ask them that.

20 Q Okay. Do you have any camouflage clothing?

21 A Now?

22 Q At any time?

23 A In my life?

24 Q Yes, sir.

25 A Probably have.

1 Q Probably have. What do you do with your camouflage
2 clothing?

3 A I hunt.

4 Q Hump, what that mean?

5 A Hunt, H-U-N-T, hunt.

6 Q You hunt?

7 A Yes, sir.

8 Q What do you hunt?

9 A Deer.

10 Q You hunt deer?

11 A Yes, sir.

12 Q And so you have camouflage clothing for hunting; is
13 that correct?

14 A Yes, sir.

15 Q And you've been hunting for a long time?

16 A Yes, sir.

17 Q And you had camouflage clothing back in 2004?

18 A Couldn't answer that.

19 Q Why can't you?

20 A Because I don't know.

21 Q If you don't know, who would know?

22 A Nobody. I mean, it can't be answered honestly. I
23 mean, I can't remember whether I had camouflage in 2004, I
24 don't know.

25 Q But you have had camouflage clothing ---

1 A Yes.

2 Q --- over the years?

3 A Yes, sir.

4 Q All right, sir. And so last Saturday, out of the
5 blue, the police show up to you to ask you about Mark
6 McCoy; is that right?

7 A Yes, sir.

8 Q Okay.

9 MR. JOHNSON: Thank you so much.

10 Indulge me just one minute.

11 THE COURT: All right, sir.

12 (WHEREUPON, a pause in the proceedings.)

13 BY MR. JOHNSON:

14 Q Is your name Heyward or Hazel?

15 A Heyward.

16 Q And you were born [REDACTED] [REDACTED] [REDACTED]?

17 A Yes, sir.

18 Q And your social security number is [REDACTED]

19 A Excuse me?

20 Q Is your social security number [REDACTED] ---

21 A No, sir.

22 Q What is your social security number, is it [REDACTED] ---

23 MS. FANT: Your Honor, objection to relevance.

24 THE COURT: Yes, sir, what is the relevance?

25 MR. JOHNSON: Trying to identify him because he's got

1 three different social security numbers.

2 MS. FANT: He's identified himself.

3 THE COURT: Ask him the last four, we don't need to
4 get the whole social security number on the record.

5 BY MR. JOHNSON:

6 Q Is the last four numbers [REDACTED]?

7 A No, sir.

8 Q Is the last four numbers [REDACTED]?

9 A No.

10 Q Is your last four numbers [REDACTED]?

11 A Yes, sir.

12 Q Have you ever used any other social security number?

13 A No, sir.

14 Q Were you arrested in 2000 and charged with possession
15 of crack cocaine and convicted of it?

16 A I been convicted of possession of crack before, yeah.
17 I don't know the year. You got to look at that.

18 Q Sir?

19 A The year, you'll have to look at the paperwork. I
20 can't remember the year. But I've been convicted of
21 possession of crack.

22 Q How about in 2001, were you convicted -- were you
23 convicted in 2001 of unlawful carrying a weapon, a gun?

24 A 2001, I was incarcerated, I believe. What month?

25 Q January 25, 2001?

1 A I don't know. I'm not sure. I'm not sure.

2 Probably.

3 Q Probably?

4 A Yeah.

5 Q You don't remember being convicted of an unlawful
6 weapon?

7 A I know I was -- for the possession of crack in
8 January, I was doing time at Manning Correctional
9 Institution.

10 Q Do you have a gun at Manning Corrections?

11 A No, I didn't.

12 Q Where did you have the gun?

13 A I mean, you asking me that, I don't know.

14 Q I don't know either, that's why I'm asking?

15 MS. FANT: Your Honor, at this point, I would object.
16 He said he was probably convicted of that.

17 THE COURT: All right, cross-examination. I'll allow
18 Mr. Johnson a little leeway.

19 BY MR. JOHNSON:

20 Q Tell us about this gun that you had, what kind of gun
21 was it?

22 A I don't know. I don't remember.

23 Q You don't remember what kind of gun you had?

24 A No, sir.

25 Q Do you remember you weren't supposed to have a gun?

1 A Well, if I had a gun, I guess I remember I ain't
2 supposed to have one.

3 THE COURT: I think the rule does require for
4 impeachment purposes that if he admits to the crime that's
5 as far as it goes.

6 BY MR. JOHNSON:

7 Q Mr. Heyward, what have you been promised ---

8 A Nothing.

9 Q I hadn't finish my question.

10 A You said promised, what have I been promised. It's a
11 complete sentence, sir.

12 Q But I didn't ---

13 THE COURT: Y'all don't argue, just ask him the
14 question, Mr. Johnson.

15 BY MR. JOHNSON:

16 Q You anticipated that I was going to ask you what you
17 been promised ---

18 THE COURT: No, sir, ask him the question,
19 Mr. Johnson.

20 BY MR. JOHNSON:

21 Q What have you been promised for them to give you for
22 Christmas? Is that what you anticipated me to ask you?

23 MS. FANT: Your Honor, I would object to that
24 question.

25 THE COURT: What's the question, Mr. Johnson?

1 MR. JOHNSON: I asked him what he had been promised.
2 He knew what I was going to ask him, I ---

3 THE COURT: Wait a minute. Wait a minute. Ask the
4 question, Mr. Johnson?

5 BY MR. JOHNSON:

6 Q What you have been promised they were going to give
7 you for Christmas?

8 THE COURT: I'm going to sustain that objection.

9 BY MR. JOHNSON:

10 Q What have you been promised to testify here today?

11 A Nothing.

12 Q And so you came out here out of the goodness of your
13 heart; is that right?

14 A Yes, sir. No one made any promise to give me
15 anything.

16 Q And so it was not until from 2004, 2005, 2006, 2007,
17 you never came and told anyone what you're telling this
18 jury today; isn't that true?

19 A Yes, sir.

20 Q And so after they came to you on Saturday at five
21 o'clock, now, you're here testifying, is that what you're
22 telling this jury?

23 A Yes, sir.

24 Q And you just came here because you voluntarily came
25 here?

1 A Well, you asked me was I promised anything. No, sir,
2 I wasn't.

3 Q But why did you come?

4 A Because I'm here.

5 Q You're here, we recognize that you're here, why
6 did -- what's your purpose for being here?

7 A Cause when they came and questioned me, they asked me
8 some questions and my answers got me here.

9 Q And your answers got you here?

10 A Yeah.

11 Q And so based solely on that -- and you knew the
12 answers, according to your testimony, years ago, but you
13 never came forward; isn't that right?

14 A Yes, sir.

15 Q So after five o'clock Saturday, what changed your
16 mind?

17 A They asked the questions.

18 Q Just because they asked the questions, you changed
19 your mind?

20 A Yes, sir.

21 Q By asking questions ---

22 A Yes, sir.

23 Q --- you change your mind?

24 A Yes, sir. Yes, sir.

25 Q And so that is the reason you're here because they

1 asked you questions?

2 A Yes, sir.

3 Q Isn't it true, Mr. Heyward, that the reason you are
4 here, not they might have promised you something, but you
5 certainly are expecting something, aren't you?

6 A I would hope so. But I ain't expecting nothing and
7 nobody ain't made me no promises.

8 Q But you hope so?

9 A I would hope so.

10 Q You hope you get some ---

11 A No one made me any promises.

12 Q I know they haven't made you any promises.

13 A I have no deals with them.

14 THE COURT: Wait a minute don't talk over him.

15 BY MR. JOHNSON:

16 Q I know nobody made you any promises, but you know
17 you're expecting to get some compensation for being here;
18 isn't that true?

19 A I don't know.

20 Q You don't know, but you ---

21 A I can't answer that because I never been made any
22 promises, sir.

23 Q I know the game. I understand that.

24 A You know ---

25 THE COURT: Point made. Move on to something else.

1 MR. JOHNSON: Point made, Your Honor. Thank you.

2 REDIRECT EXAMINATION

3 BY MS. FANT:

4 Q Mr. Heyward, you're currently being held on federal
5 charges; is that correct?

6 A Yes, ma'am.

7 Q And pursuant to that, did you obtain an attorney? Do
8 you have an attorney on those charges?

9 A Yes, ma'am.

10 Q And ---

11 MR. JOHNSON: Your Honor, excuse me if I may. I
12 think we may need to have a side bar.

13 THE COURT: Yes, sir.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: I think probably, ladies and gentlemen,
18 this is a good time to go ahead -- so I can rule on this
19 evidentiary matter at the same time to go ahead and take
20 our morning recess at this time. So we will do so I will
21 allow you to go to your jury room for about 15 minutes.
22 We'll be ready to resume in a few minutes. Do not talk
23 about the case among yourselves. I will send for you very
24 shortly.

25 (WHEREUPON, the jury retire to the jury room.)

1 (WHEREUPON, State's Exhibit No. 25 was marked for
2 identification only.)

3 THE COURT: All right. Let's resolve this
4 evidentiary matter right now.

5 Go ahead, Ms. Fant, and make your proffer and let me
6 see what the problems are.

7 BY MS. FANT:

8 Q Mr. Heyward, I'll show you what's been marked for
9 identification as State's Exhibit 25. Do you recognize
10 that document?

11 A Yes, ma'am.

12 Q And what is it?

13 A My proffer agreement.

14 Q Okay. And did actually sign that agreement?

15 A Yes, ma'am.

16 Q And did all parties to it sign it?

17 A I know the agent and my lawyer was there and they
18 did, yes, ma'am.

19 MS. FANT: Thank you.

20 THE COURT: Is there any objection to this,
21 Mr. Johnson?

22 MR. JOHNSON: Yes, sir. I continue to object. It's
23 unexecuted and unsigned. There's no evidence it's been
24 filed. All we have is an unsigned proffer agreement.

25 THE COURT: All right. That objection will be

1 overruled based upon the witness' testimony provided he
2 testifies in the presence of the jury that he signed it
3 and that his lawyer signed it and that the government
4 signed it. And for whatever it's worth, it will be
5 admitted into evidence because there is no reason not to.
6 I mean, it's appropriate that it be offered. I am going
7 to admit it into evidence.

8 All right. Mr. Johnson, you -- and before we break,
9 Mr. Johnson, you indicated you had a motion that you
10 wished to make and I'll be glad to hear from you.

11 MR. JOHNSON: Your Honor, that's all right.

12 THE COURT: All right. Then that matter is not
13 pursued and we'll be in recess until 11:15.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Back on the record with regard to the
16 matter of The State vs. McCoy. Mr. McCoy is back present
17 with his counsel, Mr. Johnson, and the State is present
18 with Ms. Fant.

19 One of the things, the recess was a little longer
20 than what I wanted to take, but I wanted to give
21 Mr. Johnson the chance to talk with Mr. Bostic, who is the
22 witness that the State discloses had written a letter to
23 law enforcement and they brought him over this morning.

24 Mr. Johnson, have you had a chance to talk with
25 Mr. Bostic?

1 MR. JOHNSON: Yes, sir, Your Honor.

2 THE COURT: All right. And I realize your objection
3 and I've already ruled on that and your objection is
4 preserved. Is there anything in addition to that you'd
5 like to put on the record?

6 MR. JOHNSON: No, sir, Your Honor, not at this time.

7 THE COURT: All right. You ready to go forward, Ms.
8 Fant, with the redirect of this witness?

9 MS. FANT: Yes, Your Honor.

10 THE COURT: Isn't that where we were?

11 MS. FANT: Actually, I guess, the next witness, if we
12 could just go over his criminal history.

13 THE COURT: Who is that?

14 MS. FANT: That would be Mr. Bostic, Roland Bostic.

15 THE COURT: What is his criminal record?

16 MS. FANT: The thing that we would submit could be
17 impeached in 2004, a breach of trust with fraudulent
18 intent; in 2006, possession of a stolen vehicle and B & E
19 auto; in 2006, also, a grand larceny; and in 2006, still,
20 apparently, a strong armed robbery, two burglary seconds,
21 a grand larceny and a shoplifting; and then, finally, a
22 petty larceny in 2008.

23 THE COURT: So you would that agree all of those are
24 impeachable offenses?

25 MS. FANT: Yes, Your Honor.

1 THE COURT: Mr. Johnson, you see anything on his
2 record in addition to those that you think would be
3 impeachable?

4 MR. JOHNSON: I thought the record showed a failure
5 to stop for a blue light, I believe, and that carries a
6 sentence of a year.

7 MS. FANT: I think that -- where do you see that?

8 MR. JOHNSON: 2000.

9 MS. FANT: I'm sorry, that page is upside down. That
10 is correct, it is there.

11 THE COURT: That's within the period of time?

12 MS. FANT: Yes, Your Honor.

13 THE COURT: Within the ten years. So in addition, a
14 failure to stop for a blue light would be another
15 impeachable offense.

16 MS. FANT: Yes.

17 THE COURT: Anything else, Mr. Johnson?

18 MR. JOHNSON: Make sure we're on the same page, Your
19 Honor. Are we agree that they're two burglaries in 2006
20 and two strong armed robberies?

21 THE COURT: I made a note of breach of trust '04,
22 possession of stolen vehicle '06, grand larceny '06,
23 strong armed robbery '06, is it one or two, and two
24 burglaries and a petty larceny and a failure to stop for a
25 blue light. Is it one strong arm robbery or two?

1 MS. FANT: It's one strong arm robbery, Your Honor.
2 I think it's two burglaries and one strong arm robbery.

3 THE COURT: That's what you said, yeah. One on NCIC
4 might be the arrest and another might be the conviction.
5 A lot of times that's the way they show up. I'm not
6 saying that's the case in this particular instance.

7 All right, that establishes that.

8 Bring the jury in, Ms. Fant?

9 MS. FANT: Yes, Your Honor.

10 THE COURT: All right. Mr. Johnson?

11 MR. JOHNSON: Yes, sir.

12 THE COURT: All right. Bring the jury in, please.

13 (WHEREUPON, the jury enters the courtroom.)

14 THE COURT: Thank you, ladies and gentlemen, and
15 thank you for your patience. It seems like every time I
16 take a break or every time we finish something in the
17 afternoon or in the morning, I have more to do from a
18 standpoint of this case than I realized. And I do have to
19 do those things and they are necessary and I do them on
20 the record. I apologize again for the little longer break
21 than we wanted to, but this will make things go a little
22 bit faster.

23 We were in the process of taking the testimony of Mr.
24 Heyward and I believe the State is in redirect.

25 REDIRECT EXAMINATION CONTINUED

1 BY MS. FANT:

2 Q Mr. Heyward, I will show you what's been marked for
3 identification as State's Exhibit 25. Do you recognize
4 that document?

5 A Yes, ma'am.

6 Q And what is it?

7 A Proffer agreement.

8 Q And could you turn to the last page, does that copy
9 show any signatures on there?

10 A No, ma'am.

11 Q But did you, in fact, sign it?

12 A Yes, ma'am.

13 Q Did your attorney sign it?

14 A Yes, ma'am.

15 Q And did the government sign it?

16 A Yes, ma'am.

17 Q Okay. And based upon this proffer, were you offered
18 anything for your testimony today?

19 A No, ma'am.

20 MS. FANT: Thank you.

21 THE COURT: Is that for identification or is it
22 offered into evidence?

23 MS. FANT: For identification, I'll get it in through
24 the next.

25 THE COURT: Mr. Johnson, any questions of this

1 witness regarding this matter?

2 MR. JOHNSON: Your Honor, I will after it's
3 introduced into evidence.

4 THE COURT: She hasn't offered it into evidence.

5 MR. JOHNSON: Well, I anticipate ---

6 THE COURT: Sir? My question is any recross
7 examination of this witness?

8 MS. FANT: Your Honor, if he doesn't object to it
9 coming in because of the signature, then I will offer it.

10 MR. JOHNSON: I don't object.

11 THE COURT: All right, be admitted into evidence as
12 State's Number 25, admitted without objection.

13 It has an ID marking on it, Ms. Reed, if you would
14 take that off and mark it as State's Number 25.

15 (WHEREUPON, State's Exhibit No. 25 was admitted into
16 evidence.)

17 THE COURT: Do you have any cross-examination of this
18 witness, Mr. Johnson?

19 MR. JOHNSON: Yes, sir. What exhibit is that?

20 THE COURT: Number 25.

21 RECROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q Mr. Heyward, what is a proffer agreement?

24 A It's an agreement you sign with the F.B.I. It's just
25 me admitting my guilt in the charges I've been charged

1 with.

2 Q The only purpose of it is for you to admit your
3 guilt?

4 A I mean, as far as I know.

5 Q Well, did you read it when you signed it?

6 A Anything that I tell the F.B.I., I can't be charged
7 with as long as I tell the truth.

8 Q So if you committed other crimes after you signed
9 this proffer agreement, they can't charge you with it; is
10 that correct?

11 A I think the proffer agreement states as long as it
12 doesn't commit violent crimes and murders, stuff like you,
13 you can't be charged with it.

14 Q So after you signed this agreement, if you told them
15 that you had sold a kilo of heroin, they can't charge you
16 with it?

17 A I think that's what the agreement says.

18 Q That's the agreement. Do you consider that a
19 benefit?

20 A As far as?

21 Q As to you, is that a benefit to you?

22 A I mean, you got to answer that. It ain't no -- I
23 ain't getting nothing for it, so, I mean.

24 Q You're not getting anything for it?

25 A Not that I know of.

1 Q You mean ---

2 A I have to be charged with selling a kilo before I
3 could be getting the benefit for it.

4 Q But according to this agreement, it says that if you
5 tell them that you sold a kilo of crack cocaine after you
6 signed this paper, they can't charge you with it; isn't
7 that true?

8 A I guess so, yes, sir.

9 Q And you do not consider that a benefit that you would
10 receive not to be punished ---

11 A Well, the person has been -- I guess has been charged
12 with selling a kilo, it would be a benefit to them, but I
13 ain't been charged with selling no kilo, so, I mean, it's
14 not a benefit to me.

15 Q But under this agreement ---

16 A Basically, what you're saying if someone has been
17 charged with a kilo, yes, but I haven't been, so, I mean.

18 Q I understand you haven't been, but I'm just asking as
19 an example, under this agreement ---

20 A Yes, sir.

21 Q --- any crime that you tell them about that you've
22 committed in the past, that means you go scott free; isn't
23 that right?

24 A Yes, sir, as long as it's not murder or a violent
25 crime, I think. Killing or murder. I mean, if I kill

1 somebody, the proffer don't do me no good.

2 Q Right.

3 A That was my understanding, if I murder or anything
4 like that.

5 Q But all of these other crimes like armed robbery,
6 strong arm robbery, selling drugs, larceny, assault and
7 battery, all of those things, if you told them that, you
8 wouldn't be charge with it, you could just go scott free;
9 isn't that right?

10 A Yes, sir.

11 Q And that's benefit to you, isn't it?

12 A I mean, I don't understand what you saying. You
13 asking me am I benefited from signing that.

14 Q Yes, sir.

15 A I mean, I probably am.

16 Q You probably are?

17 A I mean, according to what they charge me with. I
18 told the truth about what I did. I ain't told the
19 truth -- I mean, I told the truth about everything that I
20 did. I admit my wrongs.

21 Q Okay. But this -- when you admitted to your wrong,
22 did they promise you that after you admitted to your wrong
23 that they were going to help reduce your sentence?

24 A No, sir.

25 Q Are you familiar with what they call sentencing

1 guidelines?

2 A No, sir.

3 Q Are you familiar with how punishment is imposed in
4 federal court?

5 A No, sir.

6 Q Your lawyer hadn't explained, nobody told you about
7 sentencing guidelines?

8 A No, sir.

9 Q No one has shown you a chart that indicates the level
10 of crimes, criminal history or what possible punishment
11 is for your crime?

12 A What do you mean?

13 Q Have they shown you ---

14 A The first day I went to court, I received a paper on
15 ---

16 Q An indictment?

17 A Yeah, an indictment, that's all I have.

18 Q And in the indictment, attached to that indictment is
19 a penalty sheet; isn't that right?

20 A Yes, sir.

21 Q And that penalty sheet tells you what the possible
22 punishments are?

23 A Yes, sir.

24 Q Isn't that right?

25 A Yes, sir.

1 Q And based on that, you signed this proffer; isn't
2 that true?

3 A Yes, sir.

4 Q And you are expecting to get some benefit from it,
5 aren't you? You're expecting to get a reduced sentence;
6 isn't that right, Mr. Heyward?

7 A I haven't been convicted of anything yet, so I
8 don't -- I mean, you trying to make me say something I
9 can't say to you, man.

10 Q I know you haven't been sentenced ---

11 A I can't answer it the way you want me to answer it.
12 I have to answer it the way I know how to answer it, which
13 is the truth.

14 Q Okay. Don't answer it the way I want you to answer
15 it, answer it the way you want answer it?

16 A You ask me did anyone promise me anything, no.

17 Q But this agreement contradicts you, doesn't it?

18 A No, the agreement state that anything I attest to
19 right there that I wouldn't be charge for. It doesn't say
20 that I'm expecting a reduced sentence.

21 Q But if you aren't charged with it, doesn't that help
22 you on your sentence?

23 A I mean, a proffer agreement is not actually what the
24 F.B.I. has against me, it's what I admit to, so in the
25 proffer agreement, I can tell them something that they

1 don't even know. It's just my admitting that, so, I'm not
2 contradicting myself here.

3 Q And if you admit to it ---

4 A I can't be charged with it.

5 Q You can't be charged with it?

6 A Yeah, as long as I'm not lying. But no one's charged
7 me with anything, I'm not contradicting myself by saying
8 that.

9 Q Referring to State's Exhibit Number 25, paragraph
10 four, do you understand what this means, the government
11 agrees that any self-incriminating statements made or
12 other information provided by you during the proffer will
13 not be used in determining the applicable sentencing
14 guideline range should client be convicted or enter into a
15 guilty plea unless there is a breach of this agreement.
16 Do you know what that means?

17 A I guess if I ain't lying to them, the agreement
18 stands. If it don't mean that, then you have to explain
19 it.

20 Q What does it mean by applicable sentencing
21 guidelines?

22 A I don't know.

23 Q So you signed that agreement and don't understand
24 what it means?

25 A Well, my lawyer told me what it meant. My lawyer

1 broke it down. He didn't say applicable. He broke it
2 down into a little simpler terms for me. I guess I don't
3 understand what applicable means.

4 Q You don't know what applicable ---

5 A My lawyer broke it down for me and told me as long as
6 I'm telling the truth I could admit to things and I
7 couldn't be charged with it basically. And I can't say
8 word for word what's what. Applicable, I don't know.

9 Q Do you know what this means, however, these
10 statements made or other information provided will be made
11 available to the court for its consideration pursuant to
12 section 18 U.S.C. section 3661? Do you understand what it
13 means that what you tell them will be told to a judge? Do
14 you understand that they're going to tell the judge what
15 you told them in order to get your sentence reduced?

16 A I guess so. If that's what you're saying, yeah.

17 Q No, not what I'm saying, do you understand that?

18 A Yes, sir.

19 Q So that's another benefit you're getting; isn't that
20 right?

21 A You hadn't named the first benefit first yet.

22 Q I beg your pardon?

23 A You said another benefit, what was the first one?

24 Q State's Exhibit Number 25 says that the client is
25 hereby informed and understands that this agreement does

1 not extend to any statements or other information
2 involving any homicides or other crimes of extreme
3 violence. Any statements made or other information
4 provided by client during the proffer regarding any
5 homicide or other extreme acts of violence may be used
6 against client in any criminal proceeding as maybe
7 undertaken by any authorities. You do not understand that
8 to be a benefit to you?

9 A I thought it meant that if I tell anything dealing
10 with murder that I can't get no benefit from that.

11 Q That's right.

12 A Killings and -- yeah, so, I mean, basically, I'm
13 thinking by this, I can't get no credit for being here.

14 Q You can't get any credit for telling about your other
15 crimes?

16 A You have to ask the F.B.I. that, the U.S. attorney.
17 I mean, it's just...

18 Q And refresh my memory because I forgotten since this
19 morning, when did you contact the police about coming to
20 court?

21 A When I contact -- I never contacted the police.

22 Q When did they contact you?

23 A Well, the first time they ever talk to me was when
24 the F.B.I. arrested me. They came and seen me Saturday.

25 Q They came to see you this past Saturday?

1 A Yes, sir.

2 Q That's what I wanted to remember.

3 MR. JOHNSON: Thank you.

4 THE COURT: Thank you, sir, you may step done.

5 (WHEREUPON, the witness leaves the witness stand.)

6 THE COURT: Ms. Fant.

7 MS. FANT: Your Honor, at this time, the State would
8 call Special Agent Richard Brown.

9 THE COURT: Come around Agent Brown.

10 THE CLERK: Place your left hand on the Bible and
11 raise your right hand. State your name please.

12 THE WITNESS: Richard Brown.

13 THE CLERK: You solemnly swear or affirm the
14 testimony you give this court to be the truth, the whole
15 truth, and nothing but the truth so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Have a seat up here, please. State your
18 full name, spell your last name, please.

19 THE WITNESS: Richard Brown, B-R-O-W-N.

20 WHEREUPON,

21 Richard Brown,

22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. FANT:

25 Q Agent Brown, could you tell us where you work,

1 please?

2 A I work with the Bureau of Alcohol, Tobacco, Firearms
3 and Explosives, also known as A.T.F., a federal agent. My
4 office is located in Columbia, South Carolina.

5 Q And how long have you work there?

6 A Little over seven years, little over ten years as a
7 federal agent.

8 Q How did you become involved in the case against
9 Jammia Heyward?

10 A He's just been the subject of -- his name came up
11 being involved with certain activities and was the subject
12 along with many others in an ongoing federal
13 investigation.

14 Q And as a result of that, did you go to interview him?

15 A Yes, ma'am.

16 Q And did you take a written statement from him that
17 day?

18 A No, ma'am.

19 Q Could you tell us what a proffer in the federal
20 system is, what the purpose of it is?

21 A I'll do my best. I'm not an attorney. I'll just
22 give you from my standpoint as an agent how we interpret
23 it and, basically, nuts and bolts, you know, make it
24 happen. It's an agreement between the government and it
25 can be a person that has already pled guilty or before

1 they have pled guilty that they cooperate with the
2 government in further investigations and they be
3 absolutely truthful. If they're not truthful, anything
4 that they told us can be used against them. And they're
5 aware of that.

6 Q Does -- let me ask you, did Jammia Heyward sign a
7 proffer agreement?

8 A Yes, ma'am.

9 Q Let me show what's been introduced as State's Exhibit
10 25. Do you recognize that?

11 A Yes, ma'am.

12 Q And what is it?

13 A This is a copy of Jammia Heyward's proffer agreement.
14 We met on August the 14th with Mr. Heyward's attorney.
15 Was myself, Special Agent Brian Jones and SLED Agent Jack
16 Rushing. And we witnessed Jammia Heyward and his attorney
17 both sign the document. I'm not sure what happened after
18 that point where -- I don't believe it has been filed with
19 the federal court yet, but it is in safekeeping and will
20 be filed.

21 Q But it is an agreement that has been agreed and met
22 between the two parties?

23 A Yes, it is a binding agreement between the government
24 and Mr. Heyward.

25 Q And does it say anywhere in that proffer that

1 Mr. Heyward will get -- has been promised anything for his
2 testimony in this trial?

3 A There are no guarantees of any break in sentence,
4 anything else like that.

5 MS. FANT: Your Honor, may we approach briefly?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held in the
8 presence of the jury, but out of the hearing of the
9 jury.)

10 THE COURT: Ladies and gentlemen of the jury, there
11 is a witness, potential witness in this case whose name
12 was not given to you at the time that I called off the
13 list of potential witnesses on Monday before we selected
14 the jury. That witness' name is Roland Bostic. In that
15 connection, I need to ask you is there any member of the
16 jury panel who is related by blood or connected by
17 marriage to Mr. Roland Bostic? If so, please indicate by
18 the raising of your hand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Is any member of the jury panel a
21 personal friend of or acquainted with Mr. Roland Bostic?
22 If so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. Thank you.

25 You may proceed, Ms. Fant.

1 MS. FANT: Thank you, Your Honor.

2 BY MS. FANT:

3 Q Agent Brown, do you know of someone named Roland
4 Bostic?

5 A I meet him on Monday.

6 Q And did you interview him at that time?

7 A Yes, ma'am, I did.

8 Q And where did that interview take place?

9 A The interview took place in the Richland County jail.

10 Q Did you take a written statement from him?

11 A No, ma'am, I did not.

12 Q And did you promise Mr. Bostic anything for his
13 testimony in this case?

14 A No, ma'am. Only that I would convey to whatever
15 Solicitor's office that he did assist us. That's all I
16 can do is just let them know that he assisted, but what
17 happens after that point is not up to me.

18 Q Did you indicate that you would -- did he indicate to
19 you that -- well, let me see how I can phrase this.

20 MS. FANT: Nothing further. Please answer any
21 questions Mr. Johnson may have.

22 THE COURT: Mr. Johnson, cross-examination.

23 CROSS-EXAMINATION

24 Q Mr. Brown, may I see your notes?

25 A Yes, sir.

1 Q I'm talking about the notes you took the day that you
2 interviewed Mr. Bostic?

3 A I have given those to Ms. Fant.

4 Q When did you give those notes to Ms. Fant?

5 A Well, it was actually -- he was interviewed on Monday
6 and I turned over that draft of that on Tuesday, but I
7 went back to interview him on Tuesday and those I provided
8 this morning.

9 Q Wait a minute, now. Let me get the sequence. What
10 Monday are you talking about?

11 A I'm sorry. Thank you. It was Monday, this last
12 Monday. Late afternoon is when we first went to speak
13 with him. And then I believe it was Tuesday that I
14 provided a draft of what we spoke on Monday, yes, that's
15 correct. And the things we talked about on Tuesday, I
16 just provided this morning.

17 Q So you talked with him the day before yesterday on
18 Monday?

19 A Yes, sir.

20 Q And you took notes the day before yesterday on
21 Monday?

22 A Yes, sir.

23 Q And you -- did you talk with Ms. Fant on Monday to
24 tell her that you had interviewed Mr. Bostic?

25 A I cannot recall with everything that's going on

1 whether I spoke with her or someone else from the police
2 department conveyed to her what we spoke about. I think
3 you said she would have been informed of what was spoken
4 of.

5 Q And so Tuesday, you gave her -- on yesterday, you
6 gave her your notes?

7 A I e-mailed her a draft of my interview. Normally,
8 what we do is we take notes and then -- my handwriting is
9 so bad, I was a history major, it's often indecipherable,
10 so I type up a very short summary of the key points.

11 Q So what time did you send her that summary on
12 yesterday?

13 A Sometime yesterday morning.

14 Q Sometime yesterday morning?

15 A I mean, very late morning.

16 Q Late morning?

17 A Yes, sir.

18 Q All right. So there's an interview Monday, call
19 Monday, notes typed up Tuesday and sent to Ms. Fant on
20 Tuesday. And we're talking about your interview with
21 Mr. Roland Bostic?

22 A Yes, sir.

23 Q All right, sir. Now, did you interview Mr. Bostic a
24 second time?

25 A Yes, sir, on Tuesday, I forgot the exact time, but it

1 was sometime Tuesday afternoon or very late morning.

2 Q So we're talking about yesterday?

3 A Yes, sir.

4 Q All right, sir. Did you type up any notes as a
5 result of that interview?

6 A Yes, sir, last night.

7 Q Last night?

8 A Yes, sir.

9 Q And when were those notes given to Ms. Fant?

10 A This morning, approximately 8:30, 9:00, whenever I
11 got here.

12 Q Okay. Prior, before this Monday, had you spoke with
13 Mr. Bostic about this case?

14 A No, sir, never heard of him before.

15 Q Never heard of him before?

16 A No, sir.

17 Q All right, sir. Now, who ask you to interview him?
18 Who ask you to interview him?

19 A I believe it was either Detective Irene Culick or
20 Angie Rabon. I'm sorry, there's so much information
21 that's been going back and forth. Probably one of the two
22 of them notified me they had received a letter late that
23 afternoon and ask me if I could run out and do the
24 interview as they were involved in this trial.

25 Q Okay. And you went and conducted the interview?

1 A Yes, sir, with another A.T.F. special agent.

2 Q All right, sir. Now, referring to State's Exhibit
3 Number 25.

4 A Yes, sir.

5 Q This proffer you said has been signed, but it just
6 hadn't been filed?

7 A Yes, sir. This is the proffer for Jamie Heyward, not
8 the interview with Mr. Bostic.

9 Q But she was asking you about what a proffer is?

10 A Yes, sir.

11 Q And in your experience, you know what a proffer is?

12 A Yes, sir.

13 Q And a proffer is a document -- that document is not
14 drafted by Mr. Heyward's lawyer, that was drafted by an
15 assistant U.S. attorney; isn't that correct?

16 A I believe so, sir, yes, sir, because it is from the
17 U.S. Department of Justice letterhead on it.

18 Q U.S. Department of Justice?

19 A Yes, sir.

20 Q And you were conducting an investigation involving
21 Mr. Heyward; isn't that true?

22 A Yes, sir.

23 Q And as a result of your investigation with
24 Mr. Heyward, that resulted in that proffer being executed;
25 isn't that true?

- 1 A Well, yes, sir, essentially.
- 2 Q Did you interview Mr. Heyward at any time?
- 3 A Prior to the proffer?
- 4 Q Yes, sir.
- 5 A No, sir.
- 6 Q You never talked with him, interviewed him?
- 7 A No, sir.
- 8 Q Okay.
- 9 A I met him first time the morning I arrested him and
10 he was taken for his federal initial appearance and I did
11 not speak with him until this proffer agreement.
- 12 Q So back in August of this year, you did not interview
13 him?
- 14 A I interviewed Mr. Heyward on the 14th, the day he
15 signed this proffer. This was reviewed with him and his
16 attorney, it was signed. And then immediately, we went
17 into the interview and there have been other interviews
18 since that point.
- 19 Q Fourteenth of what?
- 20 A August 2008.
- 21 Q Okay. Was his attorney present at that time?
- 22 A Yes, he was.
- 23 Q Okay. Now -- and so subsequent to that, you did not
24 talk to him, for example, last Saturday?
- 25 A Yes, sir, I did speak with him last Saturday.

1 Q You talked to him last Saturday?

2 A Yes, sir, this Saturday just passed.

3 Q Okay.

4 A I did not speak with Mr. Heyward in an interview
5 except for just speaking with him kind of what charges he
6 was looking at the day I arrested him, but actually no
7 interview until the day of the 14th and there have been, I
8 believe -- it was the interview on the 14th and then this
9 past Saturday that I was personally involved with. He may
10 have been interviewed other times by other agents, but...

11 Q I'm just talking about you. Where are those notes?

12 A Another federal agency has those and they have not
13 provided me yet with the report from that interview.

14 MR. JOHNSON: Indulge me just one minute. Thank you
15 so much, Mr. Brown.

16 THE WITNESS: Thank you, Mr. Johnson.

17 THE COURT: Redirect?

18 MS. FANT: Nothing further, Your Honor.

19 THE COURT: You may step down.

20 (WHEREUPON, the witness leaves the witness stand.)

21 MR. JOHNSON: Your Honor, while the next witness is
22 coming up, can we have a side bar?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury, but out of the hearing of the

1 jury.)

2 THE COURT: We can take care of that a little bit
3 later, Mr. Johnson.

4 You may call your next witness.

5 MS. FANT: Your Honor, may Mr. Brown be excused so he
6 can remain in the courtroom?

7 THE COURT: Mr. Johnson?

8 MR. JOHNSON: No objection, Your Honor.

9 THE COURT: Excused.

10 MS. FANT: Your Honor, the State calls Roland Bostic.

11 THE COURT: All right, Mr. Bostic.

12 MS. FANT: I believe they had to go downstairs to get
13 him, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, a pause in the proceedings.)

16 THE CLERK: Place your left hand on the Bible. State
17 your name please.

18 THE WITNESS: Roland Bostic.

19 THE CLERK: You solemnly swear or affirm the
20 testimony you give this court to be the truth, the whole
21 truth, and nothing but the truth so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Have a seat up here, please, sir. State
24 your full name, spell your last name, please, sir.

25 THE WITNESS: Roland Bostic, B-O-S-T-I-C.

1 WHEREUPON,

2 Roland Bostic,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. FANT:

6 Q Mr. Bostic, can you tell us where you're from,
7 please?

8 A I'm from Richland County.

9 Q And where are you staying currently?

10 A In the detention center, Alvin S. Glenn.

11 Q And how long have you been there?

12 A For seven months.

13 Q Do you know the defendant, Mark McCoy?

14 A I know him from jail.

15 Q So how long have you known him?

16 A For about approximately four months.

17 Q Did you know anything about this case before you met
18 Mr. McCoy?

19 A No, ma'am.

20 Q Did you write a letter to law enforcement concerning
21 this case?

22 A Yes, ma'am.

23 (WHEREUPON, State's Exhibit No. 26 was marked for
24 identification only.)

25 Q Can you look at what's been marked identification

1 State's Exhibit 26? Do you recognize that?

2 A Yes, ma'am.

3 Q How do you recognize it?

4 A Because it's mine.

5 MS. FANT: Your Honor, at this point, I would offer
6 State's 26 into evidence.

7 MR. JOHNSON: No objection, Your Honor.

8 THE COURT: Admitted into evidence without objection.

9 (WHEREUPON, State's Exhibit No. 26 was admitted into
10 evidence.)

11 BY MS. FANT:

12 Q Could you tell us what the postmarked date is on
13 there from the post office?

14 A September 19th.

15 Q Now, prior to you mailing that letter, had anybody
16 from law enforcement or myself or anyone in my office talk
17 to you?

18 A No, ma'am.

19 Q And were you promised anything to come to court to
20 testify today?

21 A No, ma'am.

22 Q In your time that you were in Mr. McCoy's company in
23 the jail, did he talk to you about this case?

24 A Yes, ma'am.

25 Q Did you ever overhear any of his calls from the

1 detention center?

2 A No, ma'am.

3 Q What did he tell you about the witnesses in this
4 case?

5 A You know, just, basically, nobody from the West side
6 was going to testify against him.

7 Q And why did he think that?

8 A Because that's his side of town, that's his
9 neighborhood, that's his hood.

10 Q Did he indicate that there were people that would
11 have to move if they testified?

12 MR. JOHNSON: Objection, Your Honor, that's a leading
13 question.

14 A He ---

15 THE COURT: Wait just a minute. I'm going to
16 overrule that. It's a matter that can be cleared up on
17 cross-examination. Objection overruled.

18 Go ahead. You can tell what he told you.

19 A He said that if they did testify, where they going to
20 hide them at, you know, where they going to move at. And
21 you know Sumter County was not going to give nobody no
22 money to move.

23 Q Now, did the Defendant at some point tell you why
24 this murder occurred?

25 A At the beginning, no, ma'am, but as time went on, he

1 eventually told me.

2 Q And what did he tell you about why it happened?

3 A The victim had broke into somebody's store or
4 something and stole something, something had came up
5 missing from the store.

6 Q Did he indicate that he had made a phone call to
7 someone name Ivan sanders?

8 A He didn't say no name, but he --

9 MR. JOHNSON: Object to the leading, Your Honor.

10 THE COURT: It's not necessarily leading and he's not
11 answering it as a leading question. Objection overruled.

12 Go ahead.

13 A He made a statement that he made a phone call to
14 someone, to his man, but he didn't call no name out.

15 Q Okay. And did he indicate what that person had said
16 to him?

17 A He said let that shit go, you know, leave it alone.

18 Q And what did he tell you that his reply to the person
19 on the phone was?

20 A Yeah, right, whatever.

21 Q Now, during the time that you had been in with him,
22 did he ever tell you anything about guns?

23 A No, ma'am.

24 Q And referring to the victim in this case, what did
25 the defendant say about the victim?

1 A He said the victim had broke into a store and the
2 victim was on drugs.

3 Q Did he indicate the reason for why the murder was
4 committed?

5 A I mean, basically, for breaking into the store.

6 Q What did the defendant tell you was going to have to
7 happen because of the break-in at the store?

8 A This was kind of like the nigga had to be caught,
9 that was just -- you know, just as blunt as I can put it
10 to you, that's the way he put it.

11 MS. FANT: Please answer any questions Mr. Johnson
12 may have.

13 THE COURT: Cross-examination, Mr. Johnson.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 Q Your name is Roland Bostic?

17 A Yes, sir.

18 Q And you are from Richland County, isn't that correct?

19 A Yes, sir.

20 Q And some of your family stays in the Eastover area?

21 A Yes, sir.

22 Q And some of them stay out in a section called
23 Colonial Heights?

24 A Yes, sir.

25 Q Do you know who I am?

1 A Not personally, I don't, no, sir.

2 Q But you know me by reputation?

3 A Yeah.

4 Q Okay. Mr. Bostic, in 2000, were you convicted of
5 failing stop for a blue light?

6 A 2000?

7 Q Yes, sir.

8 A Yes, sir.

9 Q In 2002, two years later, were you convicted of
10 breach of trust?

11 A Yes, sir.

12 Q In 2006, four years later, were you convicted of
13 possession of a stolen vehicle?

14 A Yes, sir.

15 Q That same year, were you convicted of grand larceny?

16 A Yes, sir.

17 Q In 2006, were you convicted of burglary?

18 A Yes, sir.

19 Q In 2006, a couple years ago, were you convicted of
20 strong armed robbery?

21 A Yes, sir.

22 Q Grand larceny?

23 A Yes, sir.

24 Q Shoplifting?

25 A Yes, sir.

1 Q Petty larceny?

2 A Yes, sir.

3 Q Would you agree with me that breach of trust,
4 larceny, shoplifting, petty larceny, all of those crimes
5 involve dishonesty?

6 A I mean, if you want call it that, I mean, I guess.

7 Q What do you call it? Isn't that an element of those
8 crimes that you're dishonest?

9 A I mean, yeah, if that's what you want to call it.

10 Q I mean, okay --

11 MS. FANT: Your Honor, I would object to him asking
12 what the elements of the crime are. He's admitted it.

13 THE COURT: Objection overruled. Ask him if he would
14 classify it as just dishonest, that's appropriate
15 cross-examination. Objection overruled.

16 BY MR. JOHNSON:

17 Q That involved some dishonesty, didn't it, Mr. Bostic?

18 A I would say so.

19 Q All right, sir. Now, Mr. Bostic, you've been in the
20 system a long time and had experience in criminal
21 activity. And you are aware that in the criminal process
22 that there's such a thing as discovery, you know what that
23 is?

24 MS. FANT: Your Honor, I would definitely object to
25 this question.

1 THE COURT: I'll overrule it. He either knows or he
2 doesn't know.

3 A Discovery as in like motion discovery or -- I mean,
4 discovery as in what?

5 Q Discovery as in getting information about a case from
6 the prosecution and giving it to the defendant?

7 A Well, he volunteered the information. I didn't never
8 ask him what he did or nothing like that.

9 THE COURT: Listen to the question.

10 BY MR. JOHNSON:

11 Q Listen to my question. Are you familiar with that
12 process?

13 A Yeah, a little.

14 Q And you are familiar with the process that when your
15 lawyer gets discovery, written material, statements, the
16 police version of what happened ---

17 A Yes, sir.

18 Q --- the lawyer gives it to the defendant?

19 A Yes, sir.

20 Q And when that is given to a defendant in a jail, it
21 is hard to secure that information from other inmates;
22 isn't that true?

23 A I mean, you can lock it in a room, back where we was
24 at had doors.

25 Q You had doors?

1 A Yeah.

2 Q But where you were, those doors -- you had individual
3 cells; isn't that right?

4 A Yes, sir.

5 Q And you were not a cellmate of Mark McCoy, isn't that
6 true?

7 A No, I wasn't.

8 Q And do you remember when Mr. McCoy accused you of
9 stealing material out of his cell?

10 A Mr. McCoy never did accuse me of stealing no material
11 out of his cell.

12 Q He never did?

13 A Never did.

14 Q Okay. And so did Mr. McCoy ever show you any of his
15 discovery, this information regarding the case?

16 A Yes, he did.

17 Q And you read the material, isn't that true?

18 A I wouldn't say read, I would more say as glanced at
19 it.

20 Q You glanced at it?

21 A But he didn't show me no words, he only showed me
22 pictures.

23 Q He showed you pictures?

24 A Yeah.

25 Q And as a result of him showing you pictures, that's

1 where you got your information from; isn't that right?

2 A I would say no and yes.

3 Q No and yes. Okay. And isn't it also true,
4 Mr. Bostic -- well, tell us this, when did these
5 conversations take place, give us a date?

6 A Like -- give you a date, I can't give you no specific
7 dates, but I can tell you like I would say leading up to
8 his trial, leading up to the process of his trial.

9 Q Okay. Now, you wrote this letter last ---

10 A Last Friday.

11 Q Last Friday. You wrote this letter last Friday?

12 A Yes, sir.

13 Q And around last Friday -- did he talk to you last
14 Thursday?

15 A Like I said, we talked everyday.

16 Q You talked everyday. And so you are claiming that on
17 last Thursday, he told you this information?

18 A Not last -- it was our conversations throughout the
19 time.

20 Q Throughout the time. Over a period of seven months?

21 A No. For a period of about three months I would say.

22 Q About three months. And so over a period of three
23 months, he gave you this information. And so last Friday,
24 you decided to write this letter to the sergeant of
25 investigation here in Sumter County; isn't that true?

1 A Yes, I did.

2 Q So for a three-month period, you didn't do anything.
3 And on the eve of this trial, on the eve of this trial,
4 you decided to write this letter; is that right?

5 A Yes, I did.

6 Q Okay. And there's no coincidence by that?

7 A There's no what now?

8 Q Coincidence. It just happened that the trial was
9 coming up this week and so you wrote the letter last
10 weekend?

11 A Yeah, it just happened that way.

12 Q Mr. Bostic, isn't it true that in the system, you
13 receive benefits from snitching on other people?

14 A Isn't it true I receive benefits from snitching on
15 other people?

16 Q Yeah, isn't it true the system -- I'm not talking
17 about -- I know they didn't promise you anything. Isn't
18 it true that a person who snitches on somebody else gets
19 some benefit from it?

20 A Oh, I don't know.

21 Q Hasn't that happened to you? You've benefited from
22 it, haven't you, in the past?

23 A Benefit from being a snitch?

24 Q Yeah, telling people about other people?

25 A I would say no. Because I always did time. I

1 wouldn't know nothing about that. I would say no.

2 Q You say no. All right. But isn't it common
3 knowledge that if you snitch on somebody else that you
4 receive some benefit from it?

5 A I mean, I can't say.

6 Q But Mr. Bostic, you've been in the system a long
7 time. You've been involved in criminal activity a long
8 time, you know that's what happens?

9 A I mean, I don't know.

10 Q You don't know that?

11 A No, I don't know that.

12 Q You never heard of that?

13 A I mean, I have heard, but knowing and hearing is two
14 different things, right or wrong?

15 Q Knowing and hearing, but down there with other
16 inmates, they make up stories about other inmates to help
17 themselves get their sentence reduced, don't they?

18 A I can't say. Listen, I can't say what the next man
19 may do.

20 Q But you will do it, too, won't you?

21 A I mean, no.

22 Q You won't do it?

23 A No.

24 Q So you felt a moral obligation to come in here today
25 to tell this jury this story?

1 A Yes.

2 Q Because you wanted to be a good citizen?

3 A Yes.

4 Q Because you had a history of being a good citizen;
5 isn't that right?

6 A It's about change.

7 Q About what?

8 A Change?

9 Q What has changed in your life?

10 A I'm changing my life around, sir.

11 Q What have you done differently?

12 A I don't know yet.

13 Q You don't know yet, do you? What you do know that
14 you have been constantly and consistently in jail for
15 committing crimes; isn't that true?

16 A It's true.

17 Q And so what has changed in your life, what have you
18 done different? That's your answer?

19 A I don't know.

20 MR. JOHNSON: I understand you don't. Just one
21 minute.

22 Thank you, Your Honor.

23 THE COURT: All right. Ms. Fant, redirect?

24 MS. FANT: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. FANT:

2 Q Mr. Bostic, have you ever been convicted of a violent
3 crime?

4 A No, ma'am.

5 Q And in your mind, is there a distinction between
6 stealing and hurting people?

7 A Yes, ma'am.

8 Q And were you promised anything at all for your
9 testimony in this case?

10 A No, I wasn't.

11 MS. FANT: Thank you.

12 THE COURT: Recross.

13 RECROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Bostic, did Mr. Brown tell you when he
16 interviewed you that people normally who testify for the
17 State get helped out?

18 A Did he tell me, no, sir.

19 Q He didn't tell you that?

20 A No, sir.

21 Q There was no discussion between you and Mr. Brown
22 that if you testify for the State that, normally, they
23 would report that to the prosecution and they would help
24 you out?

25 A No, sir.

1 MR. JOHNSON: Okay.

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 (WHEREUPON, the witness leaves the witness stand.)

5 THE COURT: Ms. Fant, you may call your next witness.

6 MS. FANT: Your Honor, at this time, the State calls
7 Stacey Brunson.

8 THE COURT: Come around, Mr. Brunson.

9 THE CLERK: Place your left hand on the Bible, raise
10 your right hand. State your name, please.

11 THE WITNESS: Stacey Brunson.

12 THE CLERK: You solemnly swear or affirm the
13 testimony you give this court to be truth, the whole
14 truth, and nothing but the truth so help you God?

15 THE WITNESS: Yes, sir.

16 THE CLERK: Have a seat up there, please, sir. State
17 your full name and spell your last name, please, sir.

18 THE WITNESS: Stacey Brunson, B-R-U-N-S-O-N.

19 THE COURT: All right. Ms. Fant.

20 WHEREUPON,

21 Stacey Brunson,

22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. FANT:

25 Q Mr. Brunson, could you tell us where you live, where

- 1 you're from?
- 2 A I'm from Sumter, South Carolina.
- 3 Q And do you know the defendant, Mark McCoy?
- 4 A Yes, ma'am.
- 5 Q How do you know him?
- 6 A How do I know him?
- 7 Q How do you know him?
- 8 A From the streets.
- 9 Q And how long have you known him?
- 10 A Since 1991.
- 11 Q Were y'all friends?
- 12 A Yeah.
- 13 Q And do you recall having a discussion with him about
- 14 the murder of Tyrone Pettis that occurred on June 8th of
- 15 2004?
- 16 A Yes, ma'am.
- 17 Q Where did that discussion take place?
- 18 A At Jamie Heyward house.
- 19 Q And what did he tell you about the killing of Tyrone
- 20 Pettis?
- 21 A He just, basically, told me that he shot him.
- 22 Q Did he tell you why?
- 23 A I can't recall why he said.
- 24 Q Did he mention anything about Ivan Sanders?
- 25 A Yes, ma'am.

1 MR. JOHNSON: Objection, leading, Your Honor.

2 THE COURT: Overruled.

3 MR. JOHNSON: She's suggesting an answer.

4 BY MS. FANT:

5 Q And what did he tell you about that had to do with
6 Ivan Sanders?

7 A That he broke -- that old boy broke in Ivan Sanders
8 store so he did it for retaliation.

9 Q And when you say old boy, who are you referring to?

10 A The one that got killed.

11 Q Did he tell you who was there when he shot the
12 victim?

13 A Yes, ma'am.

14 Q Who did he say was with him?

15 A Dukes, last name Dukes.

16 Q Would that be Robbie Dukes?

17 A Yes, ma'am.

18 Q And did you indicate to investigators that you were
19 surprised that he had actually done this?

20 A Yes, ma'am.

21 Q Why was that?

22 A Cause I never thought he would do something like that
23 as far as just kill a man.

24 MS. FANT: Please answer any questions Mr. Johnson
25 may have.

1 THE COURT: Cross-examination, Mr. Johnson.

2 CROSS-EXAMINATION

3 Q Mr. Brunson, my name is I.S. Leevy Johnson, along
4 with my son, George. We represent Mark McCoy. And how
5 are you today?

6 A Doing fine.

7 Q Doing fine. Are you the same Stacey Brunson that was
8 convicted of conspiracy to distribute crack cocaine in --
9 what year was that?

10 A '06, 2006.

11 Q 2006?

12 A Yes.

13 Q Okay. That's you?

14 A Yes.

15 Q Okay. Now, Mr. Brunson, what you testified to here
16 today, who did you tell that to before you came to court?

17 A What you mean?

18 Q Who did you talk to?

19 A I talk to nobody.

20 Q So you just came in here today out of the blue and
21 just started -- you didn't talk to any police officer or
22 law enforcement officer, solicitor?

23 A Today?

24 Q Any time?

25 A Yes. I talk to an A.T.F. Agent Richard Brown.

1 Q You talked to Agent Brown?

2 A Yes, sir.

3 Q And when was that?

4 A '06, and about two months ago.

5 Q 2006?

6 A Yeah, '06, like about two months ago, he came to see
7 me again.

8 Q And in 2006, did you mention Mark McCoy's name?

9 A I think I did, yes, ma'am.

10 Q You think you did, it's important -- isn't it true --

11 A Yes, sir. Yes, sir.

12 Q You did?

13 A Yes, sir.

14 Q You told him about Mark McCoy in 2006?

15 A Yes, sir.

16 Q And you sure about that date, in 2006?

17 A Yes, sir, I think.

18 Q Okay. And then two months ago ---

19 A Yeah, he came to see me.

20 Q --- he came to see you again?

21 A Yes, sir.

22 Q And when he came to see you, did he come to see you
23 about your case or about Mark McCoy?

24 A Mark McCoy case.

25 Q He came to see you about Mark McCoy?

- 1 A Yes, sir.
- 2 Q Was any statement taken, anybody write anything down?
- 3 A '06?
- 4 Q Either time, '06 or two months ago?
- 5 A Yes, sir.
- 6 Q Who wrote something down?
- 7 A Mr. Brown.
- 8 Q Mr. Brown wrote something down?
- 9 A Yes, sir.
- 10 Q Did you sign it?
- 11 A Yes, sir.
- 12 Q You signed it?
- 13 A Yeah, I think, yeah.
- 14 Q You signed the statement to verify that the
- 15 information in the statement was information that you'd
- 16 given him?
- 17 A I think I did, yes, sir. I think I did, I don't
- 18 know.
- 19 Q Well, just two months ago?
- 20 A Yeah, two months -- in the federal penitentiary like
- 21 two years, so I think I did. I don't know for sure, but I
- 22 think I did.
- 23 Q You in the federal penitentiary now?
- 24 A Yes.
- 25 Q Is that how you dress in the federal penitentiary?

1 A No, sir.

2 Q Where did you get those clothes from? Where did you
3 get those clothes from?

4 A Officer give it to me.

5 Q Officer gave you clothes to wear in here?

6 A Yes, sir.

7 Q They did? When was that?

8 A Just now.

9 Q Say what?

10 A Just now.

11 Q Just now?

12 A Yes, sir.

13 Q When you came to this courthouse today, what were you
14 wearing?

15 A Browns and sneakers.

16 Q What are browns?

17 A Khakis.

18 Q What are khakis?

19 A Pants.

20 Q Khaki pants?

21 A Yeah.

22 Q And you had on sneakers?

23 A Yeah.

24 Q So they supplied you with shoes -- are those the
25 khaki pants you had on?

1 A No, sir.

2 Q They provided you with shoes and pants and a shirt?

3 A Yes, sir.

4 Q To come into this courtroom to testify before this
5 jury?

6 A Yes, sir.

7 Q Why was that necessary?

8 A I can't answer that question.

9 Q So that's not your shirt, not your pants and not your
10 shoes?

11 A No, sir.

12 Q Do you know who they belong to?

13 A No, sir.

14 Q Did you ask them to give you those clothes?

15 A No, sir.

16 Q So they dress you up to bring you in this courtroom
17 so you could try to impress this jury?

18 A No, I came to tell the truth. I didn't come to
19 impress nobody.

20 Q You didn't come to impress nobody?

21 A No, sir.

22 Q But you couldn't tell the truth in the clothes that
23 you were wearing when you came to this courthouse?

24 A Yes, I could tell the truth, yeah.

25 Q You could tell the truth?

1 A Yes.

2 Q In those clothes, too?

3 A Yes, sir.

4 Q So it wouldn't have made any difference for you to be
5 in those other clothes?

6 A No, sir.

7 Q Did anyone talk to you today before you came into
8 this courtroom?

9 A No, sir.

10 Q You never discussed your testimony with anybody today
11 about what you were going to testify to?

12 A No, sir.

13 Q Not at all?

14 A No, sir.

15 Q Were you subpoenaed to come here?

16 A I don't know.

17 Q You don't know?

18 A I don't know.

19 Q Did you request to come here or did they ask you to
20 come?

21 A What you mean they ask me? I gave a statement, so I
22 guess I get to testify.

23 Q So you could testify?

24 A Yeah.

25 Q And Mr. Brunson, you know based on testifying against

1 other people, because you've been in the penitentiary, you
2 can reduce your own sentence; isn't that right?

3 A I guess so, I don't know.

4 Q Oh, Mr. Brunson, you say you guess so?

5 A Yeah, this is my first time in federal penitentiary.

6 Q But you've heard of the term of substantial
7 assistance?

8 A Yes, sir.

9 Q And that means if you tell on other people, you can
10 get your sentence reduced; isn't that right?

11 A I guess so, yes, sir.

12 Q You guessing or is it true?

13 A I guess so true. I still got the same sentence I
14 got.

15 Q But it helps you get out of jail earlier if you come
16 in a courtroom and testify, regardless of if it's truthful
17 or not, you just come in and testify, that helps you,
18 doesn't it?

19 A I guess so.

20 MR. JOHNSON: That's right. Thank you.

21 THE COURT: Cross-examination?

22 MS. FANT: Yes, Your Honor.

23 THE COURT: Redirect, I'm sorry.

24 REDIRECT EXAMINATION

25 BY MS. FANT:

1 Q Mr. Brunson, regarding your clothes, you're currently
2 in the federal correctional institution in Bennettsville?

3 A Yes, ma'am.

4 Q Are you allowed to bring your personal clothes and
5 shoes to court with you?

6 A No, ma'am.

7 Q Now, as part of your sentence, did you go to trial or
8 plead guilty?

9 A Plead guilty.

10 Q I'll show you what's been marked for identification
11 as State's Exhibit 27, do you recognize that document?

12 A Yes, ma'am.

13 Q How do you recognize it?

14 A It's me.

15 Q Is this a plea agreement?

16 A Yes, ma'am.

17 MS. FANT: Your Honor, at this time, I would offer
18 State's Exhibit 27.

19 MR. JOHNSON: I haven't seen it.

20 THE COURT: All right, show it to him. You're
21 offering it into evidence?

22 MS. FANT: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. JOHNSON: No, sir, Your Honor.

25 THE COURT: Admitted into evidence as State's Number

1 27 without objection.

2 (WHEREUPON, State's Exhibit No. 27 admitted into
3 evidence.)

4 BY MS. FANT:

5 Q And this is an agreement that you signed with the
6 government regarding your case?

7 A Yes, ma'am.

8 Q And what happens if you don't tell the truth
9 according to that agreement?

10 A They take the plea agreement back.

11 Q And under that agreement, did it indicate that you
12 might be prosecuted for perjury?

13 A Yes, ma'am.

14 Q And even though there may be room for some assistance
15 to you in the future, did anybody promise you anything to
16 testify today?

17 A No, ma'am.

18 MS. FANT: Thank you.

19 THE COURT: Recross?

20 MR. JOHNSON: Yes, sir.

21 RECROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q Now, according to State's Exhibit Number 27, your
24 plea agreement ---

25 A Yes, sir.

1 Q --- mr. Brunson, you -- according to this plea
2 agreement, you pled guilty to the quantity of crack
3 cocaine involved is more than 1.5-kilograms, that's a lot
4 of crack cocaine; isn't it?

5 A Yes, sir.

6 Q And according to this plea agreement that -- you know
7 what the sentencing guidelines are?

8 A Yes, sir.

9 Q You know what they are, and so for pleading guilty,
10 the lawyer for the government agreed to reduce your
11 guidelines by two levels; isn't that right? You got that
12 benefit, didn't you?

13 A Yeah, for -- I took my responsibility.

14 Q Acceptance of responsibility?

15 A Yes, sir.

16 Q So that lightened your sentence by pleading guilty;
17 isn't that true?

18 A Yes, sir.

19 Q And also, in this agreement, when Ms. Fant told you
20 that according to this agreement that if you testified you
21 had to be truthful and honest; isn't that right?

22 A Yes, sir.

23 Q And according to the agreement, who has the
24 exclusive, the sole authority hanging over your head to
25 decide whether you're telling the truth or not, isn't that

1 assistant U.S. attorney?

2 A I guess so, I don't know.

3 Q A judge doesn't decide whether you are telling the
4 truth or not, it's the assistant U.S. Attorney; isn't that
5 right?

6 A I guess so.

7 Q A jury doesn't decide it, the prosecution makes that
8 decision whether you're telling the truth or not; isn't
9 that right?

10 A I guess so.

11 Q And so the prosecution controls whether you be given
12 credit for testifying or not; isn't that right, Mr.
13 Brunson?

14 A I guess so, I really don't know.

15 Q In addition to that, in this plea agreement in
16 paragraph ten, they told you that if you pled guilty, they
17 would move the court for a reduction of sentence pursuant
18 to Rule 35(b) of the Federal Rules of Criminal Procedure;
19 isn't that right? You remember that? They said look
20 here, Mr. Brunson, if you cooperate with us, we're going
21 to ask the judge to give you a lenient sentence?

22 A That ain't what they told me.

23 Q They didn't tell you?

24 A No.

25 Q You didn't read this?

- 1 A No, I let my lawyer handle it.
- 2 Q You let your lawyer handle it?
- 3 A Yes, sir.
- 4 Q Mr. Hallman was your lawyer, isn't that right?
- 5 A Yes, sir.
- 6 Q And what you are telling this jury today and the
7 judge, you didn't tell Mr. Hallman that, did you?
- 8 A Yes, he was right there with me.
- 9 Q He was right there with you?
- 10 A Yeah, all the way.
- 11 Q All the way?
- 12 A Yes, sir.
- 13 Q And so Mr. Hallman was present when you told them
14 about Mark McCoy?
- 15 A When you talking when in '06?
- 16 Q At any time?
- 17 A I think so.
- 18 Q You think so?
- 19 A Yes, sir.
- 20 Q You know who was in the room?
- 21 A I think he was there.
- 22 Q You think he was there?
- 23 A Yeah.
- 24 Q Okay. And you testified you think he was there?
- 25 A Yeah.

1 MR. JOHNSON: Thank you, sir.

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 (WHEREUPON, the witness leaves the witness stand.)

5 THE COURT: Counsel, let me see you at side bar just
6 a moment, please.

7 (WHEREUPON, a bench conference was held in the
8 presence of the jury, but out of the hearing of the
9 jury.)

10 THE COURT: All right. Ladies and gentlemen, I was
11 just conferring with the attorneys with regard to
12 scheduling. And I think because of the matters that we've
13 got, the best thing -- we've got, also, some pretrial
14 matters, some other matters that we need to do outside of
15 your presence and on the record. So I'm going to go ahead
16 and excuse you for lunch at this time. But rather than
17 have you sit unnecessarily back in the jury room, I'm
18 going to have you come back at 3:00 instead of 2:30 so
19 that we can get these things taken care of. So I am going
20 to excuse you at this time and allow you to go about your
21 business and take care of the things that you need to do
22 and be back in your jury room, please, at 3:00 and I'll
23 see you at that time.

24 Do not discuss the case with anyone, do not allow
25 anyone to discuss it with you. Do not talk about this

1 case among yourselves. When you're reassembling in the
2 jury room, it's still premature for you to begin any
3 discussion on this matter. I'll see you at 3:00. Thank
4 you, have a pleasant lunch and I'll see you this
5 afternoon.

6 (WHEREUPON, the jury was excused for lunch.)

7 THE COURT: No one else is excused except the jury.

8 All right. Let's address a couple of things. Mr.
9 Johnson, you mentioned at side bar with regard to the
10 notes of the A.T.F. agent. My understanding of Rule 5 is
11 that it falls under Rule 5(a)(2). That the rule does not
12 authorize the discovery of inspection of reports,
13 memoranda or other internal prosecution documents made by
14 the attorney for the prosecution or other prosecution
15 agents in connection with the investigation or prosecution
16 of the case. My understanding of the Rule is
17 investigator's notes are not discoverable under Rule
18 5(a)(2). That was the basis for my ruling. And the
19 ruling has already been made, so whether you agree with it
20 or not, that is the ruling. If you want to take exception
21 to it, you certainly have a right to do so.

22 MR. JOHNSON: I do, Your Honor. As I recall, Mr.
23 Brunson said he signed the statement that he gave to
24 the -- to Mr. Brown.

25 THE COURT: Yeah, but Mr. Brown said he didn't have

1 any signed statement. He said all he had were his own
2 notes. He's the one that testified that all he had was
3 his own notes.

4 MR. JOHNSON: Could you make an in-camera inspection
5 as to whether ---

6 THE COURT: No, I'll ask, Ms. Fant, do you have a
7 signed statement from him?

8 MS. FANT: No, Your Honor.

9 THE COURT: That answers the question.

10 MR. JOHNSON: Your Honor, according to Rule 5(a)(2),
11 after examination ---

12 THE COURT: That's the witness statement. If the --
13 go on from that, statements made by prosecution witnesses
14 or prospective witnesses must be provided after the
15 witness testifies.

16 MR. JOHNSON: Those statements were made by the
17 witness, but they were written by the officer.

18 THE COURT: No, sir, that's not a statement, that's
19 an officer's investigatory notes.

20 MR. JOHNSON: Well, Your Honor, he made a distinction
21 between when they interviewed a witness and he gives them
22 information, are those investigatory notes?

23 THE COURT: The notes that the officer makes,
24 absolutely. That's what the Rule says.

25 MR. JOHNSON: I believe our objection been noted.

1 THE COURT: All right. Mr. Johnson, let me ask you
2 to -- I'm not going to require an answer from him at this
3 time, but let me advise your client at this time about his
4 Fifth Amendment rights. If you would ask him to stand,
5 please?

6 MR. JOHNSON: He is.

7 THE COURT: Mark McCoy, you may be called as a
8 witness to testify in this case. I now advise you that
9 you have a right to invoke the protections given to you by
10 the Fifth Amendment of the Constitution of the United
11 States and a similar counterpart provision of the
12 Constitution of the State of South Carolina. The Fifth
13 Amendment to the Constitution of the United States
14 provides in part that no person shall be compelled in any
15 criminal case to be a witness against himself. This
16 provision of constitutional law means that you cannot be
17 compelled or required to testify in this case. It is a
18 personal right and a privilege which the law extends to
19 you. You have the right to testify, but you also have the
20 right -- you have the right not to testify, but you also
21 have the right to testify. The Court will grant you the
22 right to consult with your lawyer before you make a
23 decision.

24 If you elect not to testify, your failure to testify
25 cannot be used by the State as an inference of guilt and

1 your failure to testify cannot be considered by the jury
2 in its deliberations. If you elect to testify and waive
3 the privileges given to you by the Fifth Amendment, I
4 advise you that you would then assume the role of a
5 witness in this case and you would waive or give up your
6 constitutional privileges against self-incrimination.
7 This means that if you voluntarily take the witness stand
8 and testify, you subject yourself to the same rules that
9 govern other witnesses in this case and you may be
10 examined and cross-examined on any relevant issue in this
11 case and you may be impeached to the same extent as any
12 other witness, all of which are subject to the rules of
13 law and the rules of evidence.

14 I would further advise you that if you elect to take
15 the witness stand and testify that this decision on your
16 part must be made freely, voluntarily, intelligently and
17 with knowledge of the protections given to you by the
18 Constitution and with knowledge of the consequences of
19 your election to testify.

20 Have you understood what I've explained to you about
21 your Fifth Amendment rights?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you have any questions that you would
24 like to ask me of your Fifth Amendment rights?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. I will allow you to confer
2 with your lawyer, of course, and to make a decision later
3 on in this matter regarding whether you do or do not wish
4 to testify at the appropriate time.

5 Thank you, you may be seated.

6 All right. Ms. Fant, anything before we recess until
7 three?

8 MS. FANT: No, Your Honor.

9 THE COURT: All right. Take care making sure that
10 you have whatever discussions you wish to have with your
11 witness and let's be prepared to go with the jury right at
12 3:00.

13 Mr. Johnson, do you anticipate or know of any matters
14 that we need to take up on the record before the State
15 calls the next witness? And I don't think there's any
16 secret that the next witness is Mr. Dukes.

17 Is that correct?

18 MS. FANT: Yes, sir.

19 THE COURT: Mr. Johnson, do you know of anything
20 preventing us from going forward right promptly at 3:00?

21 MR. JOHNSON: Nothing, Your Honor.

22 THE COURT: All right. Then we will be in recess
23 until 3:00. Thank you.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: Back on the record with regard to the

1 State vs. Mark McCoy. Mr. McCoy is present in the
2 courtroom with his counsel. The State is also present
3 with Ms. Fant.

4 Anything before we bring the jury in, Ms. Fant?

5 MS. FANT: No, Your Honor.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: One matter, Your Honor. Pursuant to
8 609(b), Your Honor, we sent a fax to Ms. Fant on
9 September 21st regarding Mr. Dukes criminal record and
10 ask -- he has a conviction for possession of less than one
11 gram of crack cocaine in 1996, possession of crack in 1996
12 ---

13 THE COURT: Now, who are we talking about, Mr.
14 Holmes?

15 MR. JOHNSON: No, Mr. Dukes. The next witness up.

16 THE COURT: All right. And what do you show his
17 criminal record?

18 MR. JOHNSON: These were convictions outside of the
19 ten-year period. In 1996 -- these convictions were in
20 1996 and we're asking the Court in your discretion to
21 allow us to use those convictions also ---

22 THE COURT: What are they and when are they?

23 MR. JOHNSON: One is possession of less than a gram
24 of ice or crack cocaine, first offense. The other is
25 possession of crack and the last one is for robbery.

1 THE COURT: Let's look at them each one. The
2 possession of crack first was when?

3 MR. JOHNSON: It looks like October 22nd, 1996.

4 THE COURT: And then you say there was another
5 possession of crack?

6 MR. JOHNSON: Yes, sir.

7 THE COURT: And when was that?

8 MR. JOHNSON: 10/28/1996.

9 Is that right, Ms. Fant?

10 THE COURT: And then you've got a robbery, you say?

11 MR. JOHNSON: 10-28-96.

12 THE COURT: Is that common law robbery?

13 MR. JOHNSON: It just says robbery, Your Honor.

14 THE COURT: And that's what date?

15 MR. JOHNSON: 10-28-1996.

16 THE COURT: That would be the same day as the
17 possession of the crack, second possession of crack.

18 MR. JOHNSON: Yes, sir.

19 THE COURT: The other one was 10-22-96?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: So you've got two possessions of crack
22 and one robbery. And there's been a request -- your
23 position is you think they are impeachable offenses under
24 609.

25 Ms. Fant?

1 MS. FANT: Your Honor, I may be able to just nip that
2 in the bud. We intend to rest after the jury comes in.

3 THE COURT: All right. That takes care of that.

4 All right. The State we will have you do it in front
5 of the jury. So the position is at this point the defense
6 rest?

7 MS. FANT: The State?

8 THE COURT: I mean the State rest?

9 MS. FANT: Yes, Your Honor.

10 THE COURT: All right. Then Mr. Johnson, I'll be
11 glad to hear from you with regard to any motions that you
12 might have.

13 MR. JOHNSON: I apologize, Your Honor.

14 THE COURT: Motions on behalf of the defendant?

15 MR. JOHNSON: Just one moment, please, sir.

16 May it please the Court, Your Honor, on behalf of
17 Mark McCoy, we move for a directed verdict on both counts.
18 As to the September 11th indictment, on the grounds there
19 is insufficient evidence for this matter to be submitted
20 to the jury. Your Honor, I'm mindful of the fact that at
21 this stage the test is whether there is an existence or
22 nonexistence of sufficient evidence to prove the elements
23 of the crime of murder and possession of a firearm during
24 the commission of a violent crime. Your Honor, there has
25 not been sufficient evidence to constitute the essential

1 elements of malice aforethought and that my client killed
2 Tyrone Pettis or that he was in possession of a weapon.

3 Your Honor, as you have heard, you've heard
4 contradictory testimony regarding the State's witnesses.
5 And it amounts to a nullification of anything that these
6 witnesses have said as to the essential elements of both
7 of these crimes. Your Honor, a jury should not be allowed
8 to consider the guilt or the innocence of the person based
9 on speculation and conjecture or passion or sympathy. At
10 this stage, with what the State has introduced into
11 evidence, that would be -- that would be the sole
12 evidence, the sole purpose of the jury considering this
13 case. So we respectfully move for a directed verdict on
14 both charges.

15 THE COURT: All right.

16 Ms. Fant.

17 MS. FANT: Your Honor, I believe we have more than
18 sufficiently proved that Mr. McCoy committed these crimes.
19 All of the evidence that the State presented pointed
20 directly to him, although some of it was circumstantial in
21 the nature of connecting it. We have an eyewitness who
22 identified him as the person who had the gun and, in fact,
23 shot the victim, Tyrone Pettis. We think we've more than
24 met our burden.

25 THE COURT: All right.

1 Mr. Johnson, I would respectfully deny your motion.
2 Under Rule 19, the rule is that the Court shall direct a
3 verdict if there is a failure of competent evidence, and
4 by competent as used in the rule, it means admissible
5 evidence or evidence in the record, tending to prove the
6 charge of the indictment. And ruling on the motion, the
7 trial judge should consider only the existence or
8 nonexistence of the evidence and not its weight. By
9 couching the motion in terms of sufficiency and
10 contradictory testimony, that would put me in the position
11 of weighing the evidence and this I cannot do. I can only
12 make a determination based upon whether there is evidence
13 in the record indicating the guilt of the Defendant. It
14 appears to me in just looking at one witness, Mr. McConico
15 actually testified that he saw the person in camouflage
16 clothing shoot the victim. And there is evidence in the
17 record regarding the camouflage clothing belonging to the
18 defendant. That evidence alone is sufficient to overcome
19 the existence or nonexistence of the evidence. What
20 weight the jury shall give to all the evidence in this
21 case is a matter for their determination, but it's my view
22 that if I were to grant your motion, I would be weighing
23 the evidence as you would have me weigh the evidence and I
24 don't believe that the law permits me to do this. So I
25 would respectfully deny your motion for a directed

1 verdict.

2 All right. Mr. Johnson, is your client prepared to
3 address the matter of Fifth Amendment protections?

4 MR. JOHNSON: He is.

5 THE COURT: All right. Let me ask you to stand,
6 please, Mr. McCoy, if you would stand.

7 Mr. McCoy, have you had an opportunity to discuss
8 with your attorney your constitutional rights with regard
9 to your privilege against self-incrimination under the
10 Constitution of the State of South Carolina and the United
11 States, have you had a chance to talk to Mr. Johnson about
12 that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Have you understood your discussions with
15 Mr. Johnson about your Fifth Amendment rights?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And have you understood your discussions
18 with him and what I have explained to you about your Fifth
19 Amendment rights?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you made a decision as to whether
22 you do or do not wish to testify in this case?

23 THE DEFENDANT: I do not wish to testify.

24 THE COURT: So you have made a decision and it's your
25 decision that you do not wish to testify?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Is that testimony -- I mean, is that
3 decision on your part freely and voluntarily made?

4 THE DEFENDANT: Absolutely.

5 THE COURT: All right. Thank you, sir. You may be
6 seated.

7 The Court will find that the Defendant, after having
8 been advised of his Fifth Amendment constitutional rights
9 by both the Court and his attorney, has made a free
10 voluntarily, knowing and intelligent decision to exercise
11 that privilege and decline to testify in this case or
12 elected not to testify in this case as is his right. And
13 the Court will respect that decision.

14 All right. That being the case, Mr. Johnson, is it
15 the defendant's intention to offer any other testimony in
16 this matter?

17 MR. JOHNSON: Your Honor, the defense rest and we
18 would renew our motion for directed verdict.

19 THE COURT: All right. Then the defense rest and
20 will not present any testimony in this case. The motion
21 for directed verdict is renewed as permitted under Rule
22 19. And again, under Rule 19, the Court's duty at the
23 directed verdict stage is to determine the existence or
24 nonexistence of evidence, either direct or circumstantial,
25 tending to prove the charges in the indictment. The Court

1 finds that there is evidence in the record that would
2 preclude the Court from granting a directed verdict in
3 this case. The question of the weight to be given to any
4 of the testimony is a matter for the jury, so I would
5 respectfully deny the motion for a directed verdict.

6 All right. Ms. Fant, any special request for charge?

7 MS. FANT: No, Your Honor. I do have the defendant's
8 request. Most of these seem to be fairly duplicated in
9 your standard charge. My only concern would be with the
10 circumstantial evidence charge, which is not the charge
11 from Grippon, which I believe is the prevailing jury
12 charge on circumstantial evidence.

13 THE COURT: I think according to the Supreme Court
14 decision, it is the only charge, is the Grippon charge.
15 The old State vs. Edwards charge is basically rejected in
16 Grippon. And I believe the correct charge is the charge
17 under Grippon. And that would be my intention to charge
18 Grippon as far as circumstantial evidence is concerned.

19 Mr. Johnson, any problem with that?

20 MR. JOHNSON: No, sir, Your Honor.

21 THE COURT: It would be the Grippon charge is the
22 circumstantial evidence charge. I will also charge on
23 credibility, presumption of innocence as contained in my
24 general charge. And I have a little more complete
25 reasonable doubt charge explaining a little bit more of

1 what reasonable doubt is. It contains the words hesitate
2 to act, but it's a little bit more involved than just the
3 hesitate to act.

4 MR. JOHNSON: Thank you, Your Honor.

5 MS. FANT: Your Honor, I do have -- oh, I'm sorry.

6 THE COURT: All right. So, Mr. Johnson, you said you
7 had no special request. Mr. Johnson, you have any other
8 special requests other than those that have been handed
9 up?

10 MR. JOHNSON: No, sir, Your Honor.

11 THE COURT: Yes, ma'am?

12 MS. FANT: Your Honor, I just had one additional
13 matter that I wanted to address. It doesn't relate to the
14 jury charge, but the closing arguments. And that be that
15 no mention of Robyn Dukes, what he's indicted for, what he
16 was tried for. Mr. Johnson, in his opening statement,
17 indicated that Robyn Dukes was not on the indictment. In
18 fact, he is as an accessory after the fact. We had
19 initially offered him that deal and then found some
20 inconsistencies in what he was telling us. We then
21 withdrew that offer and Mr. Culp indicated to me that he
22 would be willing to testify without any plea deal on the
23 table and that would have been what he would have done.

24 THE COURT: All that's not in the record?

25 MS. FANT: Correct.

1 THE COURT: Right, and you can't argue anything
2 that's not in the record, so that's not in record.

3 MS. FANT: My concern was that since he brought it up
4 opening that he had planned to argue, you know, why isn't
5 he charged, why aren't they doing anything with him. And
6 that would be our position, that it has nothing to do with
7 what's in the record in this case.

8 THE COURT: What evidence in the record is there of
9 anything as far as Mr. Dukes is concerned, Mr. Johnson?

10 MR. JOHNSON: Lieutenant Rabon's testimony. She
11 testified that on June 8th, 2004, he was arrested and
12 charged with murder.

13 THE COURT: That is in the record, he can certainly
14 testify as to that.

15 MS. FANT: Yeah, that he was arrested, but not that
16 there has been any deal with him ---

17 THE COURT: Well, I know that. And Mr. Johnson, I
18 think, knows the rules. He knows he can't argue anything
19 that's not in the record, don't you, Mr. Johnson?

20 MR. JOHNSON: I can argue that he was charged?

21 THE COURT: Yes, sir.

22 MR. JOHNSON: And that he's not here today.

23 THE COURT: Yes, sir, you can testify -- I mean, you
24 can argue that he's not here today. I mean, that's pretty
25 obvious.

1 MS. FANT: I guess I would have the right then to say
2 that he's not here today because his case is at a later
3 date?

4 THE COURT: No, you wouldn't either. I mean, he's
5 available. That doesn't have anything to do with whether
6 his case -- he can argue he's not here today as a witness
7 in this case is really what it amounts because there's
8 testimony in the record that he was in the presence of
9 Mr. McCoy at the time that this homicide took place. And
10 he can certainly testify where is Mr. Dukes as a witness.
11 Nothing to do with Mr. Dukes not being here because his
12 case is still pending or whatever, but he can -- the only
13 thing in the record with regard to Mr. Dukes, as I recall
14 it, is Ms. Rabon's testimony that he was originally
15 charged with murder. And what happened to his case after
16 that, no explanation was ever given in the record. And I
17 think that's what you can argue. And I think he can
18 testify that he's not here as a witness to the homicide as
19 being one of the people that was on the site.

20 MS. FANT: I agree with that, but I don't think he
21 can mention anything as what has happened to his case or
22 what will happen to his case because that is not in the
23 record. He was arrested. He could have been a witness.
24 We did not call him. I agree with all that again. But
25 the fact that he indicates that he thinks he's going to be

1 offered some kind of deal or that this case is going to be
2 treated differently ---

3 THE COURT: Well, I can't anticipate what he's going
4 to argue. All I can say is that I caution both counsel to
5 argue only those matters in the record. And if they are
6 matters that are argued outside of the record, you'll just
7 have to make the appropriate objection. But the record is
8 pretty clear to me that the only references to Mr. Dukes
9 are that -- through Ms. Rabon, that he was originally
10 charged in this and was originally arrested in connection
11 with the murder. And as far as I recall about her
12 testimony, no further testimony about what has happened
13 with regard to any charges against him. And anything
14 other than that would be outside the record.

15 MS. FANT: Thank you, Your Honor.

16 MR. JOHNSON: She also testified the case is still
17 pending.

18 THE COURT: Okay. That's fine, she did say the case
19 was still pending. I do recall that.

20 MS. FANT: It is, Your Honor.

21 THE COURT: It is, yeah.

22 All right. Ms. Fant, are you going to open on the
23 law?

24 MS. FANT: Only if required, Your Honor.

25 THE COURT: Mr. Johnson?

1 MR. JOHNSON: Your Honor, under the rules, she's
2 required to open and I have last argument.

3 THE COURT: That's right. In this particular case,
4 that's right, we don't have a situation -- there's no
5 opening and closing on behalf of the State, so you have
6 the last argument.

7 How long you need, Ms. Fant?

8 MS. FANT: I would expect about 20, 25 minutes.

9 THE COURT: Mr. Johnson?

10 MR. JOHNSON: About 30.

11 THE COURT: All right. Thirty minutes ought to be
12 sufficient for everybody. We've got to put the charges
13 and things together. Counsel, I have a verdict form.
14 Does anybody think that the verdict form that I have
15 prepared, which y'all haven't seen, you're certainly
16 welcome to come up and take a look at it and see if you
17 have any problems with this.

18 All right. Let's take about five minutes, Counsel,
19 and get your thoughts together and we'll be ready to go.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Counsel, after thinking about the matter
22 and looking at the hour of day, we have -- have conferred
23 with counsel, I believe the best thing to do would be to
24 go ahead with arguments this afternoon and let's get that
25 accomplished and do the charge in the morning. If I were

1 to do arguments and charge this afternoon, it would after
2 five o'clock before the jury got the case and I don't
3 think that's fair to the jury. Because I've told jurors
4 many times, I know they have lives outside of this
5 courtroom and they're here doing their civic duty and I
6 don't think it's fair to impose upon them unnecessarily,
7 so that's what I propose to do.

8 Any objection to that, Ms. Fant?

9 MS. FANT: No, Your Honor.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: All right. When I bring the jury in,
13 counsel, I will call upon the State to call your next
14 witness. You can rest. I will then call upon the defense
15 and they can rest. Then I will tell the jury where we're
16 going from there.

17 All right. Bring the jury in, please.

18 (WHEREUPON, the jury enters the courtroom.)

19 THE COURT: All right. Thank you very much, ladies
20 and gentlemen, we are now ready to go forward.

21 Ms. Fant, you may proceed. You're still presenting
22 the State's case.

23 MS. FANT: Your Honor, at this time, the State would
24 rest.

25 THE COURT: All right. The State has announced that

1 they have rested. Now, the defense will have a right to
2 present any testimony and evidence to you that they wish
3 to present.

4 Mr. Johnson.

5 MR. JOHNSON: Defense rest, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, you
7 have now heard both the State and the defense announce
8 that they have rested in this case. That means that you
9 have heard all the evidence that you will hear in
10 connection with this matter. There are only two things
11 that remain to be done, those are the arguments of counsel
12 and the instructions on the law by the Court.

13 I will tell you now as I did at the first of this
14 case that the arguments of counsel are not evidence in
15 this case. They are simply the lawyer's views of what
16 they think the evidence shows. You will decide this case
17 based upon the evidence that you have heard from this
18 witness stand and from any exhibits that have been
19 introduced into evidence. But the lawyers do have a
20 right, and not only the right, but the duty on behalf of
21 their clients to address you now and to tell you -- or to
22 give you what they view as the -- their views of the
23 evidence in this case. Once they have concluded that, I
24 will instruct you on the law of South Carolina that you
25 will apply to the facts of this case as you may find those

1 facts to be and you will be allowed to go to your jury
2 room to deliberate your verdict.

3 As far as arguments are concerned, you will hear
4 first from Ms. Fant on behalf of the State and then from
5 Mr. Johnson on behalf of the Defendant.

6 Ms. Fant.

7 MS. FANT: May it please the Court?

8 THE COURT: Yes, ma'am.

9 MS. FANT: Your Honor, Mr. Johnson, ladies and
10 gentlemen of the jury, the nigga had to get done. That's
11 what this case boils down to. It wasn't even about the
12 alleged burglary because we know now that Tyrone didn't
13 break into Ivan's store. This was about Wise and his
14 feelings of entitlement and his owning the west side.

15 The judge indicated to you that he will instruct you
16 on the law and he will. And he will tell you that what we
17 say is not evidence, not in our questions, not in our
18 statements to him, not in our opening statements or our
19 closing arguments to you. You heard the evidence from the
20 witnesses that the State presented and also from the
21 evidence you have here, the photographs, the autopsy and
22 everything that we presented to show you this crime.

23 Murder is the killing of another person with malice
24 aforethought. And the judge will instruct you that malice
25 is a formed purpose to do a wrongful act under

1 circumstances that exclude any right to do so. It is
2 often referred to as a malignant heart. In this case, not
3 only did Mr. McCoy track the victim down, Tyrone Pettis,
4 and shoot him in the back, but the fact that he used a
5 violent -- excuse me, a deadly weapon, a handgun, to do it
6 allows you to infer malice. There is no question in this
7 case that Tyrone Pettis died from a gunshot wound to the
8 back. And we believe the evidence given to you over the
9 last couple of days indicates that Mr. McCoy did that.

10 Possession of a firearm during a violent crime of
11 violence. We do not have a gun in this case and that's
12 not infrequent. People like to think that TV is the way
13 that real court is and it's not. Defendants frequently
14 hide the murder weapon and most of the time, or a lot of
15 the time, we don't get that evidence and we can't bring it
16 before you. But that doesn't mean you can't convict him
17 of that charge because we have eyewitnesses that saw him
18 with a gun and shoot Tyrone Pettis.

19 There wasn't a lot of forensic evidence in this case.
20 What we really have is a case about witnesses. The
21 eyewitnesses to what happened before, during and after the
22 time that Tyrone was shot. And the judge will instruct
23 you that the credibility of the witnesses is for your
24 determination and your determination only. He will tell
25 you that you can believe all of what a witness says, some

1 of what a witness says or none of what a witness says.
2 But that is for you to decide. And to do that, you use
3 your common sense, the way the witness was presented, how
4 they spoke, what their demeanor was, did they seem
5 credible to you. The witnesses in this case include all
6 of the people that testified, but, in addition, we have an
7 additional witness and that is the defendant's own
8 statements. They are using as a witness against him in
9 this crime because he admitted to people to what he had
10 done.

11 Now, in regard to the witnesses, there is no question
12 that there is some discrepancies in the witness testimony.
13 I can't tell you to this day and I don't think anybody on
14 the face of the planet can say exactly the order in which
15 things happened and how it went down. But we do know that
16 it is the witness's duty to testify about the truth as
17 they know it about what they saw and what their truth was.

18 And think about it logically. Other than Latimore
19 Holmes, who saw the defendant without his mask in the
20 camouflaged clothing and then saw him pull it down, no one
21 actually saw the defendant's face. And that could have
22 been because they really weren't concerned about what was
23 going on that day until the altercation started, until the
24 fight between the defendant, Mr. Dukes and the victim,
25 Tyrone Pettis. These people were sitting out enjoying

1 their day. They weren't looking for someone to get shot.
2 It happened. When they heard the arguments, common sense
3 will tell you that's when people really started to look.
4 Latimore Holmes, of course, knew in advance that something
5 was going to go down because Mr. Sanders had called his
6 cousin, Donte McFadden, and he was at Donte's house and he
7 said, well, I'm going to go back over to my aunt's house
8 and my house over on the west side to see what's going
9 down. So he was in a position to see. The others, they
10 reacted and certainly indicated that they saw some things
11 differently, but what every witness in this case told you
12 is that the guy who did the shooting, who killed Tyrone
13 Pettis was dressed in camouflage clothing. Every single
14 witness.

15 Well, we know it wasn't Robbie Dukes, who's also
16 charged in this case, and his case is still pending,
17 because he wasn't in camouflaged clothes that day. These
18 people knew Robbie Dukes from the neighborhood, some of
19 them for a long time. They recognized him and he was not
20 the person in the camouflaged clothing.

21 The witnesses themselves that testified before you.
22 Ivan Sanders, he told you that he was in Columbia when he
23 got a phone call from Wise. And he told him that he had
24 the person that had broken into Ivan's store at the drug
25 house right there. He said, what do you want me to do

1 with him? And Ivan said, don't bother with him. I
2 already know who did, that's taken care of. And that's
3 corroborated by McCoy's own words at the Richland County
4 jail where he said that the person he had called said to
5 let it go. But he couldn't let it go, cause the west side
6 is his hood and he was making the decisions there. He had
7 to show the west side what was what, that this was McCoy's
8 territory. And he didn't care because the nigga had to
9 get got. He didn't even care that he killed an innocent
10 man.

11 Joe Sumpter, I called him because he was a witness at
12 the drug house that day. But what can I say, ladies and
13 gentlemen, that was an example of a witness who lies on
14 the witness stand. He can't remember anything. Doesn't
15 admit to his own statement that he gave and indicates that
16 he had something to hide and was trying to cover something
17 up. And I'd ask you to compare his testimony and his
18 demeanor on the witness stand with everyone else who
19 testified. Even the convicted criminals, the people
20 facing charges, they did not testify and react like that.

21 Opradella Lyons, she fully admitted to you that she
22 has a drug problem. That's why she was in the house that
23 day. She told you she was always there pretty much the
24 whole day. That Wise was there, that's the defendant Mark
25 McCoy, that Denno real name Ca'Brall Archie was there,

1 that Robbie Dukes was there, Joe Sumpter was there, Linda
2 Cummings and Tonya Lesesne. She indicated that she heard
3 a conversation about some clothes and that Tyrone all of a
4 sudden got real nervous. She told you that she saw Wise
5 and Robbie Dukes leave after the victim decided to leave.
6 And that he came back later, not long after, was dress in
7 camouflaged clothing and locked her and Linda Cummings in
8 the drug house.

9 He came back later and she told you that he didn't
10 just walk right in, he snuck in the back door. And at
11 this point, he had changed his clothes and he was acting
12 very strange. She indicated that he asked several
13 questions about Tyrone, one of which was did she think
14 that Tyrone would be missed. Did anyone miss him? Would
15 anyone miss him? He then closed the drug house down. Why
16 would he have done that, that's his source of income,
17 that's his operation. He knew he had to keep quiet and
18 lay low for a while, so he kicked everyone out.

19 Opradella also told you that she was later approached
20 by Kimberly Delay, which is McCoy's girlfriend of seven
21 years, and that Kim asked her to read a letter that Mr.
22 McCoy had sent to Kim to give to witnesses and make sure
23 she was straight with her testimony about what had
24 happened that day. She also indicated that he treated her
25 differently than he had before by occasionally giving her

1 money and just being a lot nicer to her than he ever had
2 been.

3 Latimore Holmes. Before we talk about his testimony,
4 I just want to briefly address the fact that there were
5 witnesses that are incarcerated and witnesses that have
6 been charged with federal crimes, that every one of them
7 told you that they were offered no promises, no deals for
8 their testimony in this case. The fact that they came
9 forward later on rather than at the time indicates more
10 about their status in the hood on the west side than it
11 does their credibility. You heard from -- excuse me, all
12 of them and law enforcement indicated that no promises
13 were made and that most important, all of the major
14 details that they testified to were corroborated by other
15 people.

16 So these are people in federal institutions and the
17 department of -- or in Richland County detention center.
18 They're not even allowed to communicate with each other.
19 How did they all manage to coordinate their stories and
20 get things straight when they were unable to even do that.
21 That would be because they knew what they were talking
22 about because they were there either when it happened or
23 when Mr. McCoy told them what happened. Latimore said he
24 knew Wise, had known him for a while, he saw him in
25 camouflage, saw him pull on a mask and saw him shoot

1 Tyrone in the back.

2 Allen McConico told you he had lived for years at 35
3 Edwards Street right across the street from the shooting,
4 right beside the open field. He told you that the person
5 in the camouflage pulled a gun from his left pocket and
6 shot Tyrone in the back using his left hand. And that's
7 an important detail because the defendant is left-handed
8 and that's a little unusual. But Kim told us that when
9 she testified on the stand.

10 Vera Marshall, also confirmed that it was the
11 camouflaged guy who shot Tyrone in the back. All of them
12 said that that camouflage guy was not Robyn Dukes, that
13 they know him and he was not the shooter.

14 Kimberly Delay, she's Wise's girlfriend and has been
15 for seven years. And I think you could tell by her
16 testimony that it was extremely difficult for her to come
17 before you and to say what she knew. She did tell you,
18 though, that he came home that day and changed into
19 camouflage clothing. That he left out the door and
20 returned about five minutes later out of breath. He then
21 asked her to talk to witnesses to make sure they were okay
22 in their testimony. He wrote a letter and it gave it to
23 her and asked her to read it to those witnesses and told
24 her destroy it afterwards and she did. He told her about
25 creating a false alibi involving Tonya Lesesne. The same

1 Tonya Lesesne that was at the drug house that afternoon.
2 And Kim told you how she was supposed to say that she was
3 braiding Tonya's hair and had to be with her about nine
4 hours because it had to cover a long period of time. And
5 he specifically discussed with her what kind of braiding
6 would take that long and what kind of braiding was popular
7 back in 2004.

8 I submit to you that her testimony was extremely
9 credible because she still loves him. She wasn't up there
10 angry, scorned woman, mad. She just seemed really sad
11 that she had to come here and tell you the truth. Her
12 address book also corroborated the people that were
13 important in this case, Ivan Sanders, also known as S.C.,
14 Temo and Stacey Brunson, all their numbers appeared in her
15 personal telephone book indicating that their relationship
16 with Wise and with her had been extensive.

17 Jammia Heyward. He's known Wise a long time. He
18 said he saw him a couple day after Wise -- excuse me,
19 after Tyrone was killed. And he was at his grandma's
20 house and Stacey Brunson was there as well. He said Wise
21 told him that the police were out to get him off the
22 streets. And when asked why, he said because they know I
23 just killed a nigga.

24 Stacey Brunson, close friend of Wise, known him for a
25 long time. He also confirmed that they were at Jammia's

1 grandma's house and that Wise talked to him. And that he
2 told him, in fact, that he had killed the old boy, because
3 the old boy was breaking into Ivan's store and they
4 couldn't have that. He also told them that Robyn Dukes
5 was there when he shot Tyrone.

6 Roland Bostic, he got in touch with the State. We
7 did not seek him out, in fact, we didn't know who he was
8 until Monday afternoon. Whether he did through some sense
9 of moral obligation or duty, I don't know. But I do know
10 that he was not offered a single thing to come to you and
11 testify today about this case. Not from the State, not
12 from anyone. And he -- not only did he say that, but
13 Special Agent Brown with A.T.F. told you that there was no
14 deal. He wrote a letter asking to speak with law
15 enforcement and we sent someone there to talk to him.
16 That letter is in evidence. And you can take that back to
17 the jury room and read it. It's dated September 9th and
18 the State received it on the 22nd.

19 He indicated that he had never met the defendant
20 before. He had known him for about four months because
21 they had been locked up together. And that McCoy had told
22 him gradually about the case. And that makes sense
23 because that's what happens when you meet people. You get
24 to know them a little bit, you tell them something, you
25 tell them a little more. By the time you're getting ready

1 to go to trial, you might tell them a lot. And that's
2 what happened in this case.

3 He told him that he had people that were speaking to
4 the witnesses. He told him where the witnesses lived on
5 the west side. Where were they going to move if they
6 testified. That the police didn't have enough money to
7 move all of them. Because he's in charge of the west
8 side. The witnesses couldn't hide. The west side was
9 Mark McCoy's territory.

10 He then told Roland that the murder occurred because
11 the victim allegedly broke into someone's store. He told
12 him about the phone call. And although he didn't mention
13 the name Ivan Sanders, he said whoever he called told him
14 to just let it go. And what was his response? Yeah,
15 right. It's my neighborhood. I own the west side. I'm
16 not letting it go. When asked about it and asking him
17 directly about the victim, Wise said, The nigga just had
18 to get got.

19 Ladies and gentlemen, I submit to you that is the
20 essence of this case, that Mr. McCoy had absolutely no
21 respect for the law or even his own neighbors and
22 associates and friends in his own neighborhood. The judge
23 will instruct you on the law and of the elements of the
24 crimes of murder and possession of a firearm during the
25 commission of a violent crime. We welcome the burden of

1 reasonable doubt. And I'm sure that Mr. Johnson will talk
2 to you about that. Because every single piece of evidence
3 in this case points to one person and one person only and
4 that person is Mark McCoy.

5 When you swore your juror's oath, you took an oath to
6 have a duty to convict the defendant if the evidence
7 supports it. We believe we have brought you sufficient
8 evidence. And based on that, on behalf of the State of
9 South Carolina, we ask that you convict Mark Wise McCoy of
10 the crimes that he is charged with. Thank you.

11 THE COURT: Mr. Johnson.

12 MR. JOHNSON: Judge King, Ms. Fant, Mr. Foreman, and
13 ladies and gentlemen of the jury, it now becomes my duty
14 as an officer of this court to make some closing remarks
15 on behalf of Mark McCoy. My son and I want to sincerely
16 thank you for the attention that you've given to this
17 case. I do not say that to incur favors with you. I say
18 that genuinely and sincerely as an officer of this court.
19 I've had the privilege of practicing in the courts of
20 South Carolina for over 40 years and I appreciate the jury
21 system. The jury system is the best in the world.

22 Any jury trial, all of us have roles to play. As you
23 have witnessed during the course of this trial, there have
24 been disputes between Ms. Fant and myself regarding legal
25 issues. When those disputes arose, those disputes were

1 resolved by Judge King. There is a substantial dispute
2 regarding the facts of this case. And in a real sense,
3 you now become judges because you have got to judge, you
4 have got to decide who to believe.

5 As I said in my opening statement, in any criminal
6 case, there are three basic characteristics, that is
7 presumption of innocence, burden of proof and reasonable
8 doubt. You cannot convict a person based on speculation,
9 conjecture or guess work. You have probably witnessed a
10 historical trial in South Carolina. This is probably the
11 only trial in the history of this State involving a crime
12 where you have not heard any testimony from a law
13 enforcement officer except this one witness, Lieutenant
14 Rabon, who came up here and gave you a diagram of Sumter,
15 South Carolina. Think about it. Think about it. It is
16 the charge of the police to investigate crimes. It is
17 their responsibility to go out and accumulate evidence and
18 proof. That's what they do on a daily basis and you have
19 not seen one officer to come into this courtroom and say
20 to you based on my investigation, this is the evidence
21 that I compiled against Mark McCoy. You don't have any
22 physical evidence.

23 In any murder trial, in any murder trial, you have
24 two components, oral testimony and physical evidence. The
25 State makes an excuse about they don't have a murder

1 weapon. Well, the State didn't look for it. What police
2 officer came up here and put his hand on this Bible and
3 said that I went out and searched Mark McCoy's residence
4 for that murder weapon? Not a single one. What witness
5 came in here and said I went out and searched Mark McCoy's
6 home for a camouflaged jacket? Not a single one. Not a
7 single witness has come up here and told you that I
8 arrested Mark McCoy for murder, like they did Robyn Dukes
9 on June 8th, 2004. What law enforcement officer came in
10 here and told you that they had any contact with Mark
11 McCoy? Ladies and gentlemen of the jury, that is
12 elementary. If they had evidence that Mark McCoy had
13 committed this murder, they would have paraded police
14 officers, law enforcement officers in this courtroom with
15 proof that that had happened.

16 But what have they done? You know, it's really hard
17 for some jurors to appreciate the concept of reasonable
18 doubt. Because that's not a term that you hear on a daily
19 basis. But I submit to you, if nothing else, if nothing
20 else in this trial gives you reasonable doubt, the fact
21 that all of these witnesses that they have called in the
22 last two days were people that just sort of came in here,
23 halos on their heads, I'm not here to make any promises,
24 I'm not getting anything out of this, and yet, they pop up
25 two and three and four days before this trial.

1 What did little Kimberly Delay tell you? He just
2 talked to me Sunday. What about the other witnesses, they
3 talked to me Saturday. Roland Bostic said I wrote him a
4 letter last week. You think that's some coincidence?
5 That just happened? You think that just happened? That
6 is no coincidence. The State's, oh, they don't know each
7 other. You look at those plea agreements and those
8 proffers. The essence, the core vein in plea agreements
9 and proffers is they going to get something out of it.
10 One of witness said I'm not going to get anything, I'm not
11 going to get nothing. But I ask him are you expecting
12 something? Yeah, I'm expecting something. If they were
13 here to tell the truth, why is it they come in here at the
14 last minute? Why? Because as Judge King will tell you,
15 when you evaluate the credibility or believability of the
16 witnesses, you can take into consideration their interest
17 and their outcome.

18 Now, if you pause and reflect on the witnesses who
19 were on the scene that day of that shooting, not a single
20 one of them, not a single one of them identified Mark
21 McCoy except Mr. Holmes. Mr. Holmes. Who just happened
22 to be in the backyard, who just happened to be across the
23 fence and he saw Mark McCoy. But when did you tell the
24 police that? Oh, oh, oh, oh. You can take into
25 consideration the demeanor of these witnesses, how they

1 testified. You saw how they dressed this guy up, took him
2 out of his prison clothes, that's deceitful, ladies and
3 gentlemen. That's misrepresentation. And they are asking
4 you to convict Mark McCoy on the testimony of all of these
5 people who are either drug addicts or have long criminal
6 records. And you can take into consideration.

7 The State of South Carolina does not need a
8 conviction this bad that they have got to come into this
9 courtroom with this type of testimony and convict
10 somebody. This case should be labeled the missing
11 evidence because there's so much missing. In the normal
12 course of life, who would believe and rely on the people
13 who come in here to testify, the Roland Bostics of the
14 world? I asked him about those crimes that you have
15 committed, they involved dishonesty, not telling the
16 truth, cheating people. And so the State wants you to
17 believe that these people who are involved in lying and
18 cheating and dishonesty all before this trial, now they
19 are worthy of your belief.

20 Where is -- I don't how many of you remember. I
21 think it was either Wendy's or Burger King, they had this
22 commercial a few years ago where these two old ladies were
23 hanging around -- they were standing around with a little
24 piece of meat in the middle and one of them said where is
25 the beef, where is the beef? The question in this case is

1 where is the evidence? Where is the evidence? Any time,
2 any time that you're in criminal court, you might have a
3 sense or a feeling that somebody did something wrong, but
4 if you pause and reflect on it and analyze it objectively,
5 you still got to ask the question where is the proof,
6 where is the proof.

7 If you want to know which way the wind is blowing,
8 you don't look at the trunk of the tree, you look at the
9 small leaves. A small leaf in this case is Robyn Dukes.
10 Where is Robyn Dukes? Where is Robyn Dukes? When did
11 Robyn Dukes testify? Didn't Ms. Marshall say that Robyn
12 Dukes was there? Isn't Robyn Dukes an eyewitness? Hasn't
13 Robyn Dukes been charged with murder? Wasn't Robyn Dukes
14 arrested on June 8th, 2004, and charged with this murder?
15 Didn't Lieutenant Rabon say the charges were pending?
16 Where is Robyn Dukes? Where is Robyn Dukes? There's no
17 proof where Robyn Dukes is. What happened to Robyn Dukes?
18 That's an area of reasonable doubt.

19 Ladies and gentlemen of the jury, please understand
20 that a not guilty verdict does not mean that you condone
21 crime. It does not mean that you are sympathetic to
22 criminal defendants. It does not mean that you approve of
23 drug addicts. It does not mean that you approve of people
24 selling drugs. A not guilty verdict simply means in this
25 isolated case, in this one case of The State vs. Mark

1 McCoy, that there was not enough evidence and under my
2 oath as a fair and impartial juror that I can in good
3 conscience find Mark McCoy guilty. That's all a not
4 guilty verdict means. Because the burden is always on the
5 State because of the abundance of resources they have.

6 Ladies and gentlemen, where are the SLED agents that
7 came in here and testified about what happened? You don't
8 have any evidence about the crime scene. Not a single
9 piece of evidence of when the police officers went out
10 there on June 8th what they found. That's elementary.
11 That's elementary. You got people who four, five and six
12 years later coming in here telling you what Mark McCoy
13 said, what Mark McCoy did. Opradella comes in here and
14 says yeah, he had on a camouflage. Opradella, you know,
15 two or three years ago, you gave a written statement and
16 you didn't say that then. Oh, no, I didn't say that then.
17 But you're saying it now. Why are you changing your
18 testimony? Were you lying then or are you lying now?
19 But, of course, you know, they're not promised anything.
20 They're just doing it out of the goodness -- their
21 patriotic duty and good citizens.

22 Come on, ladies and gentlemen, when y'all park y'all
23 cars, you didn't park your common sense and you know
24 better than that. You know that there's something rotten
25 in the cotton about this case. There's something dirt

1 going on in this case. And it just ain't right. I mean,
2 when that guy came up here in those clothes that they
3 bought for him and give to him, that spoke volumes about
4 this case. That told you the extent to which they would
5 go to try to convict Mark McCoy without any proof. That
6 young man is the poster child for what I'm trying to tell
7 you. That is wrong and the case is missing believable
8 credible evidence.

9 Justice Finney's, portrait hangs over there, told me
10 a story many, many years ago about an old man. He told me
11 a story about an old man who was known in his community
12 for his wisdom and his staged advice. Everybody in the
13 community recognized the man as being very smart and very
14 wise. One day two little boys, two little smart alecks
15 decided they were going to challenge the old man and they
16 went and captured this bird and took that bird behind --
17 and put it behind their back and went up to the old man
18 and said, old man, old man, what is it we have behind our
19 back. And the old man wisely said, it's a bird, my son,
20 it's a bird. Then they ask the old man, is it dead or
21 alive? And the old man said, Son, the bird is in your
22 hands, whether it lives or dies, it is up to you.

23 Mr. Foreman and ladies and gentlemen of the jury,
24 whether my client is found guilty or not guilty is up to
25 you. With all the power invested in Judge King, he can't

1 direct y'all and tell y'all what verdict to return. With
2 all authority invested in Ms. Fant, she cannot tell you
3 what verdict to return. But during your deliberations
4 when you discuss this matter, you discuss the areas of
5 reasonable doubt. And you find that you hesitate and
6 pause that I'm not sure, I just can't, I just can't be
7 sure what really happened. That's what reasonable doubt
8 is. And you will find that the only just and fair verdict
9 is a not guilty verdict. And it's a not guilty verdict
10 because the State of South Carolina has not presented to
11 you sufficient proof to convince you beyond a reasonable
12 doubt that my client is guilty as charged.

13 On behalf of Mark McCoy and my son, George, we thank
14 you so very much for the attention you've given in this
15 case.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, if you would give me your attention. It is now
18 about 4:20 in the afternoon. And the only thing left to
19 be done in this case is for the Court to instruct you on
20 the law. Those instructions will take about 20 to 25
21 minutes and it would be nearly five o'clock before you
22 would be able to go to the jury room to begin your
23 deliberations in this case. I want you to feel like you
24 have enough time to adequately consider the evidence in
25 this case and to give the case the attention that it

1 deserves. And I do not think it would be fair to you for
2 me to send this case to the jury at five o'clock in the
3 afternoon. So I am going to adjourn for the afternoon at
4 this time and ask you to be back in the morning, at which
5 time, I will instruct you on the law and then you will be
6 able to go to your jury room to deliberate your verdict.

7 As I said, I want you to feel that you had as much
8 time as you would like to consider this matter without the
9 lateness of the hour. And I think it would not be fair to
10 you to send this case to you for a determination after
11 about a two-and-a-half or a three-day trial at five
12 o'clock in the afternoon.

13 So we are going to adjourn for the afternoon and I'm
14 going to allow you to go to your homes and families and
15 relax and get some rest and be back here in the morning at
16 9:30, at which time, we will be prepared -- I will be
17 prepared to give you the instructions on the law.

18 Some very careful admonitions now that you've heard
19 all the evidence in this case. First of all, again, do
20 not discuss the case with anyone. When you are away from
21 the courthouse, don't discuss it with your family, your
22 friends or anyone else. Do not let anyone discuss the
23 case with you. If anyone should approach you or try to
24 talk to you about this case over the evening recess, get
25 their name and their description and report it to me in

1 the morning -- or report to the bailiff in the morning and
2 I will deal with them. And then when you come into your
3 jury room in the morning, do not begin any discussions
4 about the case among yourselves. Because you will have to
5 hear the instructions on the law from the Court before you
6 will be allowed to begin your deliberations. So as soon
7 as you are assembled, we will be ready to go in the
8 morning at 9:30.

9 And, finally, and this is important in this case, do
10 not under any circumstances read any news reports or media
11 reports regarding this matter over the evening recess. If
12 there is anything on television or radio, simply turn
13 those matters off. If there's anything in the newspaper,
14 put that newspaper aside and read that after you have been
15 discharged by me as a juror in this case. But do not read
16 any news stories or hear any broadcast media concerning
17 this matter until after you have been discharged by me.

18 With those admonitions, then, I am going to excuse
19 you now, allow you to go to your homes and families and
20 ask you to be back tomorrow morning at 9:30 and we will
21 conclude this case tomorrow. Thank you and you are free
22 to go.

23 (WHEREUPON, the jury was excused for the day.)

24 THE COURT: I want to give the jury a few minutes to
25 clear the building before we adjourn, but is there

1 anything on behalf of the State before -- the State needs
2 to put on the record or anything at this time, Ms. Fant?

3 MS. FANT: No, Your Honor.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: None, Your Honor, thank you kindly.

6 THE COURT: Let's wait just a few minutes then to
7 give the jury a chance to clear the area before we
8 adjourn.

9 (WHEREUPON, a pause in the proceedings.)

10 THE COURT: All right. On this matter, we will be
11 adjourned until 9:30 tomorrow morning. I want to check
12 with the solicitors and see if there's anything they need
13 for us to do in the next half hour or so. But the court
14 personnel, we will convene at nine o'clock in the morning.
15 I do have a matter of a probation violation involving Mr.
16 Weinberg that was going to be scheduled for Friday, but he
17 has a conflict and I told him I would do that at nine
18 o'clock in the morning, so I need court personnel here and
19 please be here Miss Reed at nine o'clock tomorrow morning.

20 We'll take a few minutes -- as I say, we're adjourned
21 on this case and we'll take a few minutes while I check
22 and see with the solicitor's office before we adjourn for
23 the afternoon. But let me see if there is anything else
24 that needs to be done there.

25 Other than that, this matter is in recess until

1 tomorrow afternoon. And I'll let you know about overall
2 court for the rest of the afternoon.

3 (WHEREUPON, the proceedings were concluded for the
4 day to be reconvened on September 25, 2008.)

5 THE COURT: All right. We are back on the record
6 with the matter of the State vs. Mark McCoy. Mr. McCoy is
7 present with his counsel. The State is present and
8 represented by Ms. Fant. And I understand that all the
9 jurors are here.

10 Anything before we bring the jury in on behalf of the
11 State, Ms. Fant?

12 MS. FANT: No, Your Honor.

13 THE COURT: On behalf of the defendant, Mr. Johnson?

14 MR. JOHNSON: Nothing, Your Honor.

15 THE COURT: All right. Bring the jury in, please.

16 (WHEREUPON, the jury enters the courtroom.)

17 THE COURT: Thank you very much. Good morning,
18 ladies and gentlemen, and thank you for your promptness in
19 being back here. I do need to ask you if anyone has read
20 any news stories or heard any broadcast media regarding
21 this case over the evening recess? I would need to know
22 about that now.

23 A negative response and that's good. Thank you very
24 much.

25 All right. Now, ladies and gentlemen, as I told you

1 yesterday, the only thing remaining in this case is for me
2 to give you the instructions on the law. You have
3 followed very patiently and listened very tentatively to
4 the presentation of the evidence in this case and also to
5 the able arguments made by the solicitor, Ms. Fant, on
6 behalf of the State and to Mr. Johnson on behalf of the
7 defendant and I thank you for that.

8 It now becomes the duty of the trial judge under the
9 constitution of this state to charge and instruct you on
10 the law applicable to this case. And it is your duty as
11 jurors to accept and apply the law as the Court will now
12 state it to you. And as jurors, it is your exclusive duty
13 to decide all of the issues of fact in this case. And for
14 that purpose, to determine the effect, the value, the
15 weight, and the truth of the evidence. Both the State and
16 the defendant have the right to expect that you will
17 conscientiously consider and evaluate the evidence and
18 apply the law of the case thereto to the end that both the
19 State of South Carolina and the defendant will receive and
20 obtain a fair and impartial.

21 Now, when I use the word defendant, I refer, of
22 course, to Mr. Mark McCoy. The State of South Carolina in
23 the bill on indictment in this case charges the defendant,
24 Mark McCoy, with two offenses. The first offense known in
25 the law as murder. And in the indictment, he is charged

1 and it is alleged that Mr. Mark A. Wise McCoy did in
2 Sumter County on or about June 8th of 2004, feloniously,
3 willfully and with malice aforethought, either expressed
4 or implied, kill one Donald Tyrone Pettis, Jr. by means of
5 shooting him in the back with a handgun and that Donald
6 Tyrone Pettis, Jr., did die as a proximate result thereof.
7 The other count on the indictment alleges that Mark A.
8 Wise McCoy in Sumter County on or about June the 8th of
9 2004, was in possession of and did visibly display a
10 firearm, to wit a handgun, during the commission of a
11 violent crime defined in South Carolina law, specifically,
12 murder. And that is a charge of possession of a firearm
13 or knife during the commission of a violent crime.

14 To these charges and to this indictment, the
15 defendant has entered a plea of not guilty. This plea of
16 not guilty by the defendant places the burden of proof on
17 the State to prove by evidence the guilt of the defendant
18 beyond a reasonable doubt before you, the jury, can find
19 the defendant guilty. The defendant, Mr. McCoy, is
20 presumed in the law innocent of the charge contained in
21 the indictment. It is a cardinal and fundamental rule of
22 the law of evidence that a defendant, irrespective of the
23 enormity of the charge against him, will always be
24 presumed innocent of the crime for which he is indicted or
25 the crimes for which he is indicted unless and until the

1 guilt of the defendant has been proven by evidence which
2 satisfies you, the jury, of his guilt beyond a reasonable
3 doubt.

4 The presumption of innocence is not a mere legal
5 theory. It is not just a legal phrase. The presumption
6 of innocence is a substantial right to which every accused
7 is entitled. Our Supreme Court has declared that the
8 presumption of innocence is like a robe of righteousness
9 placed about the shoulders of a defendant. And it remains
10 with him and assigns to him that class, the innocent,
11 until that presumptive robe of righteousness has been
12 stripped from his person by evidence satisfying you, the
13 jury, of his guilt beyond a reasonable doubt.

14 The presumption of innocence accompanies the
15 defendant from time of his arraignment and appearance in
16 this court and continues with the defendant after you
17 retire to the jury room to deliberate your verdict. The
18 presumption of innocence continues in existence to the
19 benefit of the defendant until you, the jury, reach the
20 conclusion that the State has proven the guilt of the
21 defendant beyond a reasonable doubt.

22 Now, the State is not required to prove the guilt of
23 a defendant beyond all doubt or beyond every doubt, but
24 beyond a reasonable doubt. What is a reasonable doubt?
25 It is not an imaginary or a fanciful doubt or a weak

1 doubt, it is a substantial doubt. It is a doubt which the
2 words imply, a doubt for which you can give or assign a
3 reason based on the testimony and evidence in this case.
4 A reasonable doubt is not any sort of a doubt. You and I
5 know from every day life experiences that you may have
6 sort of a doubt about any matter that arises no matter how
7 trivial it may be or how serious it may be. A reasonable
8 doubt is a doubt which makes an honest, sincere,
9 conscientious juror in search of the truth hesitate to
10 act. Proof beyond a reasonable doubt is proof which
11 leaves you firmly convinced of the defendant's guilt. If
12 you have a doubt for which you can give or assign a reason
13 as to the guilt of the defendant, then he is entitled to a
14 verdict of not guilty. Reasonable doubt may arise from
15 evidence which is in the case or from the lack of evidence
16 in the case. You, the jury, must make the determination
17 of whether or not reasonable doubt exist as to the guilt
18 of the defendant.

19 The very fact, however, that the jury engages in a
20 full and free discussion of the issue of guilt or
21 non-guilt in this case with the normal conversational ebb
22 and flow on these issues does not automatically mean that
23 reasonable doubt exist in this case or in any other case.
24 I charge you that the defendant is entitled to every
25 reasonable doubt arising in the whole case. If upon any

1 fact -- any issue of fact essential to conviction and a
2 verdict of guilty you have a reasonable doubt as to how
3 that issue should be resolved, it would be your duty to
4 resolve that doubt in favor of the defendant.

5 A defendant, ladies and gentlemen, is not required to
6 prove his innocence. But the State is required by law to
7 prove every essential element of the offense charged
8 against the defendant by evidence which satisfies you, the
9 jury, of his guilt beyond a reasonable doubt before you
10 can convict the defendant and find him guilty. If then,
11 upon the whole case, you have a reasonable doubt as to the
12 guilt or innocence of the defendant, he is entitled to
13 that reasonable doubt and would be entitled to an
14 acquittal and a verdict of not guilty. But on the other
15 hand if, upon the whole case, you find that the State has
16 proven by evidence which satisfies you, the jury, of the
17 guilt of the defendant beyond a reasonable doubt, then in
18 such circumstances, it would equally be your duty to
19 convict the defendant and find him guilty.

20 I instruct you that the indictment in this case which
21 I have in my mind hand and which I read to you a few
22 minutes ago is not evidence and cannot be considered by
23 the jury as evidence in this case. The indictment is
24 simply the formal written instrument which contains the
25 charges against the defendant and it serves as the formal

1 document by which this case is brought to trial.

2 Now, during this case -- trial, each of us, ladies
3 and gentlemen, you and I, have certain duties to perform.
4 As the trial judge, it is my responsibility to preside
5 over the trial of this case and I also have a duty to rule
6 upon or pass upon the admissibility of evidence offered
7 during the progress of the trial. You are to consider
8 only the evidence admitted into the record. And you are
9 to disregard and disabuse from your mind any testimony
10 ordered stricken from the record of this case during the
11 progress of the trial, if there be any. And you are to
12 consider only the testimony which has been presented from
13 the witness stand together with any exhibits admitted into
14 the record of this case and any stipulations of counsel
15 made into the record, if there be any.

16 I have the additional duty to charge you the
17 applicable law in this case. As the presiding judge, I am
18 the sole judge of the law. And it is your duty to accept
19 and apply the law as I now state it to you. If you have a
20 preconceived idea as to what the law is or what the law
21 ought to be and it does not agree with what I tell you
22 what the law is, you are obligated under your oath to
23 abandon this preconception on your part because you are
24 sworn to accept the law precisely as the Court gives it to
25 you.

1 In every case tried in this court before a jury, the
2 jury becomes the sole and exclusive judge of the facts of
3 the case. You, the jury, are judges of the facts in this
4 case. The Court is the judge of the law. The
5 constitution of this state has declared that the trial
6 judge shall not intimate, state, comment upon or make any
7 statement to a trial jury about the facts of the case.
8 Since, you are the sole judge of the facts, you are not to
9 infer from anything that I have said during the progress
10 of this trial in ruling upon the admissibility of evidence
11 or otherwise or anything that I say to you now during the
12 course of these instructions to you that I have any
13 opinion about the facts of this case. I do not. The law
14 does not permit me to have an opinion about the facts.
15 This is a matter solely for you, the jury, to determine.

16 As jurors then, it is your duty to determine as I
17 have stated the effect, the value, the weight and the
18 truth of the evidence presented during the course of this
19 trial. Necessarily, then, you must assess the credibility
20 of the witnesses who have testified in this case.
21 Credibility is simply a legalistic term which means
22 believability. It becomes your duty then to analyze and
23 evaluate the evidence and to determine that evidence which
24 convinces you of its truth. I charge you that in
25 determining the question of credibility or believability

1 of the witnesses, you may believe one witness as against
2 several witnesses or several witnesses as against one
3 witness. You may believe a part of the testimony of a
4 witness and reject the remaining part of the testimony of
5 that same witness. You may believe the testimony of a
6 witness in its entirety or reject the testimony of a
7 witness in its entirety. You may consider whether any
8 witness has exhibited any interest, any bias or any
9 prejudice in the case. You may consider the demeanor of a
10 witness, that is the appearance of a witness from the
11 witness stand. And you may consider the opportunity for
12 knowledge concerning those things about which the witness
13 testified.

14 These considerations you do not exercise arbitrarily,
15 but if in your good judgment, there is sound reason in the
16 record for so doing. Because your objective, ladies and
17 gentlemen, is to find the truth, whether it comes from one
18 or more witnesses. And in doing so, in exercising your
19 mental processes and in determining what you consider to
20 be true, the law simply requires that you exercise your
21 good judgment, your common sense, your sense of logic and
22 reason, and your experiences in life. You then apply
23 these attributes of ability to the evidence and determine
24 what you consider to be the truthful evidence. And to
25 these true state of facts as determined by you, the jury,

1 you take and apply the law as I now state it to you and
2 thus arrive at a true verdict in this case.

3 Now, the defendant in this indictment, as I have told
4 you, is charged with two offenses, murder and the
5 possession of a firearm during the commission of a violent
6 crime. And I will now define each of these offenses for
7 you. As I said, the defendant is charged with murder.
8 The State must prove beyond a reasonable doubt that the
9 defendant killed another person with malice aforethought.
10 Malice is hatred, ill will or hostility towards another
11 person. It is the intentional doing of a wrongful act
12 without just cause or excuse and with an intent to inflict
13 an injury or under circumstances that the law will infer
14 an evil intent.

15 Malice aforethought does not require that malice
16 exist for any particular time before the act is committed.
17 But malice must exist in the mind of the defendant just
18 before and at the time the act is committed. Therefore,
19 there must be a combination of the previous evil intent
20 and the act. Malice aforethought may be expressed or
21 inferred. The terms expressed and inferred do not mean
22 different kinds of malice, but merely the manner in which
23 malice may be shown to exist. That is either by direct
24 evidence or by inference from the facts and circumstances
25 which are proven.

1 Express malice is shown when a person speaks word
2 which express hatred or ill will for another or when the
3 person prepared beforehand to do the act which was later
4 accomplished. For example, lying in wait for a person or
5 any other acts of preparation going to show that the deed
6 was within the defendant's mind would be express malice.
7 Malice may be inferred from conduct showing a total
8 disregard for human life. Inferred malice may also arise
9 with the deed is done with a deadly weapon.

10 A deadly weapon is any article, instrument or
11 substance which is likely to cause death or great bodily
12 harm. Whether an instrument has been used as a deadly
13 weapon depends on the facts and circumstances of each
14 case. The following are examples of instructions which
15 may be deadly weapons, a pistol, shotgun, rifle, dirk,
16 dagger, knife, slingshot, metal knuckles, razor are types
17 of deadly weapons. A gun may be a deadly weapon even if
18 it is not operated.

19 Now, the second crime for which the defendant is
20 accused in the indictment is the crime of possession of a
21 weapon during the commission of or attempting to commit a
22 violent crime. And I will say more about this later, but
23 I will tell you that you are first to consider the crime
24 of murder. And if you were find the defendant not guilty
25 of murder, you would not even get to the possession of a

1 weapon during the commission of a violent crime. You must
2 first find the defendant guilty of murder before you would
3 get to the second crime charged in the indictment of
4 possession of a weapon during the commission of a violent
5 crime.

6 The State must prove beyond a reasonable doubt that
7 the defendant was in possession of a firearm or visibly
8 displayed what appeared to be a firearm during the
9 commission of a violent crime. A firearm means any
10 machine gun, automatic rifle, revolver, pistol or any
11 weapon which will or is designed to or may be readily
12 converted to expel a projectile. In order to find the
13 defendant guilty of possession of a weapon during the
14 commission a violent crime, you must first find the
15 defendant guilty of either committing a violent crime or
16 attempting to commit a violent crime. And I would charge
17 you that murder is a violent crime.

18 Now, ladies and gentlemen, there are generally two
19 types of evidence which are presented during a trial,
20 direct evidence and circumstantial evidence. Direct
21 evidence is the testimony of a person who claims to have
22 actual knowledge of a fact, such as an eyewitness. It is
23 evidence which immediately establishes the main fact to be
24 proven. Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of a

1 fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation. The law makes
5 absolutely no distinction between the weight or value to
6 be given to either direct or circumstantial evidence. Nor
7 is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence.

9 You should weigh all of the evidence in this case.
10 And after weighing all of the evidence, if you are not
11 convinced of the guilt of the defendant beyond a
12 reasonable doubt, you would find the defendant guilty. On
13 the other hand, after weighing all the evidence, if you
14 are convinced of the guilt of the defendant beyond a
15 reasonable doubt, you would find the defendant guilty.

16 Now, ladies and gentlemen, I tell you now and I
17 emphasize to you that -- and would say the defendant in
18 this case has not testified. This is his constitutional
19 right. It is not a circumstance you can take into
20 consideration or even allow to enter into your discussions
21 in the jury room. Under the Constitution of South
22 Carolina and the United States Constitution, it is the
23 Defendant's Constitutional right not to testify. The
24 burden of proof is on the State to establish his guilt by
25 competent evidence beyond a reasonable doubt. The fact.

1 that the defendant did not take the witness stand and
2 testify in his own behalf does not create any inference
3 against him. The jury must not permit that fact to weigh
4 in the slightest degree against this defendant nor should
5 this fact enter into the discussions or deliberations of
6 the jury in any matter whatsoever.

7 Now, ladies and gentlemen, I have just about finished
8 my instructions to you, but I would tell you that when you
9 serve on the jury, you are not partisans or advocates for
10 the State of South Carolina or for this defendant. You
11 have no friends to reward and enemies to punish.
12 Obviously, such a perverted system of justice would be
13 intolerable. You have been selected by both the State and
14 the defendant as fair and impartial jurors. It is your
15 duty then by your joint deliberations to determine the
16 truth in this case giving to this defendant the benefit of
17 each and every reasonable doubt on each and every issue
18 and then to the facts which you determine to be true. You
19 then take and apply the law which has been given to you by
20 this Court and arrive at a verdict.

21 The word verdict, ladies and gentlemen, has a Latin
22 derivative. It comes from the Latin phrase -- or Latin
23 word veredicto meaning to speak the truth or true saying.
24 And when you have accomplished these responsibilities, you
25 will have satisfied your oath as jurors and you will have

1 discharged your duty to this Court.

2 Now, I want to instruct you on your forms of verdict
3 in this case. If the State has failed to prove the guilt
4 of the defendant beyond a reasonable doubt, your verdict
5 would be two words, not guilty. If the State has proven
6 the guilt of the defendant beyond a reasonable doubt, your
7 verdict would be one word, guilty. The verdict that you
8 render in this case must be the verdict of each and every
9 juror. It must be your unanimous verdict, all 12 of you
10 must agree on the verdict that you authorize the foreman
11 to write.

12 Now, Mr. Foreman, I have prepared on a sheet of paper
13 a verdict form for your use in the jury room. And I would
14 tell you that the order in which I have put the possible
15 verdicts on this verdict form has absolutely no
16 significance whatsoever. You should not infer from the
17 order in which I have put the possible verdicts on this
18 verdict form that I have any opinion as to what your
19 verdict should be. I do not. The law does not allow me
20 to have an opinion. But, obviously, in putting something
21 down on paper, I had to put something first and put
22 something second.

23 But across the top up here, we simply have the State
24 of South Carolina, the county, court of general sessions
25 and circuit, the name of the case, The State vs. Mark

1 McCoy, case number and then verdict.

2 And the first matter that you will consider would be
3 Count 1, we, the jury, by unanimous agreement find the
4 defendant, Mark A. McCoy, on the charge of murder either
5 guilty or not guilty. And you would indicate by checking
6 or making an X in one of those two blocks. If and only if
7 you find the defendant guilty of the murder charge would
8 you consider the possession of a deadly weapon. You will
9 consider the next charge only if you find the defendant
10 guilty of murder. And there again, we, the jury, by
11 unanimous consent find the Defendant, Mark A. Wise McCoy,
12 on the charge of possession of a firearm or knife during
13 the commission of a violent crime either guilty or not
14 guilty and you would indicate your verdict by making an X
15 or a check mark into whatever is your verdict. And then
16 sign your name here and date it. And notify the bailiff
17 and we will return you to the courtroom as quickly as
18 possible.

19 Now, I'm going to send you to your jury room. I'm
20 going to ask that you not begin your deliberations just
21 yet. The law does require that I take up matters --
22 certain matters with the attorneys. And if it is not
23 necessary for me to bring you back for additional
24 instructions, the bailiff will bring you the verdict form.
25 He will also bring you the exhibits and will tell you to

1 begin your deliberations. And then when you have reached
2 a verdict, you notify the bailiff and we will attempt
3 to -- we will bring you back into the courtroom just as
4 quick as we can.

5 So the 12 members of the jury, I would ask you go to
6 your jury room, but don't begin your deliberations just
7 yet. And -- well, also, let me ask the alternate to go at
8 this time. I'll bring you back in just a moment. All of
9 you go to your jury room, but don't begin your
10 deliberations.

11 (WHEREUPON, the jury retire to the jury room.)

12 THE COURT: Additions or exceptions on behalf of the
13 State, Ms. Fant?

14 SOLICITOR: None, Your Honor.

15 THE COURT: On behalf of the defendant, Mr. Johnson?

16 MR. JOHNSON: Your Honor, two clarifications. Your
17 Honor, I was listening to you and listening to my client
18 at the same time, but it appears to us, it sound like to
19 us initially when you were defining circumstantial
20 evidence, sort of at the end of your instruction, you were
21 giving alternative and you gave the word guilty twice.

22 THE COURT: I thought I read it just like it was
23 written, let me see.

24 MR. JOHNSON: Sort of at the end when you read --

25 THE COURT: I said after weighing all the evidence,

1 if you are not convinced of the guilt of the defendant
2 beyond a reasonable doubt, you would find the defendant
3 not guilty. If you are convinced of the guilt of the
4 defendant beyond a reasonable doubt, you would find the
5 Defendant guilty. Not guilty on one sentence and then the
6 second sentence would be not guilty.

7 MR. JOHNSON: Your Honor, can we check with the court
8 reporter?

9 THE COURT: Yes, sir.

10 Look back at it, Keshia, and see what it says. It'd
11 be about midway through.

12 (WHEREUPON, the court reporter reviewed jury charge.)

13 THE COURT: You are correct. I will recharge them on
14 circumstantial evidence.

15 MR. JOHNSON: Okay. Your Honor, regarding your
16 charge on his not testifying again, what did you say about
17 that? Again, we were engaged in conversation.

18 THE COURT: What I said is the defendant in this case
19 has not testified. This is his constitutional right. It
20 is not a circumstance you can take into consideration or
21 even allow to enter into your discussion in the jury room.
22 Under the Constitution of South Carolina and the United
23 States Constitution, it is a defendant's constitutional
24 right not to testify. The burden of proof is upon the
25 State of South Carolina to establish his guilt by

1 competent evidence beyond a reasonable doubt. The fact
2 the defendant did not take the witness stand and testify
3 in his own behalf does not create any inference against
4 him. The jury must not permit that fact to weigh in the
5 slightest degree against the defendant nor should this
6 fact enter into the discussions or deliberations of the
7 jury in any matter.

8 MR. JOHNSON: Thank you, Your Honor.

9 THE COURT: All right. You request a recharge on the
10 circumstantial evidence?

11 MR. JOHNSON: Yes, sir, I do.

12 THE COURT: All right. Bring the jury back.

13 Before I bring them back, is there any reason -- if I
14 do that, counsel, is there any reason that the State knows
15 that the alternate should not be excused?

16 MS. FANT: No, Your Honor.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: No, Your Honor.

19 THE COURT: All right. Bring them all back then.

20 (WHEREUPON, the jury returns to the courtroom.)

21 THE COURT: Mr. Foreman and ladies and gentlemen, I
22 may have misspoke during one portion of the charge. And
23 because I want to make sure that it is clear -- and if I
24 did misspeak, I want to make sure that I say it exactly
25 right and that is with regard to direct and circumstantial

1 evidence. And in that connection, I will instruct you
2 again on direct and circumstantial evidence.

3 There are two types of evidence which are generally
4 presented during a trial, direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a fact,
7 such as an eyewitness. It is evidence which immediately
8 establishes the main fact to be proven. Circumstantial
9 evidence is proof of a chain of facts and circumstances
10 indicating the existence of a fact. It is evidence which
11 immediately establishes collateral facts from which the
12 main fact may be inferred. Circumstantial evidence is
13 based on inference and not on personal knowledge or
14 observation.

15 The law makes absolutely no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence. Nor is a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence. You should weigh all of the evidence in
20 this case. After weighing all of the evidence, if you are
21 not convinced of the guilt of the defendant beyond a
22 reasonable doubt, you would find the defendant not guilty.
23 After weighing all of the evidence, if you are convinced
24 of the guilt of the defendant beyond a reasonable doubt,
25 you would find the defendant guilty.

1 With those additional instructions, again, I'm going
2 to ask you to go to your jury room. Do not begin your
3 discussions just yet.

4 And I'm going to ask the alternate if you'll stay
5 with me, please.

6 All right. The twelve will go, but don't begin your
7 discussions just yet.

8 (WHEREUPON, the jury retired to the jury room.)

9 THE COURT: Additions or exceptions, Ms. Fant?

10 MS. FANT: No, Your Honor.

11 THE COURT: Mr. Johnson?

12 MR. JOHNSON: None, Your Honor.

13 THE COURT: Counsel, y'all want to check the exhibits
14 and make sure that everything is in order, that nothing
15 goes to the jury room that's not supposed to go to the
16 jury room.

17 And here's the verdict form, Mr. Bailiff. And you
18 can take the exhibits and the verdict form to the jury and
19 tell them to begin their deliberations.

20 (WHEREUPON, the jury began deliberations at 10:07
21 a.m.)

22 THE COURT: Mr. Alternate, you have heard all of the
23 testimony in this case, but the law does not permit me to
24 have but 12 jurors. The purpose of having alternates is
25 in the event that something comes up that we have to

1 replace a juror and that did happen in this case. You did
2 not get selected when your name was put back in the pool
3 of the two alternates to replace the juror that we had to
4 replace. And so you have served as an alternate in this
5 case. It means that you have heard all of the testimony,
6 but you will not participate in the decision.

7 I will tell you now that after you have been excused
8 by me, there is nothing illegal about your talking with
9 anyone about this case. There's nothing illegal about
10 anybody talking to you about it. It is a practice of
11 which I strongly disapprove and I strongly discourage, but
12 it is not illegal. You have a right to talk with anyone,
13 but you also have the right not to talk with anyone. And
14 if anybody should want to talk to you about it and you
15 don't wish to talk about it and they continue to harass
16 you, you let me know and I will -- or let the court
17 personnel know and I will deal with them. I will ask that
18 you not talk with anybody about this case until after this
19 jury has returned a verdict and that would be sometime
20 later today and I don't know when that would be, but
21 please don't talk with anybody about it until after this
22 jury has returned a verdict.

23 But with that, I am going to excuse you from any
24 further responsibility on this case. What I'm going to
25 ask you to do is to call back the number that you have

1 between 12 and 1:00 today and we will know whether or not
2 we're going to go forward with any -- we have one more
3 short matter we need a jury for this week. So I'm going
4 to ask you to call back between 12 and 1 and it may be
5 that we would ask you to come back this afternoon. I just
6 don't know at this time. But that number should be on
7 materials that you have and if you don't, get it from the
8 bailiff when you leave and be sure and call that number
9 between 12 and 1. But with that then, you are excused
10 from any further responsibility on this case. You can go
11 right out this door. Thank you.

12 (WHEREUPON, the alternate was excused.)

13 THE COURT: All right. Counsel, we will be at ease
14 until we hear from the jury or until the solicitor has
15 some other matters that you wish for me to consider, Ms.
16 Fant. If there are any other matters from the Solicitor's
17 office, just let me know. I'll be in chambers and I'll be
18 glad to do those while the jury is deliberating. Thank
19 you.

20 (WHEREUPON, court was in recess awaiting a verdict.)

21 THE COURT: Thank you, please be seated.

22 All right. We're back on the record with regard to
23 the matter of The State vs. Mark McCoy, 05-GS-43-33. Mr.
24 McCoy is present with his counsel, Mr. I.S. Leevy Johnson
25 and Mr. George Johnson. The State is present with the

1 solicitor, Ms. Fant.

2 Before -- first of all, I want to say that I've been
3 advised that the jury has reached a verdict. They have
4 sent me a note to that effect. The note contains nothing
5 more than we have reached a verdict 9-25-08 and signed by
6 the foreman. I am going to give this note to the court
7 reporter and mark it as Court's Exhibit and make it a part
8 of the record.

9 (WHEREUPON, Court's Exhibit No. 3 was marked for
10 identification.)

11 THE COURT: The other thing that I want to say before
12 the jury comes in is that, of course, nobody in this room
13 knows what the jury's verdict is going to be. I know that
14 this is an important matter to everybody associated with
15 this case. I know, also, that it is a highly emotional
16 matter. I am going to require that order in the court be
17 maintained in the courtroom when the verdict is read. If
18 anybody is in the courtroom that feels that they cannot
19 sit quietly when the verdict is published, then I am going
20 to require that you leave now. I must insist that order
21 and decorum be maintained when the verdict is read. So if
22 there is anyone who feels that they cannot sit quietly
23 when the verdict is read, then I would require that you
24 leave at this time.

25 The next thing that I'm going to require is I want

1 the bailiffs, please, to clear the back, say, three rows
2 of the courtroom on this side because -- for reasons that
3 I will set forth in just a few minutes. So anybody
4 sitting in the back three rows on this side, move forward,
5 please.

6 All right. The other thing that I am going to
7 require is that after the verdict is read that no one will
8 be able to leave the courtroom until I allow you to leave
9 the courtroom until after the jury has been excused and I
10 have taken care of matters with regard to the jury. No
11 one is to leave the courtroom after I bring the jury in
12 until I relieve you from -- allow you to leave the
13 courtroom. Clearly understood? All right.

14 That being the case, anything before the jury is
15 brought in, Ms. Fant?

16 MS. FANT: No, Your Honor.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: No, Your Honor.

19 THE COURT: Bring the jury in, please.

20 (WHEREUPON, the jury returns to the courtroom with a
21 verdict at 11:04 a.m.)

22 THE COURT: Mr. Foreman, I understand you have a
23 reached a verdict; is that correct?

24 MR. FOREMAN: We have.

25 THE COURT: Would you pass it up to the bailiff,

1 please.

2 From the standpoint of form, the verdict appears to
3 be correct.

4 Mr. Johnson, would you and your client stand, please?

5 Mr. Herron, you may publish the verdict.

6 THE CLERK: Case number 2005-GS-43-33, The State of
7 South Carolina vs. Mark A. Wise McCoy, defendant. We, the
8 jury, by unanimous consent find the Defendant, Mark A.
9 Wise McCoy on the charge of murder guilty. As to Count 2,
10 we, the jury, by unanimous consent find the defendant,
11 Mark A. Wise McCoy on the charge of possession of a
12 firearm or knife during the commission of a violent crime
13 guilty. Signed David Smallwood, foreperson, dated
14 September 25th, 2008.

15 This be your verdict, so say you all by raising your
16 right hand.

17 (WHEREUPON, All hands were raised.)

18 THE COURT: Mr. Johnson, you and your client may be
19 seated. Anything before the jury is discharged,
20 Mr. Johnson?

21 MR. JOHNSON: Poll the jury, Your Honor.

22 THE COURT: Poll the jury, please.

23 THE CLERK: Ladies and gentlemen, when I call your
24 name, will you please stand and answer the questions.

25 James Shrift, this be your verdict and still your

1 verdict?

2 JUROR: Yes, sir.

3 THE CLERK: Thank you.

4 Samuel Burrows, is this your verdict and still your
5 verdict?

6 JUROR: Yes, sir.

7 THE CLERK: Ann Mack, is this your verdict and still
8 your verdict?

9 JUROR: Yes, sir.

10 THE CLERK: Catrenia Miller, is this your verdict and
11 still your verdict?

12 JUROR: Yes, sir.

13 THE CLERK: Thomas Kemp, is this your verdict and
14 still your verdict?

15 JUROR: Yes, sir.

16 THE CLERK: Donna Choice, is this your verdict and
17 still your verdict?

18 JUROR: Yes, sir.

19 THE CLERK: Dwayne Elder, is this your verdict and
20 still your verdict?

21 JUROR: Yes, sir.

22 THE CLERK: Juanita McGee, is this your verdict and
23 still your verdict?

24 JUROR: Yes, sir.

25 THE CLERK: Lori Myers, is this your verdict and

1 still your verdict?

2 JUROR: Yes, sir.

3 THE CLERK: Robert Field, is this your verdict and
4 still your verdict?

5 JUROR: Yes, sir.

6 THE CLERK: Roger Mosketti, is this your verdict and
7 still your verdict?

8 JUROR: Yes, sir.

9 THE CLERK: David Smallwood, is this your verdict and
10 still your verdict?

11 JUROR: Yes, sir.

12 THE CLERK: Your Honor, the jury has been polled and
13 the verdict stands.

14 THE COURT: All right. Thank you, sir.

15 Mr. Johnson, anything before the jury is excused?

16 MR. JOHNSON: No, sir, Your Honor.

17 THE COURT: All right.

18 All right. Ladies and gentlemen of the jury, I am
19 now going to excuse you from any further responsibility or
20 service on this case. I want to thank you for your
21 service not for your verdict. I make it a policy -- in my
22 view, the jury's role in the fact-finding process is so
23 important that the judge should not comment on the verdict
24 of the jury even after a jury has reached a decision. And
25 it's my policy never to comment on the verdict of the

1 jury. It is the jury's role to make a determination based
2 upon the facts and I think that that role is so important
3 that the trial judge should not comment on the verdict of
4 the jury and I do not do so. I will tell you that there
5 was evidence in the record by which you could have reached
6 the verdict that you did.

7 In just a few minutes, I'm going to excuse you from
8 any further service on this case and I'm going to allow
9 you to go about your business for a short while. I'm
10 going to ask that you call that number that you have
11 between 12 and 1:00. We will determine if we need you
12 here for anything else this afternoon. But if you don't
13 have the number, be sure and get it from the bailiffs
14 before you leave and call that number between 12 and 1 and
15 we will let you know whether it's going to be necessary
16 for us to bring you back this afternoon.

17 But I will tell you this, once you have been
18 discharged as a juror in this case, there is nothing
19 illegal about your talking with anybody about your service
20 on this case. There's nothing illegal about anybody
21 talking to you about your service. It is a practice of
22 which I strongly disapprove and I strongly discourage, but
23 it is not illegal. You have the right to talk with
24 anyone, but you also have the right not to talk with
25 anyone. And if anybody should want to talk with you about

1 your service on this case and they continue to -- you tell
2 them you don't want to talk about it and they continue to
3 harass you or bother you about it, you let the court
4 personnel know and I will deal with them.

5 So with those admonitions, as I say, I'm going to
6 excuse you in just a minute. Now, the other thing is I
7 know that very often jurors want to know what happens from
8 here. And we go at this point into the sentencing phase
9 of this case where I will actually sentence the defendant.
10 That procedure will take us a short time, not a whole long
11 time, but you are welcome to stay if you would like to
12 stay for the sentencing phase. And here's what I'm going
13 to do, if you would like to stay, I'm going to excuse you,
14 allow you to go out this way, go around and have a seat in
15 the courtroom on the back three rows. They have been
16 cleared for the jurors if you would like to stay. Also,
17 when I have finished the sentencing phase, I will excuse
18 you first and give you an opportunity to clear the
19 courthouse before anyone else is excused. So you're
20 certainly welcome to stay after I excuse you, but you do
21 not have to. We will go into the sentencing phase and
22 when we do, if you would like to stay, go around this way
23 with the bailiff and he'll show you how to go around the
24 hall and come back in by that back door and sit on those
25 back three rows if you would like to stay. And I will

1 excuse you first before anyone else is allowed to leave
2 the courthouse or you can leave and just simply call that
3 number between 12 and one o'clock and we'll let you know
4 about this afternoon.

5 So with that, again, I want to thank you for your
6 service on this case. And I am going to excuse you from
7 any further responsibility on this matter at this time.
8 And, perhaps, I'll see you this afternoon. Thank you very
9 much. You're free to go.

10 (WHEREUPON, the jury was excused.)

11 THE COURT: Mr. Johnson, I'll be glad to hear from
12 you by way of motion.

13 MR. JOHNSON: Your Honor, we would respectfully
14 request that we be allowed pursuant to Rule 29 to file a
15 posttrial motion within the next ten days.

16 THE COURT: Rule 29 is the rule of civil procedure, I
17 believe isn't it or is it criminal? Let me look at the
18 rule.

19 MR. JOHNSON: Rules of criminal procedure ---

20 THE COURT: Twenty-nine?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: Okay.

23 MR. JOHNSON: Your Honor, the rule sets forth also
24 for a new trial based on evidence, a posttrial motion
25 shall be made within ten days after the disposition of the

1 sentence.

2 THE COURT: Just a moment, let me find it. I'm
3 trying to do my work on the rules and -- I know that's
4 normally the case and I certainly will grant that right,
5 but I just want to check the rule.

6 The Court will grant the ten day time to file
7 posttrial motions, but will go forward with sentencing at
8 this time.

9 Ms. Fant, you have the sentencing sheets?

10 MS. FANT: Yes, Your Honor.

11 THE COURT: All right. Mr. Johnson, if you and your
12 client will come around, please.

13 Ms. Fant, anything further on behalf of the State?

14 MS. FANT: Yes, Your Honor, Mr. Mark McCoy does have
15 a prior record. Beginning in South Carolina in 1992, a
16 driving under suspension; in the year 2004, a -- excuse
17 me, I'm sorry, 1994, a possession with intent to
18 distribute crack cocaine and possession with intent to
19 distribute powder cocaine. In 2004, a possession of crack
20 cocaine. Also, has a prior record from the State of New
21 York beginning in 1986, petty larceny; 1987, attempted
22 robbery and a robbery third; and in 1988, a robbery first,
23 which then N.C.I.C. indicates was consolidated with the
24 other cases.

25 I attempted to find out from the State of New York

1 exactly what he was sentenced to in terms of what the
2 indictment said so we could possibly notice him for life
3 without parole. However, we did not find them very
4 cooperative and we were unable to obtain the exact
5 specifics on those robbery convictions and that was the
6 reason we did not serve the notice.

7 Your Honor, from the State's position, we do have
8 some people that would like to address, including the
9 mother of the victim and law enforcement. I would just
10 ask you to take into consideration during this sentencing
11 phase that we did have witnesses threatened in this case.
12 My next case for trial is actually the person who shot
13 Robyn Dukes, who was the co-defendant in this case, and I
14 will be presenting evidence in that case that that was
15 under the direction of Mr. McCoy that the co-defendant was
16 shot.

17 THE COURT: Let me address the victim in this case in
18 just a minute, Ms. Fant.

19 I, of course, know that you are the mother of the
20 young man that was killed in this case. You have the
21 right to be kept advised of everything that is going on in
22 connection with any kind of a court proceeding. You also
23 have the right to be present. Of course, you are here and
24 have been here during the trial of this case. And you
25 also have the right to address the Court, so if there's

1 anything you would like to tell me, I'll be glad to hear
2 from you.

3 MS. WELLS: Yes, sir. First of all, I'd like to say
4 thank God from whom all blessings flow. I would like the
5 Court for giving me the opportunity to speak in my son's
6 behalf because he can't speak for himself. I want to
7 thank the jury for finding Mr. Wise guilty of murdering my
8 son for no apparent reason at all. And I want to thank
9 Mr. Johnson for trying to get Mr. Wise a fair and just
10 hearing. And I just want to wish Mr. Wise well. I don't
11 want any harm to come upon him, but I want him to sit and
12 think about taking the life of my son when it could have
13 been all the crack heads of Sumter, it could have been
14 anybody else's child, but he chose mine. And for that, I
15 would like thank you, this Court, all of the detectives
16 for their hard and trying work. Thank Ms. Fant for her
17 hard effort in trying to find justice for my son, Donald
18 Tyrone Pettis, Jr. Thank you.

19 THE COURT: All right. Ms. Fant, anyone else?

20 MS. FANT: I believe law enforcement would like to
21 address the Court.

22 THE COURT: All right. I'll hear from you, Ms.
23 Rabon.

24 MS. RABON: Thank you, sir. I just want to say I
25 know you're the Judge and you're going to do the sentence,

1 but if anyone needs life, I feel it is Mr. McCoy. The
2 control he has in the west side of town is unreal. Just
3 as she stated, Donte shot Robyn Dukes who snitched on him.
4 He has that control and power that people will do what he
5 wants them to do. He also, in conversations that we
6 seized from Richland County jail, he talked about some of
7 these witnesses had nowhere to go. I'm concerned for
8 their safety as well because we don't have money to move
9 them. But he is that type of person and I think it's
10 serious.

11 THE COURT: All right. Thank you.

12 Yes, sir?

13 CAPTAIN HOLSTON: Please the Court, Your Honor, I'm
14 the commander --

15 THE COURT: Give your name, please, for the court
16 reporter.

17 CAPTAIN HOLSTON: Captain Alvin Holston. I'm the
18 commander of the criminal investigations section for the
19 City of Sumter. I've spent a number of years
20 investigating cases, attempting to build units together to
21 provide security and safety for the citizens of Sumter.
22 This situation here has been very tedious over the past
23 three years to try and work this case, do the right thing,
24 constantly behind it all and make sure that ordinary
25 citizens in the west side of the community are protected.

1 There's a lot of stuff that we are continuing -- are going
2 to continue to work over the next couple of months and
3 next couple of years to try and bring some dignity to
4 ordinary citizens that live in these communities where
5 they're being plagued with drugs and violence. And for
6 any players that we can deem and do things just in the
7 fairness of the law, we're going to bring them forward to
8 the courts.

9 Mr. McCoy is before you today, I've listened to my
10 detectives and watched them work over the past year.
11 They've really gone at it. And for those who attempt to
12 disrupt the decency and dignity of ordinary people working
13 to get by on day-to-day basis that would bring this type
14 of violence into the community, Your Honor, I think
15 Detective Rabon spoke best. We ask that you maximize on
16 the sentence of this one individual coming before you and
17 just hear our voice from law enforcement. Thank you, Your
18 Honor.

19 THE COURT: Thank you.

20 All right. Mr. Johnson.

21 MR. JOHNSON: Your Honor, we will make our argument
22 in mitigation during the period of our new trial -- motion
23 for a new trial.

24 THE COURT: No, sir, I'm going to impose sentence
25 today, so I need to hear from you now.

1 MR. JOHNSON: Your Honor, with all due respect to the
2 commander and to Ms. Rabon, let me first thank the mother
3 of Mr. Pettis for her kind words. It is very unusual for
4 the mother of the victim to compliment defense counsel. I
5 think it speaks volumes on her character and her decency
6 to compliment me on defending my client and all of the
7 things that she said about the court, about the jury and
8 about law enforcement.

9 As you're aware, having practiced law for so many
10 years and now being on the bench for over 13 or more
11 years, at this point in a trial, it is very, very
12 difficult and painful for the client and for the attorney.
13 When I was retained on this case, when I first met Mark
14 McCoy, I immediately was impressed with his determination
15 and his commitment to form a partnership with me to defend
16 him against these charges. Having been an officer in the
17 courts of South Carolina for over four years, it was very
18 unusual to find a client with the intellectual capacity of
19 Mark McCoy. In a real true sense, Your Honor, we have
20 been a team, along with my son, George, a threesome, in
21 preparing this case and identifying strengths and
22 weaknesses of the case. As you know, in here and every
23 case, there are some strengths and some weaknesses. And I
24 am mindful of the fact, as Ms. Fant indicated, that he has
25 a history of being involved in some criminal activity.

1 Obviously, if someone could have controlled his life, it
2 would have been redirected in a different direction
3 because he has so much to contribute on a positive basis.

4 It was striking to me, as I told the jury, that this
5 was a case where all of these witnesses sort of fell out
6 of the sky shortly before this trial commenced. Mark will
7 corroborate the fact that when I told -- when I first met
8 with him, I told him, you know, the police really are not
9 a threat to us. It is your acquaintance and your
10 so-called friends. And he witnessed it here in the last
11 few days with these so-called acquaintances and so-called
12 friends turned on him.

13 As I said in my opening statement, the contradictions
14 in what they testified to -- and I'm still convinced, Your
15 Honor, that -- and I abide by the jury's verdict that the
16 contradiction and their versions of what happened was
17 sufficient to constitute reasonable doubt. I'm also
18 convinced of the fact there's not one police officer,
19 except one who came in here who introduced the streets, a
20 map, was no law enforcement officers came in here. The
21 absent evidence constitutes sufficient reasonable doubt
22 for the jury to decide otherwise, but they decided that my
23 client is guilty.

24 I'm mindful of the fact of the limitations that you
25 have in imposing a sentence. The law enforcement is

1 asking you to impose a life sentence. Under the
2 circumstances, Your Honor, I don't think it is warranted.
3 Under the circumstances, Your Honor, a minimum sentence as
4 provided by law would be appropriate. It would achieve
5 the same thing that a life sentence would achieve.
6 Obviously, for murder, he has to be punished. And it is a
7 substantial punishment. And in your discretion, we appeal
8 to you to do what is fair to the public and do what is
9 fair to Mark McCoy in your wisdom and your judgment under
10 the circumstances.

11 None of these people involved in this case come into
12 this case, unfortunately, with exemplary records. It's
13 saddens all of us the type of culture that we've been
14 exposed to in this trial. This culture that exist,
15 unfortunately, in our society. None of us condone it.
16 But, Your Honor, I believe that Mark McCoy has positive
17 aspects about his life and we, on behalf of my son and
18 myself, respectfully ask that the minimum sentence
19 provided by law be imposed.

20 THE COURT: All right. Thank you, sir.

21 Does your client care to address the Court?

22 THE DEFENDANT: Your Honor, first thing I'd like to
23 do is --

24 THE COURT: Step in front of the microphone. That's
25 good.

1 THE DEFENDANT: The first thing that I'd like to do
2 is -- you know, again, I don't feel that I'm guilty, but I
3 was found guilty by 12 people, my peers, so I have to
4 accept the punishment for that. But I want to say to the
5 lady that I am very sorry that your son was taken away. I
6 really mean that. You know, once somebody's gone, you
7 can't bring them back. And I do understand that. Okay.
8 I'm sorry for that, that took place. All right. I mean
9 that.

10 Again, Your Honor, you know, I mean, I'm ready to be
11 sentenced. And again, that's the only person I have
12 something to say to is the lady. You know, law
13 enforcement know what they did. It's done.

14 THE COURT: All right. Thank you, sir.

15 Almost 13 years ago when I got this job, my
16 colleagues on the bench talked to me and we talked and
17 they said that the most difficult thing that we would have
18 to do is criminal sentencing. And nothing has changed in
19 those 13 years that -- or nothing has come up in those 13
20 years that changes my opinion that it is the most
21 difficult thing that we have to do. We judges have no
22 crystal ball. We can only rely on our experience and the
23 facts of the case as we see them as they have been brought
24 to the attention of the Court and try to come up with a
25 sentence that serves the requirements of society as well

1 punishing the defendant for the conduct. But it is
2 difficult to do and we simply do the best that we can
3 based upon experience and judgment.

4 I am very concerned about the situation in this case
5 because it does appear to be just general lawlessness in
6 the area of our community based upon what the jury has
7 found to be the defendant's conduct as well as the conduct
8 of many of the witnesses who appeared in this case. That
9 attitude of lawlessness and disregard for the law has
10 simply got to cease. I disagree with the defense position
11 that the defendant in this case was convicted -- or the
12 testimony against him was by people in that culture. A
13 lot of it was, but the very fact of the matter is that
14 those are the people that are involved in this kind of
15 culture and that's why they are the witnesses in the case.
16 But as I think back over the testimony in this case, the
17 testimony to me would be very, very hard to disregard by
18 the jury no matter what you thought of the prison
19 witnesses who appeared or the so-called jailhouse
20 snitches. I don't get see how you can get around the fact
21 that Mr. McConico was fine upstanding citizen who had
22 nothing to gain and nothing to lose. He came in here and
23 told what he saw. And that his testimony was eyewitness
24 testimony of the actual shooting regardless of what you
25 think of -- what anyone thinks of the other witnesses who

1 testified in this case.

2 I do think that it is important that the word go out
3 to this community that the kind conduct for which this
4 defendant has been found guilty by this jury will not be
5 tolerated in our community. And the sentence that I'm
6 going to impose is designed to punish him, but it is also
7 designed to send that message.

8 The sentence of the Court is the defendant is
9 committed to the state department of corrections for a
10 term of life imprisonment. On the possession of a firearm
11 during the commission of violent crime, the sentence of
12 the Court is the defendant is committed to the state
13 department of corrections for a term of five years to run
14 consecutive to count one.

15 The hearing as far as the defendant is concerned is
16 adjourned. As far as everyone else in the courtroom is
17 concern at this time, the members of the jury that are
18 here may leave at this time. No one else.

19 I'll give a minute a two for the jury members to
20 clear the building and get out of the way. And then,
21 Ms. Fant and Ms. Barwick, I'm going to excuse the
22 prosecution team and the victim and allow them to go
23 before I release anyone else and get into either your
24 office or to leave the building, whichever the case may
25 be, and then I will adjourn from there. But right now,

1 let's give the jury a few minutes to clear the building.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. JOHNSON: Your Honor, may we exit since we're
4 going in the opposite direction?

5 THE COURT: Yes, sir, y'all can go ahead.

6 All right. Members of the victim's family can go to
7 the victim's office downstairs.

8 If there's anyone else in the courtroom who is
9 associated with the victim's family and has not gone with
10 the victim's advocate to the victim's advocate office, but
11 is associated with the victim's family, you're free to go
12 at this time.

13 In just a few minutes, we are going to recess for ten
14 minutes and everyone will be excused. All spectators who
15 are here for this matter that are members of the
16 defendant's family or associated with the victim will be
17 required to leave not only the courthouse, but the
18 courthouse grounds. The only people that I want remaining
19 in the building or will allow to remain in the building or
20 on the grounds are officers of this court, attorneys,
21 court personnel, employees here in the courthouse. But if
22 there's anybody that is here as a spectator or a
23 participant in this case against Mr. Mark McCoy will be
24 required to vacate not only the building, but to vacate
25 the grounds. That being the case, we will be in recess

1 for ten minutes.

2 END OF REQUESTED TRANSCRIPT

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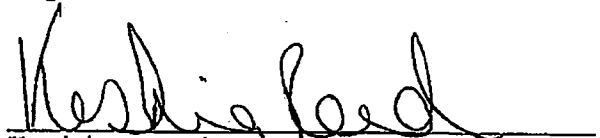
1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4
5 I, Keshia Reed, Court Reporter and Notary Public
6 in and for the State of South Carolina At Large, do hereby
7 certify that the above-entitled cause was heard as
8 hereinafter set out; that I was authorized to and did
9 transcribe the said proceedings; and that the foregoing
10 and annexed pages, numbered 1 through 230, inclusive,
11 constitute a true and accurate transcription of my
12 stenographic report of the said cause taken during the
13 said hearing.

14 In witness whereof, I have hereunto affixed my
15 signature this 7th day of May, 2009.

16 
17 Keshia Reed, Court Reporter
18 My Commission Expires: 6-5-2010
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FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER 2012 JULI -5 AMN: 39

2012-CP-43-1090

MARK MCCOY 210705
Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick C.I.
2. Name and location of Court which imposed sentence SUMTER COUNTY COURT OF GENERAL SESSION
3. Name(s) of co-defendant(s) (if any) ROBIN LAVERN DUKES
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) MURDER 05-GS-43-0033
 - (b) POSSESSION OF FIREARM IN COMMISSION OF A VIOLENT CRIME 05-GS-43-0033
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SENTENCED ON SEPTEMBER 25, 2008
 - (b) MURDER: LIFE IMPRISONMENT

(c) POSSESSION OF FIREARM IN COMMISSION OF VIOLENT CRIME: 5 YEARS

6. Check whether a finding of guilty was made:

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

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

YES

8. If you answered "yes" to (7), list:

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

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. APPLICANT CONVICTIONS WERE AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. JUNE 8, 2011

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) PROSECUTOR'S MISCONDUCT
 (c) _____

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

- (a) THE GROUND FOR RELIEF STATES THE RELEVANT FACTS
~~THE~~ STRIKLAND V WASHINGTON, 466 US 668 (1984)
 (b) VIOLATION OF BRADY V. MARYLAND 373 US 83 (1963)

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

- (a) any petition in a State Court under South Carolina Law? APPEALED DIRECTLY TO
~~SOUTH CAROLINA SUPREME COURT AS SPECIFIED IN (7) AND (8), SUPREME~~
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) THEY WERE NOT APPROPRIATE ISSUES FOR DIRECT APPEAL OR
FOR A PETITION FOR A WRIT OF CERTIORARI TO US SUPREME COURT
FURTHERMORE, THESE GROUNDS RELY ON ADDITIONAL FACTS
OUTSIDE THE RECORD BEFORE THE PREVIOUS COURTS

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. I.S. LEEVY JOHNSON & GEORGE C. JOHNSON
- ii. 1615 BARNWELL STREET
- iii. COLUMBIA SOUTH CAROLINA (803) 252 9700
- (b) the proceedings at which each such attorney represented you:
- i. APPLICANT WAS REPRESENTED BY COUNSEL DURING TRIAL
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
APPLICANT SEEKS RELIEF FROM HIS CONVICTION AND SENTENCE
20. Are you now under sentence from any other court that you have not challenged?
FEDERAL CRIMINAL SYSTEM

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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

Mark A. McCoy

SWORN to and subscribed before me this 4
day of June, 2012

Deane L. Young (L.S.)
Notary Public

My Commission Expires: 10-11-2021

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

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

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

Mark A. McGary
Applicant

SWORN or affirmed to and subscribed before me this
4 day of June, 2012
Jorge L. Young
Notary Public

My Commission Expires: 10-11-2021

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Mark A. McCoy,

Appellant.

Appeal From Sumter County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2011-UP-278
Submitted May 1, 2011 – Filed June 8, 2011

APPEAL DISMISSED

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

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Attorney General Donald J. Zelenka, all of Columbia;
and Solicitor C. Kelly-Jackson, of Sumter, for
Respondent.

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COURT DULY NOTE

RECORDED
2012 JUN -5 AM 11:40JAMES J. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.G.

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10(C) & 11(C) PAGES 1-23

10(D) & 11(D) PAGES 1-15

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10(H) & 11(H) PAGES 1-5

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THE EXHIBITS NUMBER #1 THRU #16

COURT DULY NOTE: APPLICANT'S TRIAL TRANSCRIPT OF RECORD,
ON SEPTEMBER 22-23, 2008, THE COURT REPORTER WAS
MARGARET T. SULLIVAN.

ON SEPTEMBER 24-25 2008, THE COURT REPORTER WAS
KESHIA REED

THEIR ARE TWO TRANSCRIPT OF RECORD BOOKS. BOTH
START AT PAGE ONE (1). TO MAKE THE DISTINCTION OF
WHAT BOOK IS BEING USED IN REFERENCE TO, IN APPLICANT'S
PCR ARGUMENTS WILL FOLLOW AS;

COURT PLEASE NOTE:

INFORMATION FROM TRANSCRIPT OF RECORD; BOOK ONE
(DATED SEPT 22-23) WILL SHOW AS; [TR(1) - PAGE(S) - LINE(S) IF NEEDED]

INFORMATION FROM TRANSCRIPT OF RECORD, BOOK TWO
(DATED SEPT 24-25) WILL SHOW AS; [TR.(2) - PAGE(S) - LINE(S) IF NEEDED]

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<u>U.S. V. BAGLEY</u>	473 US AT 667 (1985).....	11(C), 11(D)
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<u>GIGLO V. U.S.</u>	405 US AT 150, 154 92 S.C.T (1972).....	11(C), 11(D)
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<u>WASHINGTON V. STATE</u>	324 SC 232, 478 SE 2D 833 (1996).....	11(C), 11(D)
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<u>STATE V. DAMON</u>	285 SC 125, 328 SE 2D 628 (1985).....	11(C), 11(G)
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JAMES CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

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STATE V. PRUITT 187 SC 58, 196 SE 371 (1938)..... 11 (H), 11 (I)

STATE V. SMITH 288 SC 329, 342 SE 2D 600 (1986)..... 11 (H)

STATE V. KENNEDY 272 SC 231, 250 SE 2D 339 (1978)..... 11 (H), 11 (I)

STATE V. SMITH 290 SC 393, 350 SE 2D 923 (1986)..... 11 (I)

STRICKLAND V. WASHINGTON 446 US 668, 104 S. CT 2052 80 L. ED
2D 624 (1984)..... 11 (F), 11 (G), 11 (H).

EXHIBITS

- # 1. (A) STATE INDICTMENT FOR MURDER, CONSPIRACY
POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF A VIOLENT CRIME. INDICTED JANUARY 3, 2008 DOCKET
NUMBER 2005-GS-43-33
- (B) STATE INDICTMENT FOR MURDER, POSSESSION OF FIREARM
OR KNIFE DURING COMMISSION OF A VIOLENT CRIME. INDICTED
SEPTEMBER 11, 2008 AMENDED DOCKET NUMBER 2005-GS-43-33
- # 2. ARREST WARRANT F-413307 AFFIDAVIT: SWORN AND SUB-
SCRIBED: OCTOBER 22, 2007
- # 3. (A) BRADY MOTION; FILED NOVEMBER 9, 2007
- (B) MOTION FOR DISCLOSURE OF EVIDENCE; FILED NOVEMBER 9, 2007
- (C) MOTION TO COMPEL; FILED APRIL 16, 2008
- (D) MOTION FOR IN-CAMERA INSPECTION OF THE PROSECUTOR'S
FILE JUNE 3 2007
- (E) ORDER FOR IN-CAMERA BY THE HON. HOWARD P KING
JULY 22, 2008
- (F) JUDGE DENIAL OF BRADY MOTION AND DISCLOSURE OF
EVIDENCE; FILED AUGUST 19, 2008

EXHIBITS

- # 4. KIMBERLY DELAY'S INTERVIEW FORM AND SUMTER POLICE DEPARTMENT REPORT OF INVESTIGATION. DATED JANUARY 22, 2008
- # 5. KIMBERLY DELAY'S REPORT OF INVESTIGATION SUMMARY DONE BY FEDERAL SPECIAL AGENT RICHARD BROWN OF ATF. DATE APRIL 11, 2008
- # 6. KIMBERLY DELAY'S ATTORNEY MS. CATHERINE LEEK LETTER TO SOLICITOR FANT. DATED OCTOBER 13, 2009
- # 7. SOLICITOR FANT LETTER IN RESPONSE TO DELAY'S ATTORNEY MS C. LEEK DATED OCTOBER 13, 2009
- # 8. SOLICITOR FANT AFFIDAVIT OF IMPORTANCE TO DELAY'S TESTIMONY
- # 9. INFORMATION SHOWING THE DISPOSED CHARGES OF DELAY.
- # 10. LATIMORE HOLMES REPORT OF INVESTIGATION DONE BY FEDERAL SPECIAL AGENT RICHARD BROWN OF ATF DATED JANUARY 25, 2008
- # 11. STACEY BRUNSON REPORT OF INVESTIGATION DONE BY FEDERAL SPECIAL AGENT RICHARD BROWN OF ATF DATED JULY 9, 2008

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- # 12. ROBIN LAVERN DUKES RULE 5 DISCLOSURE AND MOTION
FOR RECIPROCAL DISCOVERY AND DISCLOSURE OF EVIDENCE
DATED: APRIL 21, 2008
- # 13. MARK MCCOY SUPPLEMENT RULE 5 DISCLOSURE AND MOTION
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DATED: AUGUST 5, 2008
- # 14(A) LATIMORE LERON HOLMES FEDERAL JUDGMENT IN A CRIMINAL
CASE DOCUMENT DATED 3/23/06
(B) LATIMORE L. HOLMES FEDERAL AMENDED JUDGMENT IN A
CRIMINAL CASE DOCUMENT DATED 11/20/08
- # 15. JAMMIA L HEYWARD FEDERAL PROFFER AGREEMENT
DATED: UNAVAILABLE (NOT DATED NOR SIGNED)
- # 16. APPLICANT REFUSING TO SIGN WAIVER OF RIGHT, MATERIAL SIGNED
BY DETECTIVE EUGENE WILLIAMS. DATED 10/23/07

10(A). APPLICANTS RIGHT TO ENSURE THAT DUE PROCESS OF THE LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA STATES CONSTITUTION. ART. 1 § 11; ART. 5 § 22 WAS NOT VIOLATED DURING THE GRAND JURY PROCESS. APPLICANT NOW REQUESTS THE GRAND JURIES IMPANELMENT DOCUMENTS.

11(A). SOUTH CAROLINA SUPREME COURT HELD: "WE CONCLUDE IMPANELMENT DOCUMENTS, INCLUDING THE STATE'S PETITION, SUPPORTING MATERIALS, AND THE IMPANELING JUDGE'S ORDER, MAY BE RELEASED TO A DEFENDANT PRIOR TO TRIAL UPON TIMELY REQUEST OR TO AN APPLICANT IN A PCR PROCEEDING. OF COURSE, THE STATE MAY REDACT INFORMATION NOT RELATED TO A PARTICULAR DEFENDANT'S CASE OR INFORMATION CONCERNING OTHER PERSONS OR MATTERS UNDER CONSIDERATION BY THE STATE GRAND JURY. RELEASE OF THE DOCUMENTS MAY BE APPROPRIATE BECAUSE (A) SECTION 14-7-1770 IS NOT A COMPLETE PROHIBITION ON THE RELEASE OF THE INFORMATION; (B) RELEASE OF THE DOCUMENTS IS NOT PROHIBITED BY SECRECY PROVISIONS OR OTHER CONCERNS FOLLOWING THE ISSUANCE OF A TRUE BILL OF INDICTMENT; AND (C) A DEFENDANT HAS THE RIGHT TO REVIEW THE DOCUMENTS TO DETERMINE WHETHER TO TIME CHALLENGE THE LEGALITY OF THE STATE GRAND JURY WHICH INDICTED HIM." EVANS V. STATE 611 S.E.2D 510 (SC 2005)

APPLICANT WAS INDICTED JANUARY 3, 2008. THE DOCKET NUMBER 2005-GS-43-33; ON SEPTEMBER 11, 2008 APPLICANT'S INDICTMENT WAS AMENDED, THE SAME DOCKET NUMBER

APPLICANT NOW REQUESTS THE IMPANELMENT DOCUMENTS, SUPPORTING MATERIALS AND BOTH THE JUDGE'S ORDERS. THIS REQUEST CONSIST OF BOTH APPLICANT'S INDICTMENTS THAT WENT BEFORE THE GRAND JURIES:

DATED AS JANUARY 3RD AND SEPTEMBER 11TH OF 2008 [EXHIBITS # 1(A), (B)]

S.C. SUPREME COURT HELD; THE STATE'S PETITION, SUPPORTING MATERIALS, & IMPANELING ORDER MAY BE MADE AVAILABLE TO A DEFENDANT WHEN A DEFENDANT'S RIGHT TO OBTAIN RECORDED MATERIALS OF PROCEEDING ARISES. ALTHOUGH MAINTAINING SECRECY IS ESSENTIAL WHILE A MATTER IS UNDER DELIBERATION BY THE GRAND JURY, SUCH CONCERNS DIMINISH FOLLOWING ISSUANCE OF A TRUE BILL OF INDICTMENT. A DEFENDANT IS ALLOWED TO OBTAIN AND USE THE IMPANELMENT DOCUMENTS IN PREPARING A DEFENSE AND ENSURING PROTECTION OF HIS DUE PROCESS RIGHTS. EVANS, SUPRA

APPLICANT IS ENTITLED TO CHALLENGE THE LEGALITY AND SUFFICIENCY OF THE PROCESS OF THE STATE GRAND JURY WHICH ISSUED THE INDICTMENTS

COURT DULY NOTE; APPLICANT'S REQUEST HAS BEEN MADE, ABOUT BOTH OF HIS INDICTMENTS, TO ASSURE HIS DUE PROCESS RIGHTS

10(B) APPLICANTS RIGHT TO UNREASONABLE SEIZURE OF HIS PERSON, AND DUE PROCESSES OF THE LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA CONSTITUTION WAS VIOLATED WHEN THE MAGISTRATE JUDGE ISSUED ARREST WARRANT BASED ON INFORMATION THAT NEVER EXISTED FOR PROBABLE CAUSE. LAW ENFORCEMENT DETECTIVE VIOLATED APPLICANTS FOURTH AMENDMENT BY KNOWINGLY USE RECKLESS FALSITY INFORMATION TO OBTAIN ARREST WARRANT OF APPLICANT.

11(B) ON OCTOBER 23, 2007 AN ARREST WARRANT WAS ISSUED BY MAGISTRATE JUDGE (LEE ANNA TINDAL). PROBABLE CAUSE FOR ISSUING THE ARREST WARRANT: LAW ENFORCEMENT RECEIVED STATEMENTS THAT IMPLICATED THE DEFENDANT AS THE PERSON THAT SHOT DONALD TYRONE PETTIS JR. WITH A PISTOL WHICH RESULTED IN THE DEATH OF THE VICTIM DONALD T. PETTIS. [EXHIBIT # 2] ARREST WARRANT

FEDERAL AND SOUTH CAROLINA LAW; THE FOURTH AMENDMENT WARRANT CLAUSE IMPOSES THE REQUIREMENTS FOR A CONSTITUTIONAL ARREST WARRANT (§ 3.2)

(1) THE MAGISTRATE MUST MAKE AN INDEPENDENT DETERMINATION THAT PROBABLE CAUSE EXISTS FOR THE ARREST.

(2) THE MAGISTRATE DETERMINATION MUST BE SUPPORTED BY INFORMATION GIVEN UNDER OATH.

(3) THE WARRANT MUST CONTAIN A PARTICULARIZED DESCRIPTION OF THE PERSON TO BE ARREST

(A) DETERMINATION OF PROBABLE CAUSE BY MAGISTRATE

(A) DETERMINATION OF PROBABLE CAUSE BY MAGISTRATE

THE FOURTH AMENDMENT DIVIDES RESPONSIBILITY FOR THE ISSUANCE OF A WARRANT BETWEEN THE MAGISTRATE AND THE OFFICER WHO APPLIES FOR THE WARRANT. THE MAGISTRATE IS RESPONSIBLE FOR DECIDING WHETHER PROBABLE CAUSE EXISTS FOR AN ARREST OR SEARCH. HOWEVER, BECAUSE THE MAGISTRATE LACKS INDEPENDENT KNOWLEDGE OF THE UNDERLYING FACTS, THE FOURTH AMENDMENT PLACES RESPONSIBILITY FOR SUPPLYING THIS INFORMATION ON THE APPLICANTS. A POLICE OFFICER BEGINS THE WARRANT PROCESS BY PREPARING A SWORN (WRITTEN) STATEMENT, CALLED A AFFIDAVIT, IN WHICH HIS APPLICATION IS MADE. THE MAGISTRATE REVIEWS THE OFFICER'S AFFIDAVIT AND DECIDES WHETHER THE FACTS STATED IN IT ARE SUFFICIENT IN MAKING THIS DECISION. THE MAGISTRATE CONSIDERS BOTH THE CONTENT OF THE INFORMATION AND THE RELIABILITY OF THE OFFICER'S SOURCES.

(B) SUPPORTED BY OATH OR AFFIRMATION

THE FOURTH AMENDMENT REQUIRES THAT THE MAGISTRATE'S PROBABLE CAUSE DETERMINATION BE BASED ON INFORMATION GIVEN UNDER OATH. AN OATH IS REQUIRED TO ENSURE THAT THE INFORMATION ON WHICH THE MAGISTRATE ACTS IS TRUTHWORTHY. MAGISTRATE NORMALLY RELY EXCLUSIVELY ON THE INFORMATION CONTAINED IN THE OFFICER'S SWORN STATEMENT (AFFIDAVIT); THEY RARELY TAKE ORAL TESTIMONY OR CALL OTHER WITNESSES. THIS MEANS THAT VALIDITY OF THE WARRANT WILL HINGE ON WHETHER THE OFFICER AFFIDAVIT CONTAINS ENOUGH INFORMATION TO ENABLE THE MAGISTRATE TO MAKE AN INDEPENDENT DETERMINATION OF PROBABLE

CAUSE. ON A SCALE OF ONE (1) TO TEN (10), OF THE SKILLS NEEDED TO BE A POLICE INVESTIGATOR. KNOWING HOW TO PREPARE A CONSTITUTIONALLY SUFFICIENT AFFIDAVIT RATES "10." TO SUPPORT THE ISSUANCE OF A WARRANT THE OFFICER'S AFFIDAVIT MUST CONTAIN A DETAILED ACCOUNT OF THE FACTS UNCOVERED BY THE INVESTIGATION, THE SOURCE OF THE FACTS, AND OTHER INFORMATION THAT THE MAGISTRATE WILL NEED TO EVALUATE THE RELIABILITY OF THE OFFICER'S SOURCES. IF THE OFFICER HEARD ABOUT IT FROM A THIRD PARTY HE SHOULD IDENTIFY THE THIRD PARTY AND EXPLAIN THE THIRD PARTY'S BASIS FOR KNOWLEDGE AND THE OFFICER'S REASON FOR BELIEVING THE THIRD PARTY'S INFORMATION RELIABLE. THIS IS PARTICULARLY IMPORTANT WHEN THE EXISTENCE OF PROBABLE CAUSE DEPENDS ON INFORMATION SUPPLIED BY A POLICE INFORMANT. COURT CONSIDER POLICE INFORMANTS DISREPUTABLE AND THEIR INFORMATION SUSPECT. CONSEQUENTLY, SPECIAL ATTENTION MUST BE GIVEN TO PROVIDING INFORMATION THAT WILL ENABLE THE MAGISTRATE TO EVALUATE AND INFORMANTS CREDIBILITY AND BASIS OF KNOWLEDGE.

COURT DULY NOTE; IN APPLICANT'S ARREST WARRANT IT INVOLVED THREE PARTIES. PROBABLE CAUSE WAS LAW ENFORCEMENT RECEIVED STATEMENTS THAT APPLICANT WAS THE SHOOTER WHICH CAUSED DEATH.

IN APPLICANT'S CASE ALL RELEVANT FACTS WERE REQUESTED. APPLICANT'S

ATTORNEY SERVED SOLICITOR FANT WITH BRADY MOTION AND DISCLOSURE OF EVIDENCE MOTION, NOV 9 2007 [EXHIBITS 3A, B]. THIS WAS TO NO AVAIL. THESE STATEMENTS LAW ENFORCEMENT RECEIVED IMPLICATING APPLICANT WERE NEVER PRODUCED, BEFORE TRIAL, DURING TRIAL, OR AFTER TRIAL.

THE FACT OF THE MATTER, THE SAID STATEMENTS USED TO SHOW PROBABLE CAUSE TO THE MAGISTRATE JUDGE, IN ORDER TO OBTAIN AN ARREST WARRANT WAS RECKLESSLY FALSTIV INFORMATION PROVIDED BY THE DETECTIVE MORRIS ON OCTOBER 22, 2007. THE SAID STATEMENTS NEVER EXISTED AT NO TIME.

THEREFORE, BY DETECTIVE MORRIS USING RECKLESS FALSTIV INFORMATION IN DECIEVING THE MAGISTRATE JUDGE IN ORDER TO OBTAIN THE ARREST WARRANT. THIS ACTION VIOLATES APPLICANTS DUE PROCESS GUARANTEED BY THE UNITED STATES AND SOUTH CAROLINA CONSTITUTION OF HIS FOURTH AMENDMENT RIGHT.

10(c) APPLICANT'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS DENIED AS A RESULT OF PROSECUTORIAL MISCONDUCT BY SOLICITOR FANT, SPECIAL AGENT, AND POLICE. WITHHOLDING CRUCIAL PROSECUTION'S WITNESSES STATEMENTS OF FACT, AND RIGHT TO A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW, VIOLATED BY SOLICITOR FANT'S MISCONDUCT MAKING PROMISE AND FAVOR (AGREEMENTS) WITHIN THE CRIMINAL JUSTICE SYSTEM WITH CRUCIAL WITNESS; AND NOT CORRECTING HER FALSE INFORMATION TO THE JURORS (SOLICITORS).

11(c) UNDER BRADY V. MARYLAND 373 US 83 (1963) THE PROSECUTION HAS AN AFFIRMATIVE DUTY TO MAKE AVAILABLE TO THE DEFENSE ANY EVIDENCE WHICH IS EXCULPATORY FOR THE DEFENDANT IN A CRIMINAL TRIAL.

SUPPRESSION BY THE PROSECUTOR OF EVIDENCE FAVORABLE TO THE ACCUSED WHO HAS REQUESTED IT VIOLATES DUE PROCESS, WHERE EVIDENCE IS MATERIAL.

ALSO SEE;

US V. BAGLEY 473 US AT 667, 676-77 (1985)

IMPEACHMENT EVIDENCE AS WELL A EXCULPATORY EVIDENCE SUBJECT TO THE BRADY DISCLOSURE; NO DISTINCTION SHOULD BE MADE WITH RESPECT TO CONSTITUTIONAL DISCLOSURE REQUIREMENTS.

APPLICANT'S ATTORNEY DURING PRE-TRIAL EXERCISED DUE DILIGENCE TO OBTAIN ANY INFORMATION, STATEMENT OF FACTS BY WITNESSES, ALL ISSUES THAT WERE

RELEVANT TO THE DEFENSE, BE IT STATE OR ANY LAW ENFORCEMENT AGENCY DURING THE INVESTIGATION. APPLICANTS ATTORNEY FILE THE FOLLOWING MOTION SERVED ON THE SOLICITOR FANT; (NOV 9, 2007) BRADY AND DISCLOSURE OF EVIDENCE MOTIONS [EXHIBIT # 3(A) # (B)], (APRIL 16, 2008) MOTION TO COMPEL [EXHIBIT # 3(C)], (JUNE 3, 2008) MOTION OF IN-CAMERA INSPECTION OF PROSECUTOR'S FILE [EXHIBIT # 3(D)], (JULY 22, 2008) WAS ORDERED BY HON J.P. KING [EXHIBIT # 3(E)]. SOLICITOR WAS TO SUBMIT HER ENTIRE CASE FILE TO COURT FOR INSPECTION. JUDGE DENIED APPLICANTS MOTION FOR BRADY AND DISCLOSURE OF EVIDENCE [EXHIBIT # 3(F)]

NOTE: IN APPLICANTS MOTION OF IN-CAMERA INSPECTION OF PROSECUTOR'S FILE DEFENSE ASKED THE HONORABLE COURT FOR AN ORDER REQUIRING THE STATE TO MAKE AVAILABLE TO THE COURT ALL INFORMATION AND EVIDENCE OBTAIN BY THE STATE OR ANY LAW ENFORCEMENT AGENCY DURING THE INVESTIGATION OF THE ABOVE CAPTIONED CASE SO AS TO ENABLE THE TRIAL JUDGE TO MAKE AN IN CAMERA INSPECTION OF SAID INFORMATION AND EVIDENCE SO AS TO INSURE THAT THE STATE HAS COMPLIED WITH THE REQUIREMENTS OF BRADY V. MARYLAND 373 U.S. 83 (1963)

APPLICANTS MOTION WAS SPECIFIC IN THERE REQUEST; CONCERNING ANY LAW ENFORCEMENT AGENCY WHOM OBTAINED EVIDENCE. THE EVIDENCE SUPPRESSED WILL SHOW PROSECUTION WAS IN POSSESSION OF THE EVIDENCE THAT IS MATERIAL BEFORE AND DURING APPLICANTS TRIAL.

SEPTEMBER 22-25, 2008 APPLICANT WENT TO TRIAL, AND WAS FOUND GUILTY OF MURDER AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME. SENTENCED TO LIFE WITHOUT PAROLE AND FIVE(5) YEAR CONSECUTIVELY. THROUGH OUT THE TRIAL IT WAS NOT ANY PHYSICAL EVIDENCE THAT CONNECTED THE APPLICANT TO THIS MURDER. APPLICANT WAS ARRESTED THREE(3) YEARS AND FOUR(4) MONTHS AFTER THE MURDER. DURING THE TRIAL THE RECORD WILL SHOW, NOT ONE INVESTIGATING OFFICER TESTIFIED TO WHAT LEAD TO THE ARREST OF APPLICANT, HOW APPLICANT BECAME A SUSPECT, NOR GAVE TESTIMONY ABOUT ANY OR WHAT TYPE OF INVESTIGATION LAW ENFORCEMENT TOOK PART IN TO SOLVE THE CRIME. PROSECUTION'S CASE RESTED TOTALLY ON WITNESSES (WHOM NONE FROM "2004" EVER IMPLICATED APPLICANT). THE CRUCIAL PROSECUTION WITNESSES, WERE ALL FEDERAL INMATE WITNESSES THAT CAME FORTH EIGHT(8) AND TWO(2) MONTHS, EVEN THE NIGHT BEFORE APPLICANTS TRIAL STARTED; THIS WAS THREE AND A HALF ($3\frac{1}{2}$) TO FOUR (4) YEARS AFTER THE FACT. EACH OF THESE FEDERAL WITNESSES HAD SOMETHING TO GAIN IN THE CRIMINAL JUSTICE SYSTEM FOR TESTIMONY. THESE VITAL FEDERAL INMATE WITNESSES IS WHAT THE STATE RELIED ON TO GET A CONVICTION OF APPLICANT.

IN APPLICANTS TRIAL, THE FACTS WILL SHOW; THE FEDERAL INMATE WITNESSES CREDIBILITY WAS THE STRENGTH TO SOLICITOR'S CASE. SHE DID EVERYTHING TO ENSURE THIS. SUPPRESSING EVIDENCE THAT WAS MATERIAL FROM THE DEFENSE THE SOLICITOR'S ACTIONS WERE DONE DELIBERATELY, IN ORDER TO KEEP THE CREDIBILITY OF WITNESSES (FEDERAL); MISLEAD, AND INFLUENCE THE JURY. HER ACTIONS EFFECTED THE TRIAL, AND DENIED APPLICANT DUE PROCESS, AND FAIR TRIAL.

THE MATERIAL OF FACTS TO BE PRESENTED; STATEMENT OF FACTS MADE BY STATE WITNESSES. TWO (2) WERE MADE BY PROSECUTION'S MOST CRITICAL WITNESSES TO TESTIFY IN APPLICANT'S TRIAL. THESE FACTS SUPPRESSED BY THE STATE. ALONG WITH MATERIAL FACT THE SOLICITOR, MADE PROMISE AND FAVOR AGREEMENT WITH CRITICAL PROSECUTION WITNESS FOR TESTIMONY USED TO HELP STATE GET A CONVICTION. THIS DEAL WAS DONE, BEFORE APPLICANT'S MURDER TRIAL.

STATEMENT OF FACT MADE BY WITNESS, WHICH APPLICANT CLAIMS IS GOVERN UNDER BRADY: KIMBERLY DELAY WHOM WAS APPLICANT GIRLFRIEND. SHE WAS ARRESTED ON UNRELATED DRUG CHARGES. DELAY SIGNED A WAIVER TO SPEAK WITH THE POLICE TO DISCUSS ALL APPLICANT'S CRIMINAL ACTIVITIES; ON (JANUARY 22, 2008) THIS WAS EIGHT (8) MONTHS BEFORE APPLICANT'S TRIAL. DELAY WAS QUESTIONED BY * INVESTIGATING DETECTIVE LT. E WILLIAMS OF SUMTER LAW ENFORCEMENT (ISD UNIT) [WHOM WORK CLOSELY IN APPLICANT'S CASE], WITH OTHER OFFICER DELAY WAS ASKED ABOUT THE MURDER CHARGE APPLICANT WAS IN JAIL FOR; WAITING TO GO TO TRIAL ON. AT THIS INTERVIEW (1.22.08) DELAY CLEARLY STATED HER FACTS: SHE NEVER HEARD MCCOY TALK ABOUT THE MURDER, NOR DOES SHE KNOW ANYTHING ABOUT THE MURDER. [EXHIBIT #4]

*TAKE NOTE; (1) DETECTIVE LT. E WILLIAMS; SIGNED DELAY'S WAIVER
(2) DETECTIVE LT. WILLIAMS; SIGNED APPLICANT'S WAIVER WHEN HE REFUSED TO TALK OR SIGN WAIVER ON THE DATE AND TIME OF HIS ARREST ON 10.23.07 [EXHIBIT #16]

(3) DETECTIVE LT. E WILLIAMS; WENT AND SPOKE, TO GET INFORMATION FROM PROSECUTION'S ONLY WITNESS TO ALLEGEDLY PUT APPLICANT UNDER A MASK AND SHOOT VICTIM: FEDERAL INMATE LATIMORE HOLMES
[TR(1) P. 234.] LINES 15 - 25

(4) DETECTIVE LT. E WILLIAMS; NAME IS ON STATES TRIAL WITNESS LIST.

ALSO NOTE: ** SPECIAL AGENT (ATF) RICHARD BROWN, WAS AWARE OF DELAY'S STATEMENT OF FACT. AGENT FILED THIS INFORMATION IN HIS REPORT OF INVESTIGATION ON (APRIL 11, 2008) [EXHIBIT # 5] THIS WAS FIVE (5) MONTHS PRIOR TO APPLICANT'S TRIAL.

THIS STATEMENT OF DELAY'S FACT, WHICH APPLICANT CLAIMS COMES UNDER BRADY, WAS NEVER PRESENTED TO THE DEFENSE. THOUGH ALL RELEVANT MATERIAL WAS REQUESTED. NOR REVIEWED BY THE COURT AS ORDERED. THE PROSECUTION SUPPRESSED THIS VITAL EVIDENCE. IT WAS IMPERATIVE THAT SOLICITOR FANT WAS AWARE OF THIS EVIDENCE. SOLICITOR'S * INVESTIGATING DETECTIVE LT. E WILLIAMS (ISD UNIT), WHOM SPOKE WITH ALL PROSECUTION'S CRITICAL WITNESSES; HOLMES AND DELAY, ATTEMPTED TO SPEAK WITH APPLICANT WORKED VIGOROUSLY IN CASE, BASIC ORDER OR DUTY WHEN INVESTIGATING A MURDER, IS TO INFORM SOLICITOR OF ANY AND ALL RELEVANT FACTS, CIRCUMSTANCES SURROUNDING CASE; BUT ALSO ** SPECIAL AGENT RICHARD

BROWN OF FBI, WHOM WORK VIGOROUSLY IN CASE, SPEAKING WITH OR
CONNECTED WITH ALL OF THE FEDERAL INMATES THAT WERE PROSECUTION'S
WITNESSES (RECORD WILL CONFIRM). HE WAS AWARE OF DELAY'S STATEMENT
 OF FACTS. [NEVERTHELESS, EVEN WHEN PROSECUTOR DOES NOT HERSELF
 POSSESS BRADY MATERIAL, SHE HAS A DUTY TO LEARN OF ANY FAVORABLE
 EVIDENCE KNOWN TO OTHER GOVERNMENT AGENTS, INCLUDING THE POLICE]
 SEE: KYLES V. WHITELY, 514 US AT 437 (1995)

ALSO SEE; GIGLO V. US 405 US AT 150, 154 92 S.C.T. "PROCEDURES AND
 REGULATIONS CAN BE ESTABLISHED TO CARRY [THE PROSECUTOR'S] BURDEN AND
 ENSURE COMMUNICATIONS OF ALL RELEVANT INFORMATION ON EACH CASE
 TO EVERY LAWYER INVOLVED IN THE CASE"

THE BRADY RULE GOVERNS BOTH IMPEACHMENT EVIDENCE AND EXCULPATORY
 EVIDENCE. [Id., BAGELY 473 US AT 676, 105 S.C.T 3375]

GIGLO AT 154-55, SUPRA; AN AGREEMENT MADE WITH A GOVERNMENT WITNESS
 FOR TESTIMONY IN EXCHANGE FOR MONETARY COMPENSATION OR FAVORABLE
 TREATMENT IN THE CRIMINAL JUSTICE SYSTEM SHOULD BE DISCLOSED AS
 IMPEACHMENT EVIDENCE, ESPECIALLY WHERE TESTIMONY IS AN IMPORTANT
 PART OF GOVERNMENT CASE.

FEDERAL INMATE DELAY PROSECUTION'S VITAL KEY WITNESS WAS GUARANTEED FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM FOR EXCHANGE OF TESTIMONY AGAINST APPLICANT, BY SOLICITOR FANT.

SOLICITOR FANT MADE AGREEMENT WITH DELAY MONTHS PRIOR TO THE TRIAL SOLICITOR WAS IN CONTACT WITH DELAY'S FEDERAL ATTORNEY^{TO} MAKE ARRANGEMENTS. SOLICITOR KNEW IN ADVANCE BEFORE THE TRIAL, SHE HAD DIRECT INTENTIONS ON DISMISSING ALL OF DELAY'S STATE PENDING CRIMINAL FELONY CHARGES, FOR EXCHANGE OF TESTIMONY

[SOLICITOR KNOWING THIS INFORMATION OF FACT PRIOR TO TRIAL OF THE AGREEMENT. BY ALL MEANS, SHOULD OF DISCLOSED THIS RELEVANT EVIDENCE OF DELAY RECIEVING PROMISE OF FAVORABLE TREATMENT FROM THE STATE. THE DEFENSE WAS ENTITLED TO KNOW OF THE PLEA AGREEMENT BETWEEN SOLICITOR FANT AND DELAY. THIS EVIDENCE COULD BE USED AS IMPEACHMENT PURPOSES.] GIGLO, SUPRA

"THE BURDEN IS ON THE SOLICITOR TO DISCLOSE EVIDENCE THATS MATERIAL, WHICH IS EXCULPATORY OR IMPEACHING;" GIBSON V STATE 334 S.C. 515, 514 S.E.2D 320 (1999)

THE HON. J.P. KING WAS UNDER THE IMPRESSION THAT DELAY OR OTHER WITNESSES WERE NOT BEING PROMISED ANYTHING FOR TESTIMONY IN HIS COURTROOM; FROM THE STATE OF SOUTH CAROLINA. CLEARLY, JUST ANOTHER PART OF SOLICITOR FANT'S DECEPTION ON THE COURT. MISLEADING TACTICS. SEE JUDGE UNAWARE: [TR. (1) 277, LINES 2-10]

SOLICITOR FANT SUPPRESSED THIS RELEVANT FACT OF EVIDENCE, THAT ONLY SHE AND NO ONE ELSE HAD CONTROL OVER. THIS WAS DONE ABSOLUTELY DELIBERATE WITHIN SOLICITOR ACTIONS. SOLICITOR SAID IN HER CLOSING ARGUMENT, REFERRING TO THE FEDERAL INMATE PROSECUTION WITNESSES. "ALL THE FEDERAL WITNESSES CHARGE WITH FEDERAL CRIMES. THAT EVERYONE OF THEM TOLD YOU (JUDORS). THAT THEY WERE OFFERED NO PROMISE, NO DEALS FOR THE TESTIMONY IN THIS CASE
[TR(2) P. 169 LINES 3-8]

SOLICITOR FANT IS DELIBERATE IN HER DECEPTION ON THE ENTIRE COURTROOM. MISLEADING, MISREPRESENTATION OF FACTS. GIVING FALSE TESTIMONY TO THE COURT, JURORS, AND DEFENSE. SOLICITOR FANT, OFFICER OF THE COURT SHE'S THE INDIVIDUAL WHO MADE PROMISE AND DEAL IN EXCHANGE FOR TESTIMONY WITH A FEDERAL INMATE: KIMBERLY DELAY APPLICANTS GIRLFRIEND

APPLICANT HAS MATERIAL EVIDENCE TO EXPOSE SOLICITOR BAD FAITH ACTS:

✓ A LETTER FROM DELAY'S FEDERAL ATTORNEY TO SOLICITOR FANT. INQUIRING ABOUT, WHY DELAY'S STATE PENDING CHARGES WERE NOT DISMISSED. DELAY DID HER PART AS WAS DISCUSSED PRIOR TO APPLICANTS TRIAL; AND BECAME A STATE WITNESS GIVING TESTIMONY THAT HELP GIVE APPLICANT NATURAL LIFE SENTENCE. THE FEDERAL ATTORNEY WAS PREPARING FOR DELAY TO BE SENTENCED IN FEDERAL COURT, AND KNEW THE STATE CHARGES WOULD WEIGH AGAINST HER CLIENT. SEE; FEDERAL ATTORNEY LETTER; [EXHIBIT #6].

SOLICITOR'S LETTER IN RESPONSE TO DELAY'S FEDERAL ATTORNEY; SPEAK VOLUMES. SEE: SOLICITOR FANT LETTER [EXHIBIT #7]. THOUGH SOLICITOR FANT IS WELSHING ON AGREEMENT. THE MATERIAL FACT AND POINT; THE DEAL WAS ALREADY IN PLACE WITH SOLICITOR AND DELAY BEFORE APPLICANTS TRIAL. THE JUDGE NOR THE DEFENSE WASN'T MADE AWARE OF THE FAVORABLE TREATMENT DELAY DID RECIEVE IN EXCHANGE FOR HER TESTIMONY. SOLICITOR FANT INTENTIONALLY SUPPRESSED THE RELEVANT EVIDENCE, FROM DEFENSE AND JUDGE

FURTHERMORE, THE MATERIAL EVIDENCE REVEALS SOLICITOR MISLEADING COURT AND JURORS WITH FALSE TESTIMONY OF HER OWN. DELIBERATE IN HER ACTIONS.

THE UNITED STATES SUPREME COURT HELD; "A PROSECUTOR'S DELIBERATE DECEPTION OF A COURT AND JURORS BY THE PRESENTATION OF KNOW FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE."
GIGLIO V. U.S., 405 US AT 150, 153. 92 S.C.T. 763, 31 LED. 2D 104 (1972)

THE SOUTH CAROLINA SUPREME COURT HELD; "THE FAILURE TO CORRECT FALSE EVIDENCE IS AS REPREHENSIBLE AS ITS PRESENTATION." PLEASE SEE:
WASHINGTON V. STATE, 324 S.C. 232, 478 SE 2D 833 (1996)

SOLICITOR HAS A DUTY TO CORRECT FALSE INFORMATION. SOLICITOR FANT ALLOWED IT TO GO UNCORRECTED. THIS WAS DONE DELIBERATELY IN APPLICANTS TRIAL. IT WAS TO THE PROSECUTIONS BENEFIT TO DO SO. FACTS SHOW.

THUS, SOLICITOR FANT USED DELAY'S TESTIMONY AS A VITAL KEY WITNESSE FOR

THE PROSECUTION. SOLICITOR PUT THE SEAL OF THE SOLICITOR'S OFFICE BEHIND DELAY'S TESTIMONY. SOLICITOR VOUCHER FOR DELAY DURING CLOSING ARGUMENT [TR. (2) P. 171 LINES 8-11]. SOLICITOR SAID: "I SUBMIT TO YOU (JURY) THAT HER (DELAY) TESTIMONY WAS EXSTREEMLY CREDIBLE BECAUSE SHE STILL LOVES HIM (APPLICANT) SHE WASNT ANGRY, SCORN WOMAN, MAD, SHE JUST SEEM REALLY SAD SHE HAD TO COME HER AND TELL YOU (JURY) THE TRUTH"

SOLICITOR FANT WAS VERY CONFIDENT IN THE WAY SHE USED DELAY'S TESTIMONY IN ORDER TO GET CONVICTION. SOLICITOR NOT ONLY STOOD BEHIND DELAY'S CREDIBILITY, BUT ALSO SIGNED AN AFFIDAVIT SAYING HOW SUBSTANTIAL HER TESTIMONY WAS IN HELPING GET A CONVICTION OF THE APPLICANT [EXHIBIT # 8] THUS SHOWING THE COURT; DELAY WAS A VITAL KEY WITNESS FOR PROSECUTION

SOLICITOR WAS ABLE TO BOASTER DELAY'S CREDIBILITY TO THE JURY, HOW EXSTREEMLY CREDIBLE AND THE TRUTH DELAY WAS. HOWEVER, IF SOLICITOR FANT WOULD NOT HAVE SUPPRESSED DELAY'S MATERIAL EVIDENCE, DELAY'S INTERVIEW ON JANUARY 22, 2008 [SHE KNOWS NOTHING ABOUT THE MURDER OR THE FACT OF SOLICITOR FANT HERSELF WAS GOING TO DROP DELAY'S NUMEROUS FELONY CHARGES IN EXCHANGE FOR TESTIMONY]. WOULD SOLICITOR FANT STILL FELT THE SAME WAY ABOUT DELAY'S TESTIMONY, IF THE MATERIAL EVIDENCE WAS EXPOSED TO THE JURY DURING THE TRIAL, WOULD DELAY'S TESTIMONY BE SO EXSTREEMLY CREDIBLE AND THE TRUTH. WOULD SOLICITOR FANT PUT

THE SEAL OF THE SOLICITOR'S OFFICE BEHIND DELAY'S TESTIMONY, OR SIGN THE AFFIDAVIT AS SHE DID.

COURT PLEASE NOTE: SOLICITOR FANT WAS AWARE OF ALL THIS EVIDENCE BEFORE APPLICANTS TRIAL. SOLICITOR CHOOSE TO SUPPRESS, AND KEEP THE EVIDENCE THAT WAS MATERIAL. NOT KNOWING THE EVIDENCE WOULD COME TO LIGHT; AND EXPOSE WHAT WAS DELIBERATELY DONE. ALL INTENTIONALLY THROUGH BAD FAITH, DECEPTION, MISLEADING JUDGE, JURY AND DEFENSE SO SOLICITOR FANT COULD GET HER CONVICTION OF APPLICANT.

THE DEFENSE WAS NOT AWARE OF THE EVIDENCE SOLICITOR FANT SUPPRESSED, BEFORE APPLICANTS TRIAL OR DURING. DELAY'S STATEMENT OF FACTS MADE ON JANUARY 22, 2008 OR THE FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM THAT DELAY DID RECIEVE FOR EXCHANGE OF TESTIMONY. DELAY'S CREDIBILITY WENT UNCHALLENGE; AS SOLICITOR SAID SHE EXSTREEMLY CREDIBLE. THERE WAS EVIDENCE THAT WOULD OF CHALLENGE THIS WITNESS (FEDERAL INMATE) CREDIBILITY, OR TO BE USED AS IMPEACHMENT EVIDENCE ALL GOVERN UNDER BRADY. DELAY WAS A VITAL WITNESS FOR PROSECUTION. SOLICITOR'S ACTIONS BY SUPPRESSING THE EVIDENCE, DID EXSTREEMLY PREJUDICE APPLICANT'S RIGHT TO DUE PROCESS AND FAIR TRIAL.

AS PREVIOUSLY NOTED BY THE SUPREME COURT "REGARDLESS OF REQUEST, FAVORABLE, EXCULPATORY OR IMPEACHMENT EVIDENCE IS MATERIAL, AND CONSTITUTIONAL ERROR RESULTS FROM ITS SUPPRESSION BY THE GOVERNMENT, IF THERE IS A REASONABLE PROBABILITY THAT HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT." UNITED STATES V. NORIEGA, 117 F.3D 1206, 1218 (11TH CIR. 1997) (QUOTING KYLES V. WHITELEY, 514 U.S. 419, 433, 115 S.CT. 1555, 1565, 131 L.ED.2D 490 (1995)) (INTERNAL MARKINGS AND QUOTATION MARK OMITTED). A REASONABLE PROBABILITY OF A DIFFERENT RESULT IS SHOWN WHEN THE GOVERNMENT'S EVIDENTIARY SUPPRESSION UNDERMINES CONFIDENCE IN THE OUT COME OF THE TRIAL. KYLES, 514 U.S. AT 434, 115 S.CT. AT 1566 (QUOTATION MARKS AND CITATION OMITTED). IN THE CASE OF IMPEACHMENT EVIDENCE, A CONSTITUTIONAL ERROR MAY DERIVE FROM THE GOVERNMENT'S FAILURE TO ASSIST THE DEFENSE BY DISCLOSING INFORMATION THAT MIGHT HAVE BEEN HELPFUL IN CONDUCTING THE CROSS-EXAMINATION. UNITED STATES V. BAGLEY, 473 U.S. 667, 105 S.CT. 3375, 3381, 87 L.ED.2D 481 (1985).

IN REJECTING ANY DISTINCTION BETWEEN IMPEACHMENT EVIDENCE AND EXCULPATORY EVIDENCE IN BRADY CONTEXT, THE SUPREME

COURT HAS OBSERVED THAT "THE JURY'S ESTIMATE OF THE TRUTHFULNESS AND RELIABILITY OF A GIVEN WITNESS MAY WELL BE DETERMINATIVE OF GUILT OR INNOCENCE, AND IT IS UPON SUCH SUBTLE FACTORS AS POSSIBLE INTEREST OF THE WITNESS IN TESTIFYING FALSELY THAT A DEFENDANT'S LIFE OR LIBERTY MAY DEPEND." NAPUE V. ILLINOIS
360 U.S. 264, 269, 79 S. CT. 1173, 1177, 3 L. ED. 2D 1217 (1959)

11(C) PART #2

NEXT MATERIAL EVIDENCE SUPPRESSED BY PROSECUTION, APPLICANT CLAIMS THE MATERIAL EVIDENCE WOULD BE GOVERN BY BRADY V. MARYLAND AND RULE (5) DISCLOSURE OF EVIDENCE S.C.R. CRIM.P. FOLLOWING INFORMATION TO SUPPORT:

PROSECUTION'S CRITICAL ALLEGED EYE WITNESS LATIMORE HOLMES, WHOM WAS ALSO A FEDERAL INMATE AT THE TIME OF APPLICANTS TRIAL. HOLMES WAS THE ONLY PROSECUTION WITNESS WHO ALLEGEDLY EYE WITNESS APPLICANT BARE FACED. THEN PUT ON A MASK AND GO FIGHT THE VICTIM, THEN SHOOT THE VICTIM. (THE MATERIAL EVIDENCE APPLICANT POSSES, TRIAL RECORD SHOW FACT)

APPLICANTS ATTORNEY APPLIED DUE DILIGENCE TO OBTAIN ALL INFORMATION OBTAIN BY STATE OR ANY LAW ENFORCEMENT AGENCY DURING THE INVESTIGATION (STATEMENT OF FACTS, ETC...) THAT MAY BE IN PROSECUTION POSSESSION THAT DEFENSE IS ENTITLED TOO [EXHIBITS* 3(A), (B), (C), (D)]

THE MATERIAL EVIDENCE OBTAINED AFTER TRIAL SHOWED LATIMORE HOLMES DID MAKE HIS STATEMENT OF FACTS TO ** SPECIAL AGENT RICHARD BROWN WHOM PLACED HOLMES INFORMATION IN HIS REPORT OF INVESTIGATION. HOLMES SAID HE ALSO MADE HIS STATEMENT TO * DETECTIVE L.T.E WILLIAMS, THIS WAS THROUGH HOLMES OWN ADMISSION [TR. (1) P. 234 LINE 18 - P. 235 LINE 3]

FIRST MATERIAL ISSUE: HOLMES STATEMENT OF HIS FACTS WAS TO BE REVIEWED BY THE HON. J.P. KING WHEN HE ORDERED IN-CAMERA INSPECTION OF

PROSECUTOR'S FILE. HIS FINDINGS WOULD RULED IF MATERIAL STATEMENT OF FACTS WAS EITHER EXCULPATORY OR INCULPATORY. HOWEVER, THE STATEMENT OF ALLEGED FACTS BY PROSECUTION'S MOST CRITICAL WITNESS WAS DELIBERATELY SUPPRESSED BY SOLICITOR FANT.

SECOND MATERIAL ISSUE: HOLMES STATEMENT OF HIS ALLEGED FACTS WAS GOVERN BY BRADY, (IT DEALT WITH PUNISHMENT ISSUE IN BRADY) APPLICANT WAS ENTITLED TO THE MATERIAL EVIDENCE. ALSO UNDER RULE (5) DISCLOSURE EVIDENCE, APPLICANT WOULD HAVE BEEN ALLOWED TO MAKE A TIMELY MOTION, AFTER HOLMES TESTIFIED ON DIRECT, TO RECEIVE THE MATERIAL EVIDENCE, THAT SURROUNDED THE SAME CIRCUMSTANCES HOLMES TESTIFIED TOO, HOWEVER, DEFENSE WAS NOT AFFORDED OPPORTUNITY TO CONFRONT THE WITNESS WITH HIS OWN STATEMENT OF FACTS. BE IT CHALLENGE HOLMES TOWARDS HIS CREDIBILITY OR FOR IMPEACHMENT PURPOSES. APPLICANTS CONSTITUTIONAL RIGHT. THOUGH DUE TO SOLICITOR FANT, ** SPECIAL AGENT R. BROWN, AND POLICE. DEFENSE WAS ONLY LEFT TO CHALLENGE HOLMES CRIMINAL RECORD, WHICH WAS OVER-SHADOWED BY SOLICITOR IMPROPERLY VOUCHING FOR THE FEDERAL INMATES.

LATIMORE HOLMES WAS ASKED ABOUT HIS STATEMENT [TR.(1)P.234 LINES 1-5] APPLICANTS ATTORNEY WAS QUESTIONING HOLMES ABOUT HIS STATEMENT. SOLICITOR "OBJECTED" SHE THEN SAID "THERE IS NO STATEMENT." [TR.(1)P.234 LINES 6-9] HOLMES WAS ASKED WHOM DID HE TALK TO, AND WHO WROTE OUT HIS STATEMENT [TR.(1)P.234 LINES 15-23] * DETECTIVE LT.E WILLIAMS OF SUMTER LAW ENFORCEMENT, ** ATF R BROWN.

SOLICITOR FANT WAS NOT AT INTERVIEW WITH HOLMES [TR.(1)P.235 LINE 5-12]

THOUGH SOLICITOR WASN'T AT THE INTERVIEW WITH HOLMES ITS IMPERATIVE THAT SOLICITOR WAS AWARE OF THE INTERVIEW; AND WHAT INFORMATION WAS GATHERED. HOLMES IS STATE'S ONLY ALLEGED EYE WITNESS TO SEE THE APPLICANT TO PUT ON A MASK. HOLMES SENT LETTERS REQUESTING TO BE INTERVIEWED, SO HE COULD GIVE LAW ENFORCEMENT (*+**) HIS STATEMENT OF FACTS. (SOLICITOR KNEW THE MEETING WAS TO GET FACTS)

SOLICITOR FANT RE-CROSSED HOLMES ABOUT HIS STATEMENT [TR. (1) 238 LINES 14-2] SOLICITOR IS DOING EVERYTHING TO SHOW THAT A STATEMENT FROM HOLMES NEVER EXISTED TO THE JUDGE, JURY AND DEFENSE DURING THE TRIAL. IF ONE EXISTED AT THE TRIAL, IT WOULD OF VIOLATED THE JUDGE'S EARLIER MOTION OF IN-CAMERA INSPECTION THAT WAS ORDERED [EXHIBIT # 3(E)]

SOLICITOR FANT NEVER REALIZED THAT HOLMES' STATEMENT OF FACTS WOULD COME TO LIGHT. SOLICITOR DELIBERATELY IN HER ACTIONS SUPPRESS THIS EVIDENCE. ** ATF RICHARD BROWN'S REPORT OF INVESTIGATION; THE (SOURCE) LATIMORE HOLMES [EXHIBIT # 10] HOLMES INTERVIEWED JANUARY 25, 2008

THE UNITED STATES SUPREME COURT HELD: "THE SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE EVIDENCE IS MATERIAL EITHER TO GUILT OR PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION." BRADY V. MARYLAND 373 US 83, 87. 83 S.Ct.

COURT NOTE; PLEASE SEE WHEN LOOKED AT HOLMES STATEMENT OF FACTS
IN REPORT OF INVESTIGATION [EXHIBIT #10]

PARAGRAPH NUMBERED [3] HOLMES STATE; "MCCOY (APPLICANT) BEGAN ASSAULTING
PETTIS (VICTIM) AND PETTIS GOT IN A HIT ON MCCOY. THE SOURCE OBSERVED
MCCOY PULL OUT A SILVER IN COLOR REVOLVER AND SHOOT PETTIS IN THE
BACK."

THE STATEMENT OF FACTS IN THE REPORT TO AT THE INTERVIEW ON THE
DATE OF JANUARY 25 2008 BY ATF AGENT BROWN, FROM WITNESS LATIMORE
HOLMES. HOLMES WITNESSED THE ALTERCATION

IT WASNT UNTIL THE VICTIM HIT THE APPLICANT, THEN THE APPLICANT
ALLEGEDLY PULLED OUT THE WEAPON AND SHOT VICTIM.

APPLICANT CLAIMS, THE PROSECUTORIAL MISCONDUCT OF SOLICITOR FANT
AND **SPECIAL AGENT BROWN SUPPRESSED THE RELEVANT EVIDENCE THAT
WAS MATERIAL TO PUNISHMENT, THAT WAS REQUESTED UNDER THE
BRADY... SUPRA

FURTHERMORE, THESE FACTS OF EVIDENCE HOLMES CLAIM TO HAVE WIT-
NESSED SUPPORTS A LESSER INCLUDED OFFENSE OF VOLUNTARY
MANSLAUGHTER.

"VOLUNTARY MANSLAUGHTER IS DEFINED AS THE UNLAWFUL KILLING OF A
HUMAN BEING IN SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL
PROVOCATION." STATE V DAMON, 285 S.C. 125, 328 SE 2D 628 (1985)

"A PHYSICAL ALTERCATION BETWEEN THE DEFENDANT AND THE DECEASED IS CIRCUMSTANCES OF PROVOCATION AND HEAT OF PASSION AND REQUIRES AN INSTRUCTION OF MANSLAUGHTER IN A PROSECUTION FOR MURDER"

STATE V DAVIS, 278 SC 544, 298 SE 2D 778 (1983)

THE MATERIAL EVIDENCE THAT WAS SUPPRESSED BY SOLICITOR FANT WAS MATERIAL TO THE FEDERAL INMATE WITNESS LATIMORE HOLMES TESTIMONY DURING APPLICANTS TRIAL. THE SOLICITOR, SPECIAL AGENT AND DETECTIVE INTENTIONALLY THROUGH BAD FAITH WITHHELD THE INFORMATION FROM THE JUDGE AND DEFENSE. THE REPORT OF INVESTIGATION THAT LAW ENFORCEMENT WITH HELD WAS VITAL INFORMATION. BY DOING SUCH DENIED APPLICANT A FAIR TRIAL AND DUE PROCESS

11(C) PART #3

MORE EVIDENCE THAT WAS MATERIAL SUPPRESSED BY SOLICITOR FANT. ALSO APPLICANT CLAIMS THE EVIDENCE WOULD BE GOVERN BY BRADY AND RULE (5) DISCLOSURE OF EVIDENCE; FOLLOW FACTS OF INFORMATION TO SUPPORT:

FEDERAL INMATE WITNESS STACEY BRUNSON WAS A CRUCIAL WITNESS WHOM TESTIFIED APPLICANT TOLD HIM THAT HE MURDERED THE VICTIM. THOUGH BRUNSON WAS IN FEDERAL CUSTODY SINCE "2004", AND COOPERATED IN "2004" INFORMING THE AGENTS OF ALL THE CRIMINAL ACTIVITY HE KNEW ABOUT, EVEN ABOUT APPLICANT'S DRUG DEALING IN "2004". BRUNSON FORGOT TO INFORM THE AGENTS ABOUT THE MURDER, NOT UNTIL JULY 9, 2008, TWO MONTHS BEFORE APPLICANT'S TRIAL THESE FACTS CAME BACK TO HIM.

APPLICANT'S ATTORNEY APPLIED DUE DILIGENCE TO OBTAIN ALL INFORMATION OBTAIN BY STATE OR ANY LAW ENFORCEMENT AGENCY DURING THE INVESTIGATION THAT MAY BE IN PROSECUTION'S POSSESSION THAT DEFENSE IS ENTITLED TO

[EXHIBITS # 3(A), (B), (C), (D)]

THE EVIDENCE OBTAINED AFTER TRIAL SHOWED STACEY BRUNSON DID MAKE HIS STATEMENT OF FACTS TO ** SPECIAL AGENT RICHARD BROWN WHOM PLACED BRUNSON INFORMATION IN HIS REPORT OF INVESTIGATION. THIS WAS BEFORE THE APPLICANT TRIAL. BRUNSON TESTIFIED HE DID GIVE A SIGNED STATEMENT ** BROWN. THIS WAS THROUGH HIS OWN ADMISSION [TR. (2) P. 130 LINE 3 - P. 132 LINE 18]

FIRST ISSUE OF FACT: BRUNSON'S STATEMENT OF HIS FACTS WAS TO BE ENTERED,

FOR REVIEW BY TRIAL COURT WHEN ORDERED IN-CAMERA INSPECTION OF PROSECUTOR'S FILE. HIS FINDING WOULD OF RULE IF THE MATERIAL STATEMENT OF FACTS WAS EITHER EXCULPATORY OR INCULPATORY. HOWEVER, THE STATEMENT OF ALLEGED FACT BY PROSECUTION'S CRUCIAL WITNESS WAS INTENTIONALLY SUPPRESSED BY SOLICITOR FANT, AND ^{**}SPECIAL AGENT BROWN.

SECOND ISSUE OF FACT: BRUNSON'S STATEMENT OF HIS ALLEGED FACT WAS GOVERN BY BRADY. (IT DEALT WITH PUNISHMENT ISSUE IN BRADY V MARYLAND) APPLICANT WAS ENTITLED TO THE EVIDENCE THAT WAS MATERIAL TO PUNISHMENT. ALSO UNDER RULE (5) DISCLOSURE OF EVIDENCE, APPLICANT'S ATTORNEY ATTEMPTED TO OBTAIN THE STATEMENT OF FACTS; HOWEVER, SOLICITOR FANT TOLD THE JUDGE NO STATEMENT EXISTED (WITH BRUNSON SIGNATURE) THIS ACTION NEGLIGENTED THE DEFENSE TO MAKE A TIMELY MOTION, AFTER BRUNSON TESTIFIED, TO CIRCUMSTANCES THAT WERE SUPPORTED IN THE EVIDENCE APPLICANT NOW POSSESS, THAT SOLICITOR SUPPRESSED. DEFENSE WAS NOT AFFORDED THE OPPORTUNITY TO CONFRONT THE WITNESS WITH HIS OWN STATEMENT OF FACTS. IF DEFENSE WOULD OF POSSESS AT THE TIME OF TRIAL; THE WITNESS CREDIBILITY COULD BEEN CHALLENGED OR USED TOWARDS IMPEACHMENT PURPOSE. THE DEFENSE WAS ONLY LEFT TO CHALLENGE WITNESS THROUGH HIS CRIMINAL RECORD. WHICH WAS OVER SHADOWED BY SOLICITOR'S MANY TACTICS.

Id. BRUNSON WAS ASKED ABOUT HIS STATEMENT, WHICH HE ADMITTED

THROUGH HIS OWN ADMISSION HE SIGNED.

TRIAL JUDGE WAS ASKED BY THE DEFENSE TO DO AN IN COURT IN-CAMERA INSPECTION OF PROSECUTOR'S FILE. JUDGE DENIED DEFENSE REQUEST, BUT DECIDED TO ASK SOLICITOR FANT DID SHE HAVE A SIGNED STATEMENT FROM BRUNSON. SOLICITOR SAID "NO" [TR.(2) P 143 LINE 7, P 144 LINE 9]

COURT NOTE; SOLICITOR FANT HERE AGAIN WITH ANOTHER FEDERAL INMATE WITNESS (BRUNSON); WHOM WAS INTERVIEWED BY LAW ENFORCEMENT ABOUT A MURDER, TO OBTAIN FACTS. SOLICITOR IS AGAIN PRESENTING TO THE JUDGE, JURY, AND DEFENSE AS NO STATEMENT OF FACTS EXISTED. NOR WAS THERE AN INVESTIGATION REPORT DONE.

HOWEVER, SOLICITOR FANT NEVER REALIZED THAT, OR THOUGHT PROSECUTION'S FEDERAL INMATE WITNESS BRUNSON'S STATEMENT OF FACTS WOULD COME TO LIGHT. SOLICITOR AGAIN DELIBERATELY IN HER ACTIONS, IN BAD FAITH INTENTIONALLY SUPPRESSED EVIDENCE SHE KNEW EXISTED. ** (ATF) SPECIAL AGENT RICHARD BROWN'S REPORT OF INVESTIGATION; (SOURCE) STACEY BRUNSON [EXHIBIT # 11] BRUNSON INTERVIEWED ON JULY 9, 2008

THE UNITED STATES SUPREME COURT HELD: "THE SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE EVIDENCE IS MATERIAL EITHER TO GUILT OR PUNISHMENT, IRRESPECTIVE OF GOOD FAITH OR BAD FAITH OF PROSECUTION". BRADY. SUPRA.

COURT NOTE; SEE WHEN LOOKED AT BRUNSON'S STATEMENT OF ALLEGED FACTS IN THE REPORT OF INVESTIGATION, WHICH APPLICANT CLAIMS WOULD BE GOVERN BY BRADY V MARYLAND. THE FOLLOWING FACTS WILL SHOW;

[EXHIBIT # 11]

WHEN BRUNSON TESTIFIED HE TOLD THE JURY, THAT APPLICANT TOLD HIM HE MURDER THE VICTIM OVER A DISPUTE. THIS WAS BRUNSON'S TESTIMONY [TR. (2) 128 LINE 13; P 129 LINE 17]

JUST AS IN THE REPORT OF INVESTIGATION BRUNSON TOLD ** SPECIAL AGENT R. BROWN. APPLICANT TOLD HIM HE MURDER THE VICTIM.

THE SOLICITOR USED BRUNSON TESTIMONY AS CRUCIAL EVIDENCE. THE STATEMENT OF BRUNSON'S FACTS, SUPPRESSED BY SOLICITOR WAS ALSO CRUCIAL EVIDENCE.

PARAGRAPHS [2-3]; BRUNSON IS ALLEGEDLY STATING THE FACTS TOLD TO HIM BY APPLICANT ABOUT THE EVENTS THAT OCCURED. [3] THIS LED TO A FIGHT BETWEEN MCCOY AND PETTIS IN WHICH MCCOY SHOT PETTIS IN THE BACK. ROBIN DUKES WAS WITH MCCOY AT THE TIME OF THE FIGHT AND SUBSEQUENT MURDER.

SOLICITOR FANT USED BRUNSON'S TESTIMONY AS EVIDENCE FROM WHAT APPLICANT ALLEGEDLY TOLD BRUNSON.

THE FIGHT WHAT LED TO THE SHOOTING, WOULD ALSO BE EVIDENCE.

THIS FIGHT THAT SOLICITOR FANT DIDNT BRING UP DURING BRUNSON'S
TESTIMONY, WAS VITAL INFORMATION. SOLICITOR SUPPRESSED EVIDENCE
THAT WOULD BE MATERIAL TO PUNISHMENT.

10(D) APPLICANT'S RIGHT TO A FAIR TRIAL, AND DUE PROCESS OF THE LAW GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW, WAS DENIED AS A RESULT OF THE MISCONDUCT BY THE SOLICITOR, IN REGARD OF SUPPRESSING EVIDENCE THAT WAS MATERIAL, BEFORE AND DURING APPLICANT'S TRIAL. THUS THE MATERIAL EVIDENCE EXPOSES SOLICITOR DELIBERATELY ALLOWING OVERLOOKING FALSE TESTIMONY FROM CRUCIAL FEDERAL INMATE WITNESSES ALONG WITH SOLICITOR MISLEADING COURT AND JURORS WITH FALSE INFORMATION HERSELF.

11(D) BRADY V MARYLAND 373 U.S. 83 (1963) "PROSECUTION HAS AN AFFIRMATIVE DUTY TO MAKE AVAILABLE TO THE DEFENSE ANY EVIDENCE WHICH IS EXCULPATORY FOR THE DEFENDANT IN A CRIMINAL TRIAL." ALSO SEE, UNITED STATES V BAGLEY, 473 US 667, 682, 105 S.C.T. 3375, 3383, 87 L ED 2D 481 (1985) "THE EVIDENCE IS MATERIAL" ONLY IF THERE IS A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT."

DUE TO THE SUPPRESSION OF EVIDENCE BY SOLICITOR OF DEAL(S); AND STATEMENTS OF FACTS MADE BY FEDERAL INMATE WITNESSES THAT WERE PLACED IN REPORT OF INVESTIGATIONS, BY INVESTIGATING LAW ENFORCEMENT, IF SOLICITOR NOT VIOLATED THE JUDGE'S ORDER (IN-CAMERA) AND PRESENTED MATERIAL EVIDENCE TO THE DEFENSE OR JUDGE, THERE'S A STRONG PROBABILITY THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.

APPLICANTS ATTORNEY EXERCISED DUE DILIGENCE TO OBTAIN ALL INFORMATION BY STATE OR ANY LAW ENFORCEMENT AGENCY DURING THE INVESTIGATION [EXHIBITS #3(A), (B), (C), (D)] ON JULY 22, 2008 THE HON J.P. KING ORDERED A IN-CAMERA INSPECTION OF PROSECUTOR'S FILE. SOLICITOR WAS TO TURN OVER THE ENTIRE CASE FILE. FROM THE FILE MATERIALS FOR JUDGE TO INSPECT, THE JUDGE DENIED THE MOTION FOR BRADY AND DISCLOSURE OF EVIDENCE [EXHIBIT 3(F)] MATERIAL EVIDENCE APPLICANT INTENDS TO PRESENT COURT, WILL SHOW THE SOLICITOR VIOLATED THE JUDGE'S ORDER.

COURT NOTE: ALL SOLICITOR'S MISCONDUCT, EVIDENCE WILL SHOW IT SURROUNDS THE FEDERAL INMATE PROSECUTION KEY WITNESSES.

THE TRIAL RECORD SHOWS THESE MATERIAL FACTS; THERE WAS NOT ANY PHYSICAL EVIDENCE THAT CONNECT APPLICANT TO THIS MURDER. APPLICANT WAS ARRESTED THREE (3) YEARS AND FOUR (4) MONTHS AFTER THE MURDER. DURING THE TRIAL NOT ONE INVESTIGATING OFFICER TESTIFIED TO WHAT LED TO APPLICANT ARREST, OR HOW APPLICANT BECAME A SUSPECT, NOR GAVE TESTIMONY ABOUT ANY OR WHAT TYPE OF INVESTIGATION LAW ENFORCEMENT TOOK PART IN THIS CRIME. PROSECUTION CASE RESTED TOTALLY ON WITNESSES. THE MOST VITAL PROSECUTION WITNESSES WERE FEDERAL INMATES THAT ALL CAME FORTH THREE AND A HALF (3½) TO FOUR (4) YEARS AFTER THE FACT, WHOM EACH HAD SOMETHING TO GAIN IN THE CRIMINAL JUSTICE SYSTEM FOR THEIR TESTIMONY. THESE CRUCIAL PROSECUTION WITNESSES IS WHAT THE STATE RELIED ON TO GET A CONVICTION OF APPLICANT.

IN APPLICANTS CASE IT WILL BE FOUND, THE FEDERAL INMATES CREDIBILITY WERE A STAKE, AND ALL SOLICITOR'S UNDERHAND TACTICS ARE TAKING PLACE AROUND THESE FEDERAL INMATES. THERE TESTIMONY'S WERE NEEDED AT ALL COST. MATERIAL EVIDENCE WILL SHOW.

THE SUPPRESSED EVIDENCE APPLICANT NOW PRESENTS TO THE COURT, EXPOSES PROSECUTORIAL MISCONDUCT BY SOLICITOR FANT; SUCH AS ALLOWING PROSECUTION WITNESSES [FEDERAL INMATES] TO GIVE FALSE TESTIMONY TO COURT AND JURORS. PRESENTMENT OF FALSE EVIDENCE TO INFLUENCE THE JURY, MISREPRESENTATION OF FACTS; BUT ALSO SOLICITOR FANT HERSELF PARTICIPATING IN FALSE INFORMATION MISLEADING THE COURT AND JURORS; VIOLATE COURT ORDER; DECEPTION ON THE ENTIRE COURTROOM, THIS IN ORDER TO GET A CONVICTION OF APPLICANT.

THE UNITED STATES SUPREME COURT HELD; A "PROSECUTOR'S DELIBERATE DECEPTION OF A COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE"
GIGLIO V. U.S. 405 US. AT 150, 153, 92 S. CT 763 31 L. ED. 2D 104 (1972)

THE FOLLOWING FACTS, WILL ALL BE SUPPORTED BY EITHER THE MATERIAL EVIDENCE TRIAL TRANSCRIPT OR BOTH.

SOLICITOR FANT VIOLATED J.P. KING (JUDGE) ORDER OF IN-CAMERA INSPECTION OF PROSECUTOR'S FILE; THREE OF FOUR PROSECUTION MOST VITAL WITNESSES EACH MADE STATEMENT OF THEIR FACTS, PROVIDED TO LAW ENFORCEMENT

ABOUT THE MURDER. EACH FEDERAL INMATE WITNESS WAS KNOWN TO THE PROSECUTION. BEFORE HON. J.P. KING ORDERED THE IN-CAMERA MOTION ON THE STATE. (JULY 22, 2008) [EXHIBIT #3(E)]

EVIDENCE TO SUPPORT FACT, BEFORE THE TRIAL

LATIMORE HOLMES - PROVIDED HIS STATEMENT OF FACTS TO LAW ENFORCEMENT (JANUARY 25, 2008) APPROX SEVEN (7) MONTHS BEFORE IN-CAMERA WAS ORDERED [EXHIBIT #10] ON THE ABOVE DATE THESE FACTS WERE TAKEN BY **SPECIAL AGENT BROWN AND SUMTER'S INVESTIGATOR *DET. E WILLIAMS

KIMBERLY DELAY - PROVIDED HER STATEMENT OF FACTS TO LAW ENFORCEMENT (JANUARY 22, 2008) APPROX SEVEN (7) MONTHS BEFORE IN-CAMERA WAS ORDERED [EXHIBIT #4] ON THE ABOVE DATE THESE FACTS WERE TAKEN BY *DET. LT. E WILLIAMS. BUT ALSO **SPECIAL AGENT R. BROWN PLACED DELAY'S INFORMATION IN REPORT OF INVESTIGATIONS ON (APRIL 11, 2008) APPROX THREE (3) MONTHS BEFORE IN-CAMERA WAS ORDERED [EXHIBIT #5]

STACEY BRUNSON - PROVIDED HIS STATEMENT OF FACTS TO LAW ENFORCEMENT (JULY 9, 2008) TWO (2) WEEKS BEFORE IN-CAMERA WAS ORDERED [EXHIBIT #11]. THE ABOVE DATE THESE FACTS WERE TAKEN BY **SPECIAL AGENT R. BROWN,

SOLICITOR FANT KNEW BEFORE THE JUDGE ORDERED ~~THE~~ THE IN-CAMERA MOTION AND THE APPLICANT TRIAL, THESE FEDERAL INMATES WOULD BE PROSECUTION WITNESSES. THE MATERIAL EVIDENCE SHOWS THIS FACT. SOLICITOR HAD AMPLE AMOUNT OF TIME TO INFORM THE JUDGE OF THESE FEDERAL INMATE WITNESSES

SOLICITOR VIOLATED JUDGE'S ORDER BY NOT SUBMITTING THE REPORT OF INVESTIGATION THAT CONSISTED OF PROSECUTION WITNESSES STATEMENTS OF FACTS. THEY WERE TO BE INSPECTED BY THE HON J. P. KING. IT WILL BE EVIDENT THE PROSECUTORIAL MISCONDUCT LEAD TO MUCH MORE

SOLICITOR FANT WAS AWARE OF THE MATERIAL EVIDENCE, BEING SUPPRESSED AS THE COURT MAY RECOGNIZE. SOLICITORS DECEPTION TACTICS SURROUNDING THESE FEDERAL INMATE WITNESSES WILL BECOME MORE APPARENT. MISLEADING THE COURT. MISREPRESENTATION OF FACTS, AND MORE. ALL TO DENY APPLICANT DUE PROCESS RIGHT TO A FAIR TRIAL.

EVIDENCE TO SUPPORT FACT: DURING THE TRIAL

STACEY BRUNSON - THOUGH ADMITTING THROUGH HIS OWN ADMISSION HE SIGNED HIS STATEMENT OF FACTS [TR(2) P 132 LINES 2-18]. APPLICANT'S ATTORNEY MADE A TIMELY REQUEST FOR BRUNSON STATEMENT, APPLYING RULE (5) DISCLOSURE OF EVIDENCE (A)2; AFTER HE TESTIFIED [TR(2) P 143 LINES 6- P 144 LINE 25]. APPLICANT'S ATTORNEY REQUESTED THE JUDGE TO DO AN IN-CAMERA INSPECTION IN COURT OF PROSECUTOR'S FILE. THE JUDGE SAID "NO": HE STATED HE WOULD JUST ASK SOLICITOR; WHEN JUDGE ASKED SOLICITOR FANT TOLD THE JUDGE "NO THEIR IS NO STATEMENT." THE JUDGE TRUSTED HER.

THIS WAS NOT FAIR TO THE DEFENSE, THE JUDGE TOOK SOLICITOR'S WORD. WHEN NOW AFTER THE FACT, THE MATERIAL EVIDENCE SHOWS. THE FACTS SURROUNDING WHAT FEDERAL INMATE BRUNSON TESTIFIED TO.

STATEMENT OF HIS FACTS DID EXIST. SOLICITOR WAS USING DECEPTIVE TACTICS THAT THE JUDGE WAS OBVIOUSLY NOT AWARE OF. SUCH AS THE SOLICITOR VIOLATING HIS IN-CAMERA ORDER.

NOTE; SOLICITOR'S DENIAL OF BRUNSON FACTS, REVEALS HON J.P. KING WAS NOT AWARE OF BRUNSON'S EVIDENCE.

SOLICITOR FAAT DELIBERATELY SUPPRESSED STACEY BRUNSON'S STATEMENT OF HIS FACTS. THE MATERIAL EVIDENCE EXISTED [EXHIBIT # 11]. BEFORE THE TRIAL, DURING THE TRIAL.

LATIMORE HOLMES - ADMITTING THROUGH HIS OWN ADMISSION, HE GAVE HIS STATEMENT OF FACTS TO **SPECIAL AGENT R. BROWN AND *DET. LT E. WILLIAMS WHOM BOTH WROTE DOWN HIS FACTS [TR(1) P 234 LINE 1-25]. WHILE APPLICANTS ATTORNEY IS INQUIRING ABOUT HOLMES STATEMENT, SOLICITOR "OBJECTED" AND THEN SAID "THERE WAS NO STATEMENT" [TR(1) P 234 LINE 5-14]. SOLICITOR WAS DOING EVERYTHING TO SHOW NO STATEMENT EXISTED [TR(1) P 238 LINE 14-21]. IF STATEMENT OF HIS FACTS EXISTED, IT WOULD OF VIOLATED THE ORDER.

NOTE; SOLICITOR'S DENIAL OF HOLMES FACTS, REVEALS HON J.P. KING WAS NOT AWARE OF HOLMESS' EVIDENCE.

SOLICITOR FAAT DELIBERATELY SUPPRESSED LATIMORE HOLMESS' STATEMENT OF HIS FACTS. THE MATERIAL EVIDENCE EXISTED [EXHIBIT # 10]. BEFORE TRIAL AND DURING THE TRIAL.

KIMBERLY DELAY - CLAIMED WHEN SHE WAS QUESTION THE NIGHT BEFORE

APPLICANT'S TRIAL, BY SOLICITOR FANT. SHE DID NOT WRITE OUT A STATEMENT. NOBODY TOOK HER STATEMENT DOWN OF THE ALLEGED FACTS. NOBODY RECORDED WHAT SHE TESTIFIED AT TRIAL [TR(1) 319 LINE 5 - P 320 - LINE 16] LAW ENFORCEMENT - SOLICITOR FANT, * DETECTIVE LT E WILLIAMS, AND ** SPECIAL AGENT R. BROWN. ALL SUPPRESSED THE MATERIAL EVIDENCE. DELAY STATED SHE KNEW NOTHING OF THE MURDER, EIGHT (8) MONTHS PRIOR TO APPLICANT'S TRIAL [EXHIBIT # 4] HOWEVER, THE NIGHT BEFORE THE TRIAL BEGAN, AFTER SPEAKING WITH SOLICITOR FANT. DELAY SUDDENLY REMEMBERS ALL OF THESE NEW FACTS [TR(1) P 319 LINE 9 - P 320 LINE 5]. DELAY'S STATEMENT OF FACTS, EXISTED BEFORE THE JUDGE'S ORDER OF IN-CAMERA INSPECTION. SOLICITOR FANT SUPPRESSED DELAY'S STATED FACTS FROM JANUARY 22, 2008; IN ORDER TO USE DELAY AS ONE OF THE MOST VITAL KEY WITNESS.

APPLICANT'S MOTION OF IN-CAMERA INSPECTION OF PROSECUTOR'S FILE. THE DEFENSE ASKED THE HONORABLE COURT FOR AN ORDER REQUIRING THE STATE TO MAKE AVAILABLE TO THE COURT ALL INFORMATION AND EVIDENCE OBTAINED BY THE STATE OR ANY LAW ENFORCEMENT AGENCY DURING THE INVESTIGATION OF THE ABOVE CAPTIONED CASE SO AS TO ENABLE THE TRIAL JUDGE TO MAKE AN IN-CAMERA INSPECTION OF SAID INFORMATION AND EVIDENCE SO AS TO INSURE THAT THE STATE HAS COMPLIED WITH

THE REQUIREMENTS OF BRADY V. MARYLAND, 373 U.S. 83 (1963))

[EXHIBIT # 30]

DULY NOTE; EACH OF THESE THREE FEDERAL INMATE PROSECUTION'S WITNESSES EVIDENCE THAT WAS MATERIAL TO GUILT, PUNISHMENT AND INNOCENCE OR WAS IMPEACHING, WAS SUPPRESSED BY SOLICITOR FANT. ARE GOVERNED BY BRADY HOLMES ALLEGED WHAT HE EYE WITNESS, APPLICANT AND VICTIM ^{WERE} ~~WAS~~ FIGHTING VICTIM GOT A HIT ON APPLICANT, APPLICANT THEN PULLED OUT A GUN A SHOT VICTIM [EXHIBIT # 10] PARAGRAPH [3] THIS EVIDENCE SUPPRESSED WOULD SHOW LESSER INCLUDED OFFENSE, VOLUNTARY MANSLAUGHTER.

BRUNSON ALLEGED APPLICANT TOLD HIM, VICTIM AND APPLICANT WAS FIGHTING VICTIM GOT A HIT ON APPLICANT, APPLICANT THEN SHOT THE VICTIM. SOLICITOR FANT USE EVIDENCE WHAT APPLICANT TOLD WITNESS, BUT DIDNT TELL THE COMPLETE STORY, AND WAS ABLE TO DO THIS BY SUPPRESSING THIS EVIDENCE THAT WAS MATERIAL TO THE PUNISHMENT APPLICANT RECIEVED [EXHIBIT # 11] SEE; PARAGRAPH [3], AGAIN SHOW LESS INCLUDED OFFENCE. VOLUNTARY MANSLAUGHTER,

DELAY WHOM KNEW NOTHING ABOUT THE MURDER EIGHT (8) MONTHS PRIOR BUT AFTER SPEAKING WITH SOLICITOR FANT THE NIGHT BEFORE APPLICANTS TRIAL. THE TESTIMONY DELAY GAVE AT TRIAL, CAME BACK TO HER SOLICITOR FANT SUPPRESSED DELAY'S STATEMENT OF FACT, WHICH COULD OF BEEN USED BY THE DEFENSE AS IMPEACHING MATERIAL. [EXHIBIT # 4]

EACH OF THESE FEDERAL INMATE PROSECUTION WITNESSES STATEMENT OF FACTS

WERE PLACED IN REPORT OF INVESTIGATION/ BY LAW ENFORCEMENT. APPLICANT EXPOSES SOLICITOR FANT'S DELIBERATE SUPPRESSION OF EVIDENCE. FACT, THE EVIDENCE EXISTED BEFORE IN-CAMERA INSPECTION OF PROSECUTOR'S FILE.

DULY NOTE: SOLICITOR FANT SENT, THE DEFENSE APPLICANT'S CO-DEFENDANT'S DISCOVERY. (RULE 5 DISCLOSURE AND MOTION FOR RECIPROCAL DISCOVERY AND DISCLOSURE OF EVIDENCE) [EXHIBIT # 12]. ON THE FRONT PAGE; 4(A) SUMTER CITY INVESTIGATION REPORT AND INCIDENT REPORT CASE. DATED APRIL 21, 2008

TI AUGUST 5, 2008 SOLICITOR FANT SENT DEFENSE (SUPPLEMENT RULE 5 DIS-
CI JRE AND MOTION FOR RECIPROCAL DISCOVERY AND DISCLOSURE OF EVIDENCE'
[EXHIBIT # 13]. ON THE FRONT PAGE; 4(A) SUMTER CITY INVESTIGATIVE REPORT AND INCIDENT REPORT CASE.

THIS EVIDENCE WAS IN RESPONSE TO DEFENSE'S REQUEST FOR DISCLOSURE OF EVIDENCE. AS DATED ABOVE SOLICITOR FANT SENT CO-DEFENDANT INVESTIGATIVE REPORT, ALSO SENT APPLICANT'S INVESTIGATIVE REPORT. APPLICANT WAS ENTITLED TO THE MATERIALS. THEREFORE, SOLICITOR FANT SHOULD OF PROVIDED THE THREE FEDERAL INMATE WITNESSES REPORT OF INVESTIGATION'S ALSO. HOWEVER, SOLICITOR FANT SUPPRESSED THE KNOWN EVIDENCE THAT WAS MATERIAL. THE SOLICITOR POSSESSED THE RELEVANT MATERIALS BEFORE SENDING THE DEFENSE THE PARTIAL DISCLOSURE RULE (5) MATERIAL (DATES SHOW THESE FACT). SOLICITOR NOT ONLY VIOLATED JUDGE'S ORDER ON IN-CAMERA, BUT SOLICITOR VIOLATED BRADY RULE, BY SUPPRESSING THE EVIDENCE, DELIBERATELY IN BAD FAITH, IN ORDER TO OBTAIN CONVICTION OF APPLICANT.

COURT DULY NOTE; APPLICANT BRINGS TO THE COURT ATTENTION IN THIS SECTION OF ARGUMENT, SOLICITOR FANT DECEIVING COURT AND JURY WITH MISLEADING FACTS, ALLOWING FALSE TESTIMONY BY FEDERAL INMATE WITNESS; FURTHERMORE, SOLICITOR FANT USING DECEPTION ON THE COURT AND JURY KNOWINGLY AND DELIBERATELY THE FOLLOWING MATERIAL EVIDENCE WILL SHOW;

SOLICITOR FANT PRESENTED TESTIMONY THAT NONE OF THE FEDERAL INMATE WITNESSES WERE PROMISED OR RECEIVING ANY DEALS FOR FOR THEIR TESTIMONY IN THE APPLICANTS TRIAL. DURING THE TRIAL. BUT ALSO IN SOLICITOR'S CLOSING ARGUMENT. THIS WAS TO GIVE HER FEDERAL WITNESSES CREDIBILITY AND STRENGTHEN THEIR BELIEVABILITY, AND MISLEAD THE JURY THAT THE WITNESSES AT THE TRIAL TO TELL THE TRUTH; AND NOT EXPECTING ANY REWARDS WITHIN THE CRIMINAL JUSTICE SYSTEM FOR THEIR TESTIMONY.

SOLICITOR FANT DELIBERATELY MISLEAD THE JURY KNOWINGLY THAT THE FEDERAL INMATES WOULD EITHER RECEIVE REDUCEMENT IN THEIR PRISON SENTENCES OR DISPOSED OF FELONY CHARGES THAT MAY BEEN PENDING. ALL THE FEDERAL INMATE WITNESSES GAINED FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM FOR TESTIMONY INSPITE OF THE DECEPTION ON THE JUDGE AND JURY. DEALS WERE IN PLACE BEFORE THE TRIAL.

COURT DULY NOTE; APPLICANT DISCUSSED IN PREVIOUS ARGUMENT. FEDERAL INMATE WITNESS KIMBERLY DELAY RECEIVING FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM, IN EXCHANGE FOR TESTIMONY AT APPLICANT'S TRIAL. [

TRIAL JUDGE WAS UNAWARE AND BELIEVED THAT NO WITNESS WAS PROMISED ANYTHING, BY THE STATE OF SOUTH CAROLINA (PROSECUTION) [TR. (1) 277 LINES 2-10] SOLICITOR FANT WITHHELD THE PERTINENT INFORMATION THAT SHE HAD MADE A DEAL OF PROMISE TO DELAY OF FAVORABLE TREATMENT IN EXCHANGE FOR TESTIMONY. THIS WAS DONE PRIOR TO APPLICANT'S TRIAL. SOLICITOR FANT DECEIVED THE TRIAL COURT, THUS SHOWING SOLICITOR'S MISCONDUCT.

THE JUROR'S WERE DELIBERATELY MISLEAD BY SOLICITOR FANT. IN HER CLOSING ARGUMENT; ALL FEDERAL INMATES SAID THEY WERE PROMISED NOTHING FOR THERE TESTIMONY. [TR. (2) 169 LINES 3-15] SOLICITOR FANT KNEW AT HER CLOSING ARGUMENT, THAT SHE HAD ALREADY MADE A DEAL OF PROMISE TO DELAY IN EXCHANGE FOR TESTIMONY.

SOLICITOR FANT WAS USING DECEPTION ON THE JUROR'S, THUS SHOWING SOLICITOR'S MISCONDUCT.

THE DEFENSE WAS INTENTIONALLY PUT IN THE BIND. BY SOLICITOR FANT. WHOM THE RESULTS EFFECTED THE MOST. THE EVIDENCE COULD OF BEEN

USED TO IMPEACH THE WITNESS. SOLICITOR WITHHELD THE BRADY INFORMATION THAT WAS REQUESTED. SOLICITOR FANT USED DELAY AS A CRUCIAL KEY WITNESS, SOLICITOR FANT SPOKE ABOUT HOW CREDIBLE DELAY'S TESTIMONY WAS, AND DELAY'S CREDIBILITY AND BELIEVABILITY WENT UNCHALLENGED. WHEN SOLICITOR FANT DID POSSESS THE IMPEACHMENT MATERIAL. THIS PREJUDICE THE APPLICANT. SOLICITOR'S LETTER SHOWS SITE WAS AWARE OF DECEIVING TRIAL JUDGE AND JURORS. THE DEAL OF PROMISE WAS IN PLACE BEFORE THE TRIAL.

[EXHIBIT # 7]

"AN AGREEMENT MADE WITH A GOVERNMENT WITNESS FOR TESTIMONY IN EXCHANGE FOR FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM SHOULD BE DISCLOSED AS IMPEACHMENT EVIDENCE, ESPECIALLY WHERE TESTIMONY IS AN IMPORTANT PART OF GOVERNMENT CASE" GIGLO AT 154-55, SUPRA; ALSO SEE; GIGLO "A PROSECUTOR'S DELIBERATE DECEPTION OF A COURT AND JURORS BY THE PRESENTATION OF KNOW FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE."

COURT ALSO SEE; WASHINGTON V. STATE, 324 S.C. 232, 478 SE 2D 833 (1996)

FURTHERMORE, APPLICANT PRESENTS MATERIAL EVIDENCE, DELAY'S NUMEROUS FELONY CHARGES WERE DISPOSED FOR EXCHANGE OF TESTIMONY. THIS WAS ALL DONE AFTER APPLICANT'S TRIAL. [EXHIBIT # 9]

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NEXT ISSUE OF FACT; LATIMORE HOLMES FEDERAL INMATE PROSECUTION WITNESS ALSO RECEIVED FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM FOR HIS TESTIMONY IN APPLICANTS TRIAL.

SOLICITOR FANT ALLOWED HOLMES TO GIVE FALSE MISLEADING TESTIMONY TO THE JURY KNOWINGLY.

SOLICITOR FANT QUESTION TO HOLMES ON DIRECT [TR(1) P. 218 LINES 13 - 15]

Q. NOW WERE YOU PROMISED ANYTHING IN THIS CASE AS FAR AS TESTIFYING HERE TODAY?

A. NO MA'AM

SOLICITOR FANT DURING CLOSING ARGUMENT [TR(2) P. 169 LINES 3 - 8]

"LATIMORE HOLMES. BEFORE WE TALK ABOUT HIS TESTIMONY I JUST WANT TO BRIEFLY ADDRESS THE FACT THAT THERE WERE WITNESSES THAT ARE INCARCERATED AND WITNESSES THAT HAVE BEEN CHARGED WITH FEDERAL CRIMES THAT THEY WERE OFFERED NO PROMISES, NO DEALS FOR THEIR TESTIMONY IN THIS CASE.

SOLICITOR FANT USED THE FALSE MISLEADING TESTIMONY TO GIVE PROSECUTION'S FEDERAL INMATE WITNESSES CREDIBILITY AND BELIEVABILITY TO THERE TESTIMONIES. SOLICITOR'S PARTICIPATING AND CONDONING IN THE FALSE MISLEADING TESTIMONY THAT WAS PRESENTED TO THE JURORS.

APPLICANT PRESENTS TO THE COURT, THE MATERIAL EVIDENCE, LATIMORE HOLMESS' FEDERAL JUDGMENT IN A CRIMINAL CASE (ORIGINAL SENTENCE DOCUMENTATION), AND HOLMESS' AMENDED JUDGMENT IN A CRIMINAL CASE [EXHIBITS # 14(A)(B)]

AFTER FEDERAL INMATE WITNESS LATIMORE HOLMES TESTIFIED IN APPLICANT'S TRIAL; TWO (2) MONTHS LATER HE WAS RELEASED FROM FEDERAL CUSTODY. HOLMES DID NOT COMPLETE HIS ORIGINAL SENTENCE. THE AMENDED JUDGMENT IN A CRIMINAL CASE OF HOLMESS', COMPARED TO THE ORIGINAL JUDGMENT IN A CRIMINAL CASE, CONFIRMS HOLMES EARLY RELEASE FROM PRISON. THIS WAS THE DEAL HOLMES RECEIVED IN THE CRIMINAL JUSTICE SYSTEM IN EXCHANGE FOR HIS TESTIMONY IN APPLICANT'S TRIAL.

COURT DULY NOTE: SOLICITOR FANT FULLY UNDERSTOOD, LATIMORE HOLMES BEING A FEDERAL INMATE WOULD RECEIVE A REDUCTION FOR HIS TESTIMONY IN APPLICANT'S TRIAL. HOWEVER, WITH HOLMES BEING THE STATE'S ONLY ALLEGED WITNESS TO PUT APPLICANT AT THE SCENE AND COMMIT THE MURDER. SOLICITOR FANT CONCEALED THE FACT THAT HOLMES WOULD RECEIVE FAVORABLE TREATMENT. FACT TO SHOW SOLICITOR FANT WAS AWARE;

WHEN SOLICITOR FANT WAS QUESTIONING FEDERAL INMATE BRUNSON. SOLICITOR ADMITTED TO JURORS. "THERE MAY BE SOME ROOM FOR ASSISTANCE TO HIM IN THE FUTURE". THOUGH HE WASN'T PROMISED ANYTHING TO TESTIFY

TODAY [TR (2) P. 138 LINE 14-17]

SOLICITOR FANT REALIZED LATIMORE HOLMES, BEING A FEDERAL INMATE, PROSECUTION'S MOST VITAL EYE WITNESS WOULD RECEIVE ASSISTANCE FOR HIS TESTIMONY AT APPLICANT'S TRIAL. SOLICITOR DIRECTLY MISLEAD THE JURY IN BELIEVING THAT LATIMORE HOLMES WOULD NOT RECEIVE ANY ASSISTANCE, FOR HIS TESTIMONY AT THE TRIAL. BY MISLEADING THE JURY OF THIS FALSE INFORMATION ABOUT FEDERAL INMATE LATIMORE HOLMES, IT WAS TO GIVE STATES WITNESS FALSE CREDIBILITY AND STRENGTH HIS TESTIMONY, BEFORE THE JURORS THAT HIS TESTIMONY WAS NOT FOR ANY KIND OF REWARD. JUST THAT HE SIMPLY CAME TO TELL THE TRUTH ABOUT HIS ALLEGED TESTIMONY. THIS WAS NOT THE CASE. AGAIN SOLICITOR FANT INTENTIONALLY MISLEAD THE JUROR AND DEFENSE DURING THE APPLICANT'S TRIAL; WITH ANOTHER FEDERAL INMATE WITNESS (LATIMORE HOLMES). SOLICITOR FANT PRESENT THE FALSE MISLEADING TESTIMONY TO THE JURY DURING CLOSING ARGUMENT ALSO. THIS USE OF DECEPTION WAS USED TO GET A CONVICTION OF APPLICANT BY SOLICITOR FANT, AT ALL COST. [EXHIBIT #13] SHOWS HOLMES' RESULTS FOR HIS TESTIMONY AT APPLICANT'S TRIAL.

10(E) APPLICANT'S RIGHT TO DUE PROCESS OF THE LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS VIOLATED WHEN TRIAL COURT ADMITTED EVIDENCE THE SOLICITOR WAS USING TO MISLEAD THE JURORS THAT WAS FALSE EVIDENCE. IT WAS BEING USED TO BUILD THE CREDIBILITY OF STATE'S FEDERAL INMATE WITNESS. THE JUDGE FULLY UNDERSTOOD WHAT THE FALSE EVIDENCE WAS BEING USED FOR, THUS REALIZING THE EFFECT IT WOULD HAVE AGAINST THE DEFENSE.

11(E) PROSECUTION'S CASE RESTED TOTALLY ON WITNESSES CREDIBILITY AND BELIEVABILITY. THE FEDERAL INMATE WITNESSES WERE PROSECUTION'S MOST VITAL KEY WITNESSES. CREDIBILITY AND BELIEVABILITY WERE EXTREME FACTORS. SOLICITOR FANT USED FALSE, MISLEADING EVIDENCE TO DECEIVE THE JURY. THIS TIME WITH FEDERAL INMATE WITNESS JAMMIA HEYWARD TO GET CONVICTION. IN THIS INSTANCE, SOLICITOR FANT PRESENTED A PROFFER AGREEMENT THAT WAS TO BE INTERPRETED BY THE JURY; JAMMIA HEYWARD DID HAVE A CONTRACT WITH THE UNITED STATES GOVERNMENT. THIS EVIDENCE WAS MATERIAL, TO ESTABLISH FALSE CREDIBILITY AND HEYWARD WOULD BE ABSOLUTELY TRUTHFUL IN HIS TESTIMONY. [TR(2) 91 LINES 1-P. 92 LINE 20]

IT HAS BEEN HELD BY THE UNITED STATES SUPREME COURT; A PROSECUTOR'S DELIBERATE DECEPTION OF COURT AND JURORS BY PRESENTATION OF KNOWN

JURY. ABOUT HEYWARD HAD A CONTRACT WITH THE GOVERNMENT, AND BUILD CREDIBILITY AND BELIEVABILITY OF THE FEDERAL INMATE HEYWARD; BUT ALSO INTENTIONALLY ALLOWING THE SOLICITOR FANT TO PRESENT FALSE EVIDENCE TO THE JURY, TO PERSUADE THEM.

NOT ONLY THE JUDGE ABUSE DISCRETION. THE JUDGE KNEW THE EVIDENCE PREJUDICE THE DEFENDANT DUE PROCESS AND RIGHT TO A FAIR TRIAL, WHEN HE OVERLOOKED WHAT THE EVIDENCE WAS BEING USED FOR.

NOTE TO COURT: WHATS DISTURBING, IF THE JUDGE DID NOT UNDERSTAND WHAT THE PROFFER AGREEMENT WAS BEING USED FOR, NO PROBLEM. BUT BY ALL INTENT THE JUDGE KNEW WHAT THE EFFECT WAS FOR, AND WHY THE SOLICITOR FANT WAS ADAMANT ABOUT PRESENTING THE FALSE EVIDENCE TO THE JURY.

COURT SEE: THE TRIAL JUDGE DISCUSSING WHAT THE PROFFER WAS MEANT TO ACHIEVE. THIS WAS IN REFERENCE TO ANOTHER PROSECUTION'S FEDERAL INMATE WITNESS. HIS OWN WORDS

THE COURT: "BUT SO DOES THAT PROFFER GO TO HER CREDIBILITY OR BELIEVABILITY." [TR.(1) 277 LINES 11-23]

IN LIGHT OF THIS MATERIAL FACT, THE APPLICANT PRESENTS; TRIAL JUDGE HAD FULL UNDERSTANDING WHAT THE PROFFER AGREEMENT WAS;

FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE." GIGLO V US 405 US AT 150, 153, 92 S.Ct

APPLICANTS ATTORNEY INITIALLY OBJECTED TO THIS PROFFER MATERIAL BEING SUBMITTED AS EVIDENCE. STATING [TR.(2)^P86 LINES 1-24] "YES, SIR. I CONTINUE TO OBJECT. ITS UNEXECUTED AND UNSIGNED. THERE IS NO EVIDENCE ITS BEEN FILED."

THE TRIAL COURT OVERRULED [TR.(2)^P86-87; 35-7] "BASED UPON THE WITNESS TESTIMONY PROVIDED HE TESTIFIES IN THE PRESENCE OF THE JURY THAT HE SIGNED IT AND THAT HIS LAWYER SIGNED IT. AND THE GOVERNMENT SIGNED IT. AND FOR WHATEVER ITS WORTH, IT WILL BE ADMITTED INTO EVIDENCE BECAUSE THERE IS NO REASON NOT TO. I MEAN, ITS APPROPRIATE THAT IT BE OFFERED. IM GOING TO ADMIT IT INTO EVIDENCE."

THE JUDGE WAS ALLOWING THE PROFFER AGREEMENT TO GO BEFORE THE JURY. KNOWINGLY THAT THIS PROFFER AGREEMENT WASN'T SIGNED [EXHIBIT #15], BUT ALSO ALLOWING THE WITNESS (PROSECUTION'S) TO GIVE FALSE TESTIMONY. THIS WAS AN ALREADY CONVICTED FELON, WHO WAS NOW A FEDERAL INMATE WHOM WAS PERJURING HIMSELF; BUT THE JUDGE KNEW WITH OUT A DOUBT, THAT SOLICITOR FANT WAS USING THE PROFFER AGREEMENT FOR THE SOLE PURPOSE TO MISLEAD THE

AND WAS BEING USED FOR BY SOLICITOR FANT. PROSECUTION'S FEDERAL INMATE WITNESS CREDIBILITY WAS MATERIAL FACT AT ISSUE. INSTEAD OF THE JURY JUST LISTENING TO HEYWARD'S TESTIMONY AND ACCESSING THE WITNESS CREDIBILITY, THE SOLICITOR PRESENTED THE USE OF FALSE MATERIAL EVIDENCE OF A UNITED STATES OFFICAL GOVERNMENT DOCUMENT IN ORDER TO GIVE PROSECUTION'S VITAL WITNESS BELIEVABILITY BEHIND HIS TESTIMONY.

ANOTHER CLEAR CUT EXAMPLE OF SOLICITOR'S MISUSE OF THE FALSE FEDERAL DOCUMENT; DIRECTLY AFTER FEDERAL INMATE WITNESS HEYWARD GAVE HIS ALLOWED PERJURED TESTIMONY, SOLICITOR FANT MISUSED THE DOCUMENT TIMELY BY ASKING THE WITNESS;

"OKAY, AND BASED UPON THIS PROFFER, WERE YOU OFFERED ANYTHING FOR YOUR TESTIMONY TODAY? NO, MA'AM. [TR(2) 91 LINE 1-19]

BUT FURTHERMORE, SOLICITOR FANT EXPERIENCED IN THESE TACTICS, AFTER FEDERAL INMATE WITNESS TESTIFIED, SOLICITOR FANT BROUGHT SPECIAL AGENT OF THE U.S. GOVERNMENT ATF RICHARD BROWN TO EXPLAIN, AND STRENGTHEN HEYWARD'S TESTIMONY OF WHAT A PROFFER AGREEMENT WAS. HEYWARD'S CONTRACT WITH THE U.S. GOVERNMENT. [TR(2) P. 101 LINE 7 - P. 104 LINE 5]

COURT DUTY NOTE; THE TACTICS THAT WERE AFFORDED TO SOLICITOR
FANT;

PRESENTING FALSE MATERIAL EVIDENCE (GOVERNMENT DOCUMENT),
ALLOWING FEDERAL INMATE WITNESS TO KNOWINGLY GIVE FALSE
PERJURED TESTIMONY UNDER OATH TO THE JURY; ALSO UNDERSTANDING
WHAT THE FALSE MATERIAL WAS BEING USED FOR, THUS KNOWING
THE EFFECT THE MATERIAL EVIDENCE WOULD HAVE AGAINST THE DEFENSE
THE ACTIONS OF THE TRIAL JUDGE SURROUNDING THE MATERIAL FACT,
WERE HIGHLY PREJUDICE TOWARDS THE APPLICANT. METHODS OF
SUCH TACTICS DENIED APPLICANTS RIGHT TO DUE PROCESS OF THE
LAW. TRIAL JUDGE DUTY IS TO ENSURE APPLICANT RECEIVES A FAIR
AND IMPARTIAL TRIAL. THESE ACTIONS WERE NOT.

10(F) APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS VIOLATED AS A RESULT OF COUNSEL'S FAILURE TO CONTINUE HIS OBJECTION TO THE FALSE MATERIAL EVIDENCE BEING USED BY THE SOLICITOR; THAT COUNSEL PREVIOUSLY HAD OBJECTED TO.

11(F) PROSECUTION'S CASE RELIED UPON THE CREDIBILITY AND BELIEVABILITY OF FEDERAL INMATE WITNESSES, THESE WITNESSES TESTIMONYS WERE USED AS CRUCIAL EVIDENCE. SOLICITOR FANT TOOK EXSTREEM MEASURES TO BUILD AND KEEP THEIR CREDIBILITY BEFORE THE JURY. SUCH AS USING FEDERAL GOVERNMENT DOCUMENTS TO ESTABLISH THAT PROSECUTION KEY WITNESSES HAD CONTRACTS WITH THE GOVERNMENT. USING INMATES FEDERAL PLEA AGREEMENTS, PROFFER AGREEMENTS, AND SPECIAL AGENT TO STRENGTHEN THE SHOW OF THESE CONTRACTS.

THEREFORE, SOLICITOR FANT WANTED TO AND WAS ALLOWED TO SUBMIT FALSE EVIDENCE OF A GOVERNMENT DOCUMENT USED TO MISLEAD THE JURY, THAT WAS UNSIGNED, UNEXECUTED, AND UNFILED WITH THE U.S. GOVERNMENT. A FEDERAL PROFFER AGREEMENT PRESUMED TO BELONG TO FEDERAL INMATE WITNESS JAMMIA HEVLWARD. THIS WAS TO BOLSTER HIS CREDIBILITY AND BELIEVABILITY.

APPLICANT PRESENTS THE FOLLOWING MATERIAL FACTS:

DURING REDIRECT EXAMINATION OF HEYWARD, APPLICANT'S ATTORNEY ASKED FOR A SIDE BAR, AFTER THE SIDE BAR THE COURT GAVE THE JURY A FIFTEEN (15) MINUTE BREAK. SO THAT HE COULD RESOLVE THE EVIDENTIARY MATTER OF STATE'S EXHIBIT NO. 25, WHICH AT THAT TIME WAS MARKED IDENTIFICATION ONLY.

AT THIS TIME FEDERAL INMATE HEYWARD WAS ASKED ABOUT HIS PROFFER AGREEMENT AND WHO SIGNED THE AGREEMENT. HE SAID; HIMSELF, LAWYER AND AGENT (F.B.I.)

THE COURT ASKED APPLICANT'S ATTORNEY IF THERE WAS ANY OBJECTION.

APPLICANT'S ATTORNEY CONFIRMED BY SAYING; "YES SIR. I CONTINUE TO OBJECT. IT'S UNEXECUTED AND UNSIGNED. THERE'S NO EVIDENCE ITS BEEN FILED. ALL WE HAVE IS AN UNSIGNED PROFFER AGREEMENT."

THE JUDGE OVERRULED APPLICANT'S ATTORNEY BASED UPON "THE WITNESS' TESTIMONY PROVIDED HE TESTIFIES IN THE PRESENCE OF THE JURY THAT HE SIGNED IT, AND HIS LAWYER SIGNED IT AND THE GOVERNMENT SIGNED IT. AND FOR WHATEVER ITS WORTH IT WILL BE ADMITTED INTO EVIDENCE BECAUSE THERE IS NO REASON NOT TO. I MEAN, ITS APPROPRIATE THAT IT BE OFFERED. IM GOING TO ADMIT IT INTO EVIDENCE." [TR.(2)^P 86-87 LINES 1-7]

APPLICANT CLAIMS; OBJECTION WAS WELL PRESERVED FOR APPEALS COURT TO EXAMINE. WOULD OF BEEN JUDGED IF TRIAL COURT ABUSED

DISCRETION BY ALLOWING PRESENTATION OF FALSE MISLEADING MATERIAL OF THE FEDERAL PROFFER AGREEMENT OF HEYWARD'S TO BE SUBMITTED INTO EVIDENCE. WHICH THE MATERIAL HAD NO VALUE, BUT SUPPORT THE CREDIBILITY AND BELIEVABILITY OF THE STATE WITNESS.

FURTHERMORE, THE TRIAL JUDGE ALLOWING THE WITNESS TO GIVE FALSE PERJURED TESTIMONY KNOWINGLY TO THE JURY. THESE MATERIAL FACTS WERE DONE WHEN THE JUDGE MADE HIS RULING ON THE ISSUE.

WHEN JURY RETURNED, THE REDIRECT OF HEYWARD CONTINUED BY, MS FANT;

Q. MR. HEYWARD, I WILL SHOW YOU WHATS BEEN MARKED FOR IDENTIFICATION AS STATES EXHIBIT Q5. DO YOU RECOGNIZE THAT DOCUMENT?

A. YES, MA'AM

Q. AND WHAT IS IT?

A. PROFFER AGREEMENT

Q. AND COULD YOU TURN TO THE LAST PAGE, DOES THAT COPY SHOW ANY SIGNATURES?

A. NO MA'AM

Q. BUT DID YOU, IN FACT, SIGN IT?

A. YES MA'AM

Q. DID YOUR ATTORNEY SIGN IT?

A. YES MA'AM

Q. AND DID THE GOVERNMENT SIGN IT?

A. YES MA'AM

Q. O.KAY. BASED UPON THIS PROFFER AGREEMENT, WERE YOU OFFERED ANYTHING FOR YOUR TESTIMONY

A. NO MA'AM

MS FANT THANK YOU. [TR(2)P. 91 LINES 1-24]

COURT NOTE: DOCUMENT (PROFFER AGREEMENT) EXHIBIT 25 IS JUST A COPY OF A FEDERAL PROFFER AGREEMENT. IT IS BEING USED FOR SHOW. NOBODY SIGNATURE IS ON THIS, THAT WAS USED AS EVIDENCE TO SUPPORT WITNESS. [EXHIBIT # 15] (LAST PAGE)

THE TRIAL JUDGE WANTED TO KNOW WHAT WAS GOING TO BE DONE WITH THE EVIDENCE: [TR. (2) P. 91-92; 25-20]

THE COURT: IS THAT FOR IDENTIFICATION OR IS IT OFFERED INTO EVIDENCE?

MS. FANT: FOR IDENTIFICATION, I'LL GET IT IN THROUGH THE NEXT.

THE COURT: MR. JOHNSON, ANY QUESTION OF THIS WITNESS REGARDING THE MATTER?

MR. JOHNSON: YOU HONOR, I WILL AFTER ITS INTRODUCED INTO EVIDENCE.

THE COURT: SHE HASN'T OFFERED IT INTO EVIDENCE.

MR. JOHNSON: WELL, I ANTICIPATE ---

THE COURT: SIR? MY QUESTION IS ANY RECROSS EXAMINATION OF THIS WITNESS

MS. FANT: YOU HONOR, IF HE DOESN'T OBJECT TO IT COMING IN BECAUSE OF THE SIGNATURES, THEN I WILL OFFER IT.

MR. JOHNSON: I DON'T OBJECT.

THE COURT: ALL RIGHT, BE ADMITTED INTO EVIDENCE AS STATES NUMBER 25, ADMITTED WITHOUT OBJECTION.

IT HAS AN ID MARKING ON IT, MS REED, IF YOU WOULD TAKE THAT OFF AND MARK IT AS STATES NUMBER 25.

(WHEREUPON, STATE'S EXHIBIT NO 25 WAS ADMITTED INTO EVIDENCE.)

THE COURT: DO YOU HAVE ANY CROSS-EXAMINATION OF THIS WITNESS MR JOHNSO

MR JOHNSON: YES SIR. WHAT EXHIBIT IS THAT?

THREE TIMES IT WAS JUST SAID EXHIBIT NO 25, APPLICANT'S ATTORNEY WASN'T PAYING ATTENTION. WHAT WAS INCREDIBLE APPLICANT'S ATTORNEY SAID NO OBJECTION, TO THE PROFFER AGREEMENT OF HEYWARD TO BE SUBMITTED AS EVIDENCE, THAT DIDN'T HAVE ANY SIGNATURES. THIS IS THE SAME EVIDENCE APPLICANT'S ATTORNEY CALLED A SIDE BAR ON WITH JUDGE. IT WAS THE SAME EVIDENCE THE JUDGE SENT THE JURY INTO A BREAK SO THE JUDGE COULD RESOLVE THE EVIDENTIARY MATTER. THE SAME EVIDENCE APPLICANT'S ATTORNEY CONTINUED TO OBJECT TO, THAT THE JUDGE OVERRULED AGAINST. WHICH WAS PRESERVED FOR APPEAL, AS ABUSE OF DISCRETION BY TRIAL JUDGE TO ALLOW UNFILED DOCUMENT THAT ONLY HELPS PROSECUTION'S WITNESS CREDIBILITY.

APPLICANT'S ATTORNEY QUASHED HIS OWN OBJECTION FOR NO APPARENT REASON. IT WAS OBVIOUSLY HE FORGOT, BECAUSE THERE WAS NOT ANY TRIAL STRATEGY TO GAIN BY CANCELLING HIS OBJECTION TO THE EVIDENCE

DIRECTLY AFTER FEDERAL INMATE HEYWARD TESTIFIED, SOLICITOR FANT NEXT WITNESS ^{**} WAS SPECIAL AGENT RICHARD BROWN, TO EXPLAIN TO THE JURY WHAT A PROFFER AGREEMENT WAS. (IN SHORT) A CONTRACT WITH THE

GOVERNMENT SIGNED. WHEN IN FACT IT WASN'T SIGNED. THIS ERROR BY APPLICANT'S ATTORNEY FOR ABANDONMENT OF HIS OBJECTION, AND NOT KEEPING WITH THIS OBJECTION TO THE FALSE EVIDENCE BEING PRESENTED TO THE JURY PREJUDICE THE APPLICANT. THIS FALSE MATERIAL EVIDENCE DENIED THE APPLICANT DUE PROCESS OF THE LAW, AND FAIR TRIAL. WHEN APPLICANT'S ATTORNEY AGREED TO ALLOW THE EVIDENCE TO BE SUBMITTED WITHOUT OBJECTION; IN HIS ERROR, HE UNINTENTIONALLY CONDONED IN THE ADMITTANCE OF FALSE EVIDENCE. THUS REMOVED A WELL PERSERVED ISSUE FOR APPEAL COURT TO REVIEW. THERE WAS NOT ANY DEGREE OF DEFENSE STRATEGY TO GAIN BY THIS. ATTORNEY ACTIONS CLEARLY SHOW HE COMMITTED ERROR THAT PREJUDICED THE APPLICANT, AND CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL. STRICKLAND V WASHINGTON, SUPRA

GOVERNMENT AND FEDERAL INMATE. A DEAL FOR INMATES TO TELL EVERYTHING THEY KNOW. CAN NOT LIE OR THE CONTRACT WOULD BE VOIDED. NO PROMISES FOR TESTIFYING, ETC., [TR.(2) P. 102 LINES 19 - P. 103 LINE 5]

HOWEVER, **SPECIAL AGENT ALSO SAID HEYWARD'S PROFFER AGREEMENT WAS FILED IN FEDERAL COURT [TR.(2) P. 103 LINES 13-20]

APPLICANT'S ATTORNEY SHOULD OF OBJECTED TO ATTEMPT TO PRESERVED THIS ISSUE. FEDERAL AGENT BROWN TESTIMONY WAS TO STRENGTHEN CREDIBILITY, TO ESTABLISH A CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, A PCR APPLICANT MUST SHOW THAT (1) COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND (2) BUT FOR COUNSEL'S ERRORS THERE IS REASONABLE PROBABILITY THE RESULTS WOULD HAVE BEEN DIFFERENT. STRICKLAND V WASHINGTON 466 US 688, 104 S.Ct. 2052, 80 L. ED 2D 674 (1984)

APPLICANT'S ATTORNEY ERRORED IN, BY QUASHING HIS OWN OBJECTION. THE PROFFER AGREEMENT WAS BEING USED BY THE SOLICITOR IN ORDER TO SHOW THE JURY FEDERAL INMATE WITNESS HEYWARD HAD A CONTRACT WITH THE GOVERNMENT, AND BUILD HIS CREDIBILITY. WHEN IN FACT AT THE TIME OF THE TRIAL HEYWARD DID NOT HAVE AN CONTRACT OR AN AGREEMENT WITH THE GOVERNMENT. THIS WAS FALSE EVIDENCE BEING PRESENTED TO THE JURY. IN ESSANCE IT WAS A BLANK PAPER, TO MISLEAD, THAT HEYWARD TOLD THE JURY HE SIGNED, HIS LAWYER SIGNED, AND THE

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APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS VIOLATED AS A RESULT OF COUNSEL'S FAILURE TO REQUEST TRIAL JUDGE TO INSTRUCT THE JURY ON THE LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER.

1(G)

PROSECUTION'S MOST CRUCIAL ALLEGED EYEWITNESS TESTIFIED THAT APPLICANT SHOT PETTIS DURING "AN ALTERCATION" [TR.(1) P. 207 LINES 20-24] ACCORDING TO THIS WITNESS (HOLMES), PETTIS SWUNG AT APPLICANT AND APPLICANT SHOT HIM IN THE BACK [TR.(1) P. 210 LINES 9-22; 228 LINE 14 - P 229 LINE 5] DEFENSE COUNSEL NEITHER REQUESTED A CHARGE ON VOLUNTARY MANSLAUGHTER NOR DID DEFENSE COUNSEL OBJECT TO ITS OMISSION FROM THE JUDGE'S FINAL INSTRUCTIONS TO THE JURY [TR.(2) P. 155 LINES 6 - P. 156 LINE 10]

VOLUNTARY MANSLAUGHTER IS DEFINED AS THE UNLAWFUL KILLING OF A HUMAN BEING IN SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL PROVOCATION. STATE V. DAMON, 285 S.C. 125, 328 S.E.2D 628 (1985).

A REFUSAL TO CHARGE VOLUNTARY MANSLAUGHTER IS JUSTIFIED ONLY WHEN THERE IS ABSOLUTELY NO EVIDENCE WHICH WOULD TEND TO

REDUCE MURDER TO THAT LESSER-INCLUDED OFFENCE. STATE V. WILLIAMS, 296 S.C. 395, 373 S.E.2D 596 (1988)

IN DECIDING WHETHER A CHARGE ON VOLUNTARY MANSLAUGHTER IS REQUIRED, THE EVIDENCE IS VIEWED IN THE LIGHT MOST FAVORABLE TO THE DEFENDENT. STATE V. BYRD 323 S.C. 319, 474 S.E. 2D 430 (1996)

IN DETERMINING WHETHER THE ACT WHICH CAUSED DEATH WAS IMPELLED BY HEAT OF PASSION OR BY MALICE, ALL THE SURROUNDING CIRCUMSTANCES AND CONDITIONS ARE TO BE TAKEN INTO CONSIDERATION, INCLUDING PREVIOUS RELATIONS AND CONDITIONS CONNECTED WITH THE TRAGEDY, AS WELL AS THOSE EXISTING AT THE TIME OF THE KILLING. STATE V. GARDNER, 219 S.C. 97, 64 S.E.2D 130, 134 (1951).

THE PROVOCATION BY THE DECEASED MUST BE THE DIRECT AND CONTROLLING CAUSE OF THE PASSION, AND IT MUST BE SUCH A NATURALLY AND INSTANTLY TO PRODUCE IN THE MINDS OF PERSONS ORDINARILY CONSTITUTED THE HIGHEST DEGREE OF EXASPERATION, RAGE, ANGER, SUDDEN RESENTMENT, OR TERROR, RENDERING THE MIND INCAPABLE OF COOL REFLECTION. STATE V. DAVIS, 50 S.C. 405, 27 S.E. 905, 911 (1897) (QUOTATION MARKS + CITATION OMITTED).

A PHYSICAL ALTERCATION BETWEEN THE DEFENDANT AND THE DECEASED IS A CIRCUMSTANCE OF PROVOCATION AND HEAT OF PASSION AND REQUIRES AN INSTRUCTION ON MANSLAUGHTER IN A PROSECUTION FOR MURDER.

STATE V. DAVIS, 278 S.C. 544, 298 S.E. 2D 778 (1983).

SINCE THERE WAS EVIDENCE APPLICANT SHOT PETTIS AFTER PETTIS TOOK A SWING AT HIM DURING AN ALTERCATION, THE TRIAL JUDGE SHOULD HAVE CHARGE THE JURY ON THE LESSER-INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER. SINCE DEFENSE COUNSEL DID NOT REQUEST THIS CHARGE NOR OBJECT TO ITS OMISSION, THIS WAS ERROR BY THE APPLICANT'S ATTORNEY, WHICH PREJUDICE THE APPLICANT

STRICKLAND V WASHINGTON, 466 U.S. 668, 104 S.C.T. 2052 80 L.ED.2D 624 (1984) "TO ESTABLISH A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, A PCR APPLICANT MUST SHOW BOTH THAT COUNSEL'S PERFORMANCE WAS UNREASONABLE AND THAT HE WAS PREJUDICED BY THAT PERFORMANCE."

APPLICANT'S ATTORNEY ACTIONS ARE GOVERN BY STRICKLAND, SUPRA.

APPLICANT BRINGS TO COURT ATTENTION:

EVIDENCE SUPPRESSED BY PROSECUTION, WOULD CONFIRM WHAT WITNESS TOLD LAW ENFORCEMENT [EXHIBITS #10, #11]

BUT ALSO SOLICITOR FANT SPOKE ABOUT THE ALTERCATION, DURING HER CLOSING ARGUMENT, [TR.(2) 165 LINES 18-25], APPLICANT'S ATTORNEY OVERLOOKED VITAL INFORMATION.

(H) APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS VIOLATED AS A RESULT OF COUNSEL'S FAILURE TO OBJECT TO TRIAL JUDGE'S INSTRUCTION TO THE JURORS TO FIND APPLICANT GUILTY OF THE CHARGE.

THE JURORS ARE PRESUMED TO FOLLOW THE INSTRUCTIONS OF THE TRIAL COURT. STATE V. QUEEN, 264 S.C. 515, 521 216 S.E. 2D 182, 185 (1975)

(H) DURING THE INSTRUCTIONS ON CIRCUMSTANTIAL EVIDENCE TO THE JURORS, JUST BEFORE THEY WENT INTO DELIBERATION: THE JUDGE CLEARLY STATED TO THE JURORS; "YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE. AND AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, **YOU WOULD FIND THE DEFENDANT GUILTY**. ON THE OTHER HAND, AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE CONVINCED OF GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, **YOU WOULD FIND THE DEFENDANT GUILTY**."

[TR.(2)P 198 LINES 9-15]

APPLICANT'S ATTORNEY DID NOT OBJECT TO THIS INSTRUCTION THAT WAS GIVEN TO THE JURORS, TO FIND APPLICANT GUILTY EVEN IF THEY WERE NOT CONVINCED OF APPLICANT GUILT.

APPLICANT NOTIFIED HIS ATTORNEY OF WHAT WAS SAID BY THE JUDGE, AFTER THE JURY WAS RETIRED TO THE JURY ROOM FOR DELIBERATION. APPLICANT'S ATTORNEY THEN ADDRESS THE ISSUE TO THE JUDGE; WHOM THEN REVIEWED THE ISSUE, FINDING THAT THE DEFENSE WAS CORRECT. HE HAD TOLD THE JURY TO FIND APPLICANT GUILTY.

[TR.(2) P.202 LINES 16 - P.203 LINE 14]

(BEFORE THE JURY RETURNED, THE JUDGE ACKNOWLEDGE HE DID MAKE A MISTAKE, NO DOUBT ABOUT IT.)

WHEN THE JUDGE ORDERED THE JURY TO RETURN, TO RECHARGE THEM THE JUDGE SAID TO THE JURY; "I **MAY** HAVE **MISPOKE** DURING ONE PORTION OF THE CHARGE. AND BECAUSE I WANT TO MAKE SURE THAT IT IS CLEAR -- AND **IF** I DID **MISSPEAK**, I WANT TO MAKE SURE THAT I SAY IT EXACTLY RIGHT AND THAT IS WITH REGARD TO DIRECT AND CIRCUMSTANTIAL EVIDENCE. AND IN THAT CONNECTION, I WILL INSTRUCT YOU AGAIN ON DIRECT AND CIRCUMSTANTIAL EVIDENCE."

[TR.(2) P.204 LINES 21 - P.205 LINE 2]

APPLICANT'S ATTORNEY AGAIN SHOULD HAVE OBJECTED TWICE MORE TO THE SURROUNDING ISSUES. THE JUDGE SAID HE "MAY" HAVE MIS-SPOKEN TO THE JURY, [THE RECORD SHOWED HE DID MISSPEAK]; THE JUDGE ALSO SAID "IF I DID" MISSPEAK, [AGAIN THE RECORD SHOWED HE DID MISSPEAK]; WHEN HE INSTRUCTED THE JURY TO FIND THE APPLICANT GUILTY. HOWEVER, IF THE TRIAL JUDGE FELT AS (IF) OR HE (MAY) HAVE MISSPOKEN, WHEN IN FACT THERE WAS NOT ANY DOUBT ABOUT IT. THEN IT CAN BE ASSUMED THE JUDGE IS INVOLVING HIS PERSONAL THOUGHTS, OR FEELINGS. BUT MORE IMPORTANTLY HE IS STILL LEAVING THE JURORS UNSURE IF HE (JUDGE) DID OR DID NOT MISSPEAK. APPLICANT'S ATTORNEY SHOULD OF OBJECTED.

SOUTH CAROLINA SUPREME COURT HELD: "A TRIAL JUDGE MUST REFRAIN FROM ANY COMMENTS WHICH TENDS TO INDICATE HIS OPINION AS TO THE WEIGHT OR SUFFICIENCY OF THE EVIDENCE, THE CREDIBILITY OF WITNESSES, THE GUILT OF AN ACCUSED, OR ANY FACT IN CONTROVERSY."
STATE V SMITH, 288 S.C. 329, 342 S.E. 2D 600 (1986); STATE V. KENNEDY, SUPRA.

FURTHERMORE, THE JUDGE NEVER GAVE ANY CURATIVE INSTRUCTIONS TO THE JURY, NOR POINTED OUT WHAT PORTION THE JURY WAS TO

1308)

APPLICANTS RIGHT TO DUE PROCESS OF THE LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW WAS VIOLATED BY THE TRIAL JUDGE'S ERRONEOUS INSTRUCTION TO FIND THE APPLICANT GUILTY, EVEN IF THE EVIDENCE DOES NOT CONVINCE THE JURY; APPLICANT'S RIGHT TO THE PRESUMPTION OF INNOCENCE AS GUARANTEED BY FEDERAL AND STATE LAW WAS VIOLATED BY TRIAL JUDGE'S COMMENT.

11(I)

THE JURORS ARE PRESUMED TO FOLLOW THE INSTRUCTIONS OF THE TRIAL COURT. STATE V. QUEEN. 264 S.C. 515. 521 216 S.E.2D 182, 185 (1975).

DURING THE INSTRUCTIONS PHASE TO THE JURY. BEFORE THE JURY WENT TO DELIBERATE, THE JUDGE WAS INSTRUCTING THE JURY ON CIRCUMSTANTIAL EVIDENCE. PART OF THE INSTRUCTIONS WERE AS FOLLOW; [TR. 12] P. 198 LINES 9-15] "YOU SHOULD WEIGH ALL THE EVIDENCE IN THIS CASE. AND AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT. YOU WOULD FIND THE DEFENDANT GUILTY. ON THE OTHER HAND AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE CONVINCED OF GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT. YOU WOULD FIND THE (APPLICANT) DEFENDANT GUILTY."

SOUTH CAROLINA SUPREME COURT HELD: IT IS ELEMENTARY THAT IN THE COURSE OF THE TRIAL OF A CRIMINAL CASE, THE TRIAL JUDGE MUST REFRAIN FROM ALL COMMENTS WHICH TENDS TO INDICATE HIS OPINION AS TO THE WEIGHT OR SUFFICIENCY OF EVIDENCE, THE CREDIBILITY OF A WITNESSES, THE GUILT OF THE ACCUSED, OR AS TO CONTROVERTED FACTS. STATE V. PRUITT 187 SC 58, 196 SE. 371 (1938); SEE ALSO STATE V KENNEDY 272 SC. 231, 250 S.E. 2D 339 (1978)

AFTER THE JURY RETIRED TO BEGIN DELIBERATION. THE TRIAL JUDGE WAS NOTIFIED OF HIS ERRONEOUS INSTRUCTIONS TO THE JURY. THE TRIAL JUDGE REVIEWED THE RECORD, AND ACKNOWLEDGE HE HAD ERRORED AND TOLD THE JUROR'S TO FIND APPLICANT GUILTY OF THE MURDER.

[TR. (2) P. 202 LINES 16 - P 203 LINE 14]

WHEN THE TRIAL JUDGE ORDERED THE JURY TO RETURN, TO RECHARGE THEM, THE JUDGE SAID TO THE JURY; "I MAY HAVE MISSPOKE DURING ON PORTION OF THE CHARGE, AND BECAUSE I WANT TO MAKE SURE THAT IT IS CLEAR-- AND IF I DID MISSPEAK. I WANT TO MAKE SURE THAT I SAY IT EXACTLY RIGHT AND THAT IS WITH REGARD TO DIRECT AND CIRCUMSTANTIAL EVIDENCE, AND IN THAT CONNECTION, I WILL INSTRUCT YOU AGAIN ON DIRECT AND CIRCUMSTANTIAL EVIDENCE". [TR. (2) P. 204 LINES 21 - P. 205 LINE 2]

DISREGARD. APPLICANT'S ATTORNEY DID NOT OBJECT TO THESE FACTS.

"EVEN AN IMMEDIATE CURATIVE INSTRUCTION CAN BE INSUFFICIENT TO PREVENT PREJUDICE FROM THE JUDGE'S IMPROPER COMMENTS."

STATE V. KENNEDY, SUPRA

IN THE APPLICANT'S TRIAL, THERE WAS NOT ANY CURATIVE INSTRUCTIONS. IN FACT THE TRIAL JUDGE WAS UNCLEAR IN EXPLAINING HIS MISTAKE, FURTHERMORE WAS UNCLEAR IF HE HAD MISSPOKEN, TO LEAVE THE JURY TO ASSUME

"IT HAS LONG BEEN RECOGNIZED THAT EVEN A SLIGHT REMARK, APPARENTLY INNOCENT IN ITS LANGUAGE, MAY, WHEN UTTERED BY THE COURT, HAVE A DECIDED WEIGHT IN SHAPING THE OPINION OF THE JURY" STATE V. PRUITT

487 S.C. 58, 61. 196 S.E. 371, 372 (1938)

APPLICANT'S ATTORNEY FAILURE TO OBJECT TO THE PREJUDICIAL COMMENTS MADE BY THE TRIAL JUDGE, THE IMPROPER, ERRONEOUS INSTRUCTIONS CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. SEE; STRICKLAND V. WASHINGTON, 466 US 688 104 S. CT 2052, 2064, 80 LED 2D 674 692 (1984). THE INSTRUCTIONS GIVEN TO THE JURY WERE IMPROPER AND CONSTITUTE ERROR. APPLICANT'S ATTORNEY SHOULD HAVE OBJECTED TO THE JUDGE'S INSTRUCTIONS, NOT GIVING CURATIVE INSTRUCTIONS, OR

POINTING OUT WHAT PORTION OF THE INSTRUCTIONS WAS TO BE DISREGARDED. IF THE JUDGE WOULD OF OVERRULED THE OBJECTION. IT WOULD OF SAFEGUARDED THE ISSUE IN THE RECORD FOR APPEAL. BY APPLICANTS ATTORNEY NOT DOING SUCH. HIS ERRORS PREJUDICE THE APPLICANT.

THE TRIAL JUDGE DID NOT GIVE ANY CURATIVE INSTRUCTIONS TO THE JURY, DID NOT TELL THE JURY TO DISREGARD HIS COMMENT. THE TRIAL JUDGE DID NOT MAKE IT CLEAR IF HE HAD MISSPOKEN TO THE JURY. JUDGE SAID HE MAY HAVE MISSPOKE, IF I DID MISSPEAK, TRIAL JUDGE IS NOT BEING STRAIGHT FORTH WITH THE JURY. JUDGE ACKNOWLEDGED OUTSIDE OF THE JURORS PRESENCE THAT HE DID ERROR, WITHOUT DOUBT. THEN WHEN IN FRONT OF THE JURORS IT CAN BE TAKEN THE TRIAL JUDGE IS NOT BEING NEUTRAL, BUT WAS EXPRESSING HIS PERSONAL FEELING TO FIND APPLICANT GUILTY OF MURDER.

SOUTH CAROLINA SUPREME COURT HELD: A FUNDAMENTAL CONCEPT OF OUR SYSTEM OF JUSTICE IS THAT EVERY PERSON CHARGED WITH A CRIME HAS THE ABSOLUTE RIGHT TO A FAIR TRIAL AND IMPARTIAL TRIAL. BASIC TO THIS CONCEPT IS THE REQUIREMENT OF NEUTRALITY ON THE PART OF THE TRIAL JUDGE, AND IT IS IMPERATIVE THAT HE EXERCISE A HIGH DEGREE OF RESTRAINT, CAUTION, AND CIRCUMSPECTION IN MAKING REMARKS OR COMMENTS IN THE PRESENCE OF THE JURY. STATE V. KENNEDY, SUPRA.

EVEN IMMEDIATE CURATIVE INSTRUCTION CAN BE INSUFFICIENT TO PREVENT PREJUDICE FROM A JUDGE'S IMPROPER COMMENTS. STATE V. KENNEDY, SUPRA; SEE ALSO STATE V. SMITH 290 S.C. 343, 350 S.E.2D 923 (1986) (INSTRUCTION TO DISREGARD INCOMPETENT EVIDENCE USUALLY DEEMED CURATIVE, UNLESS ON FACTS OF PARTICULAR CASE ACCUSED WAS PREJUDICED ANY WAY).

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TRIAL JUDGE COMMENTS HIGHLY PREJUDICE APPLICANTS RIGHT TO A FAIR
AND IMPARTIAL TRIAL.

PAGES 1-2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER) MURDER, CRIMINAL CONSPIRACY,
) POSSESSION OF FIREARM OR KNIFE DURING
) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on January 3, 2008, the Grand Jurors
 of SUMTER County present upon their oath:

COUNT ONE - MURDER

That ROBYN L. DUKES AND MARK A. McCOY did in Sumter County on or
 about June 8, 2004, feloniously, wilfully and with malice aforethought, either expressed
 or implied, kill one Donald Tyrone Pettis, Jr. by means of shooting him in the back with a
 handgun, and that the said Donald Tyrone Pettis, Jr. did die as a proximate result
 thereof.

COUNT TWO - CRIMINAL CONSPIRACY

That ROBYN L. DUKES AND MARK A. McCOY did in Sumter County on or
 about, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as
 amended, in that they did unite, combine, conspire, confederate and/or agree with one
 another for the purpose of committing the crime of murder.

COUNT THREE - POSSESSION OF FIREARM OR KNIFE DURING THE
 COMMISSION OF A VIOLENT CRIME

That MARK A. McCOY in Sumter County on or about June 8, 2004, was in
 possession of and did visibly display a firearm during the commission of a violent crime
 as defined in Section 16-1-60, to-wit: a handgun, in violation of Section 16-23-490,
 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.

C. Kelly Jackson

 SOLICITOR

EXHIBIT: 1(B)

PAGES 1-2

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

MURDER, POSSESSION OF FIREARM OR
KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME, ACCESSORY AFTER FACT OF
A FELONY

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell
CLERK OF COURT
SUMTER COUNTY

At a Court of General Sessions, convened on September 11, 2008, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE - MURDER

That MARK A. "WISE" McCOY did in Sumter County on or about June 8, 2004, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Donald Tyrone Pettis, Jr. by means of shooting him in the back with a handgun, and that the said Donald Tyrone Pettis, Jr. did die as a proximate result thereof.

COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

That MARK A. "WISE" McCOY in Sumter County on or about June 8, 2004, was in possession of and did visibly display a firearm, to wit: a handgun, during the commission of a violent crime as defined in Section 16-1-60, to-wit: murder, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT THREE - ACCESSORY AFTER THE FACT OF A FELONY

That ROBYN L. DUKES did in Sumter County on or about June 8, 2004, render assistance to a felon, namely, Mark A. "Wise" McCoy, who, on or about June 8, 2004, completed the crime of murdering Donald Tyrone Pettis, and said ROBYN L. DUKES did harbor or assist Mark A. "Wise" McCoy for the purpose of enabling him to escape detection or arrest.

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

P. Kelly Jackson
SOLICITOR

1(B) P2

ARREST WARRANT

F- 413307

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Sumter

THE STATE

CERTIFIED TRUE COPY
OF ORIGINAL FILED

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

JAMES L. MORRIS
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

2007 OCT 25 AM 11:27

Personally appeared before me the affiant Mark A. McCoy who

being duly sworn deposes and says that defendant Mark A. McCoy violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☒ Municipality of Sumter)

In the following particulars:

Incident # 04057789
Murder (16-03-0010)

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:

That the defendant did commit the above stated offense in that he did while accompanied by a co-defendant, did with malice and aforethought, shoot one Donald Tyrone Pettis Jr. with a pistol while Pettis was attempting to escape after being physically assaulted by the defendant. As a result, Pettis died from the gunshot wound. Said offense having occurred on Edwards Street near Kelly Street, in the City of Sumter State of SC.

Probable Cause: Law Enforcement received statements that implicate the defendant as the person that shot Donald Tyrone Pettis Jr. with a pistol, which resulted in the death of the victim, Donald Tyrone Pettis Jr.

Sworn to and subscribed before me on 10-23-07

Signature of Affiant Detective D.W. Morris / 107 E. Hampton

Affiant's Address Sumter, SC. 29150

Signature of Issuing Judge Michael J. Marshall

Affiant's Telephone 436-2705

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.

Code/Ordinance Sec. 16-03-0010 Offense Code 0116

Prosecuting Agency: 01 Agency ORI #: SC0430100

Prosecuting Officer: Morris-1549

Offense: Murder

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Mark A. McCoy on 10-23-07

Signature of Constable/Law Enforcement Officer Michael J. Marshall

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of

AFFIDAVIT

SC Attorney General
July 29, 1980
SCGA 518

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 06/08/04 defendant Mark A. McCoy did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☒ Municipality of Sumter) as set forth below:

DESCRIPTION OF OFFENSE:

Murder (16-03-0010)

Now, therefore, 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 his execution, or as soon thereafter as is practicable.

Judge's Address 115 N. Harvin St./PO Box 1420

Sumter, SC 29151

Signature of Issuing Judge Michael J. Marshall

Judge's Telephone 803-436-2280

Judge Code: _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

A

EXHIBIT #3(A)

PAGES 1-11

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE GENERAL SESSIONS COURT
IN THE THIRD JUDICIAL CIRCUIT

The State of South Carolina)

Plaintiff,)

-vs-)

Mark A. McCoy,)

Defendant.)

Warrant Number(s): F-413307

BRADY MOTION

TO: CATHERINE FANT, SOLICITOR FOR THE THIRD JUDICIAL CIRCUIT:

The Defendant herein, by and through his undersigned attorney, hereby requests you pursuant to the authority of Brady -vs- Maryland, 373 U.S. 83(1963), to give him without undue delay any information in your possession or gathered for your use and available to you or which in the exercise of reasonable diligence could be in your possession which tends to show that the Defendant is not guilty of the offenses charged or which tends to show that the Defendant is not guilty of the offense charged or which tends to mitigate the severity of the offenses charged or any sentence which might result therefrom.

This request includes, but is not limited to, the following:

1. Copies of any statements by the Defendant, co-Defendants or other witnesses containing relevant information or which contradicts any evidence which the State tends to introduce at trial;
2. A list of physical evidence items;
3. Copies of any relevant expert reports;
4. The names and addresses of all witnesses, including law enforcement personnel, having relevant information about the case;

Douglas N. Truslow
August 11, 2008
Page 4

W. WALTER WILKINS
UNITED STATES ATTORNEY

By: _____
Jane B. Taylor
Assistant U.S. Attorney

I AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT:

JAMMIA L. HEYWARD

Date

ATTORNEY



SUMTER POLICE DEPARTMENT
INTERVIEW FORM



BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- YOU HAVE THE RIGHT TO REMAIN SILENT.
- ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.
- IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.
- IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 1:30 A.M. P.M. ON Oct. 23 2007 AT LEC.
BY OFFICER Sr. Det. Morris OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

SIGNED: Refused to Sign.
DATE: 10/23/07 TIME: 1:33 PM

WITNESSES:

Sr. Det. [Signature]
Eugene [Signature]

Sr. Det. [Signature]

Douglas N. Truslow
August 11, 2008
Page 3

applicable sentencing guideline range should Client be convicted or enter a guilty plea unless there is a breach of this Agreement. However, these statements made and other information provided will be made available to the court for its consideration pursuant to 18 U.S.C. § 3661. The provisions of this paragraph shall not be applied to restrict the use of any such statements or information:

- (A) known to the Government prior to the date Client makes this Proffer;
- (B) concerning the existence of prior convictions and sentences in determining § 4B1.1 (career offender);
- (C) in a prosecution for perjury or giving false statement; or
- (D) in the event there is a breach of the terms of this Agreement or subsequent plea agreement. §1B1.8, United States Sentencing Commission Guidelines.

The obligations of and restrictions on the Government within this Agreement are expressly contingent upon Client's abiding by federal and state laws and complying with the terms and conditions of any bond executed in this case. Therefore, Client's violation of federal or state law or of the provisions of any bond executed in this case constitutes a breach of this Agreement, and upon such violation, the Government may use for any purpose any and all statements made and other information provided by Client in the prosecution of Client on any charges.

Client is hereby informed and understands that this Agreement does not extend to any statements or other information involving any homicides or other crimes of extreme violence. Any statements made or other information provided by Client during the Proffer regarding any homicide or other extreme acts of violence may be used against Client in any criminal proceedings which may be undertaken by any authorities.

To the extent the Government is entitled under this Agreement to offer in evidence any statements made or other information provided by Client or leads obtained therefrom, Client shall assert no claim under the United States Constitution, any Statute, Rule 410 of the Federal Rules of Evidence, or any other federal rules that such statements made or other information provided or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

Client is advised that making a false statement in a matter within the jurisdiction of the United States is a federal offense punishable by imprisonment for up to five years, and a fine of up to \$250,000.

The parties hereby agree that this Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this Agreement are null and void.

Douglas N. Truslow
August 11, 2008
Page 2

void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on Client's part:

- (1) the Government may file any and all charges known to the Government in the appropriate district; and
- (2) the Government may use for any purpose any and all statements made and other information provided by Client in the prosecution of Client on any charges, including perjury. Client accepts this provision being fully advised that under Fed.R.Evid. 410, statements made by Client pursuant to this Agreement would not ordinarily be admissible in any criminal proceedings including perjury and making false statements unless the statements were made under oath, on the record, and in the presence of counsel.

Client agrees to submit to polygraph examination(s) by any qualified polygraph examiner should Client be requested to do so. Failure to pass to the satisfaction of the Government any polygraph examination administered pursuant to this Agreement constitutes a breach of the Agreement, and the Government may use for any purpose any statements made and other information provided by Client in the prosecution of Client on any charges.

Provided Client is truthful as described above, remaining terms of the Agreement are as follows:

1. No statements made or other information provided by Client during this Proffer or discussion will be used against Client in any criminal or civil case except as provided herein.
2. The Government may make derivative use of and may pursue any investigation leads suggested by any statements made or other information provided by Client for the purpose of obtaining other evidence which may be used in a prosecution of Client. This is necessary to prevent the Government from having to prove that evidence it would introduce at any future trial is not tainted by any statements made or other information provided by Client during this Proffer.
3. In the event that Client is a witness at a trial or other proceeding concerning any matter discussed in this Proffer and testifies materially different from any statements made or other information provided during this Proffer, the Government may cross-examine Client concerning any statements made or other information provided during this Proffer or use such to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised sua sponte by the District Court) at any stage of the criminal prosecution (including bail, trial, and sentencing) should any prosecution of Client be undertaken.
4. The Government agrees that any self-incriminating statements made and other information provided by Client during this Proffer will not be used in determining the



U.S. Department of Justice

United States Attorney

District of South Carolina

25
F. 25

Wachovia Building
Suite 500
1441 Main Street
Columbia, SC 29201
(803) 929-3000
FAX (803) 254-2943

151 Meeting Street
Suite 200
Post Office Box 978
Charleston, SC 29402
(843) 727-4381
FAX (843) 727-4443

John L. McMillan Federal
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401 W. Evans Street
Post Office Box 1567
Florence, SC 29503
(843) 665-6688
FAX (843) 678-8809

105 N. Spring Street
Suite 200
Post Office Box 10067
Greenville, SC 29603
(864) 282-2100
FAX (864) 233-3158

Reply to: Columbia

August 11, 2008

Douglas N. Truslow
Post Office Box 1465
Columbia, South Carolina 29202

RE: JAMMIA L. HEYWARD

Dear Mr. Truslow:

The following constitutes the proffer agreement between the Attorneys for the Government and JAMMIA L. HEYWARD, hereinafter referred to as "Client."

PROFFER AGREEMENT

The purpose of Client making a Proffer is to provide the Government with an opportunity to assess the value, extent, and truthfulness of Client's information about the criminal liability of Client and others.

THIS IS NOT A COOPERATION AGREEMENT. Client has agreed to provide the Government with statements and information, and to respond to questions so that the Government may evaluate Client's statements and other information in making prosecutive decisions. By receiving Client's Proffer, the Government does not agree to make a motion for downward departure on the Client's behalf or to enter into a cooperation agreement, plea agreement, immunity or non-prosecutive agreement. The Government makes no representation about the likelihood that any such agreement will be reached in connection with this Proffer.

By signing this "Proffer Agreement," Client agrees to be fully truthful and forthright with the United States Attorney's Office for the District of South Carolina and federal law enforcement agents in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings with no misstatements or material omissions of fact of Client's knowledge concerning all unlawful activities. Also, Client understands that Client must fully disclose and provide truthful information to Government including any books, papers, or documents or any other items of evidentiary value to the investigation. Client must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. Client's failure to be fully truthful and forthright at any stage will, at the sole election to the Government, cause the obligations of the Government within this Agreement to become null and

AO 245B (SCD Rev. 5/05) Judgment in a Criminal Case
Sheet 5 Part B - Criminal Monetary Penalties

DEFENDANT: LATIMORE LERON HOLMES
CASE NUMBER: 3:05-559 (001)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A. ☒ Lump sum payment of \$100.00 due immediately, balance due
☐ not later than , or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or
- B. ☐ Payments to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or
- C. ☐ Payments in (e.g., equal, weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence after the date of this judgment; or
- D. ☐ Payments in (e.g., equal, weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. ☐ Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court, unless otherwise directed by the court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant names and case numbers (including defendant number), total amount, joint and several amount, and corresponding payee, if applicable.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in property as directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

14(B)5

AO 245B (SCD Rev. 6/05) Judgment in a Criminal Case
Sheet 5, Part A - Criminal Monetary Penalties

DEFENDANT: LATIMORE LERON HOLMES
CASE NUMBER: 3:05-559 (001)

CRIMINAL MONETARY PENALTIES

The defendant will make all checks and money orders payable to the "Clerk, U.S. District Court" unless otherwise directed by the court.

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ <u>100.00</u>	\$ <u>na</u>	\$ <u>na</u>

- ☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case* will be entered after such determination.
- ☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed on the next page.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified in the priority order or percentage payment column on the next page. However, pursuant to 18 U.S.C. § 3664(8), all nonfederal victims must be paid in full prior to the United States receiving payment.

SEE VICTIM(S) LIST ON THE NEXT PAGE

- ☐ If applicable, restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B, may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ fine and/or ☐ restitution.
- ☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

14(B) 4

AO 241B (SCD Rev. 6/05) Judgment in a Criminal Case
Sheet 3 - Supervised Release

DEFENDANT: LATIMORE LERON HOLMES
CASE NUMBER: 3:05-559 (001)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the Probation Office. (Check, if applicable)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the Probation Office. (Check, if applicable)
- ☐ The defendant shall participate in an approved rehabilitation program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14 (B) 3

AO 246B SCD (Rev. 6/05) Judgment in a Criminal Case
Sheet 2 - ImprisonmentDEFENDANT: LATIMORE LERON HOLMES
CASE NUMBER: 3:05-559-MJP (001)**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of TIME SERVED.

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at a.m./p.m. on.
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on [Date to surrender at institution]
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHALBy _____
Deputy United States Marshal

14(B)2

EXHIBIT 14(B) PAGE 1-5

AO 245C (SCD Rev. 3/05) Case 00559-MJP Document 1-1 Filed 11/20/08 Entry Number 60 Page 1 of 5

United States District Court District of South Carolina

SECOND

UNITED STATES OF AMERICA

vs.

LATIMORE LERON HOLMES

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Date of Original Judgment: 3/27/2006

Case Number: 3:05-559-MJP (001)US Marshal's Number: 12968-171Jimmy Rogers, AFD

Defendant's Attorney

(Date of Last Amended Judgment) 5/15/2006

Reason for Amendment:

- ☐ Correcting Clear Error (Fed.R.Crim.P.35(a))
- ☒ Reducing a Sentence Pursuant to Fed.R.Crim.P.35(b)
- ☐ Correction of Sentence for Clerical Error (Fed.R.Crim.P.36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. §3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. §3582(c)(2))
- ☐ Direct Motion to District Court Pursuant to
- ☐ 28 U.S.C. §2255, ☐ 18 U.S.C. §3559(c)(7),
- ☐ Modification of Restitution Order (18 U.S.C. §3664)

THE DEFENDANT:

- ☒ pleaded guilty to count one of the indictment on 12/28/2005.
- ☐ pleaded nolo contendere to count(s) on which was accepted by the court.
- ☐ was found guilty on count(s) on after a plea of not guilty.

Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21:841(a)(1) and 841(b)(1)(B)	Please see indictment	5/4/2005	one

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s).
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.
- ☒ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court or United States attorney of any material change in the defendant's economic circumstances.

11/20/08
Date of Imposition of Judgment

Signature of Judicial Officer

Matthew J. Perry, Jr., Sr. U.S. District Judge
Name and Title of Judicial OfficerDate 11-20-2008

14(B) 1

AO 245B (SCD Rev. 6/05) Judgment in a Criminal Case
Sheet 5 Part B - Criminal Monetary Penalties

DEFENDANT: COLUMBIA
CASE NUMBER: 3:05-559 (001)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$100.00 due immediately, balance due
☐ not later than , or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or
- B ☐ Payments to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or
- C ☐ Payments in (e.g., equal, weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence after the date of this judgment; or
- D ☐ Payments in (e.g., equal, weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court, unless otherwise directed by the court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant names and case numbers (including defendant number), total amount, joint and several amount, and corresponding payee, if applicable.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in property as directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

14(A)5

AO 245B (SCD Rev. 6/05) Judgment in a Criminal Case
 Sheet 5, Part A - Criminal Monetary Penalties

DEFENDANT: COLUMBIA
 CASE NUMBER: 3:05-559 (001)

CRIMINAL MONETARY PENALTIES

The defendant will make all checks and money orders payable to the "Clerk, U.S. District Court" unless otherwise directed by the court.

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ <u>100.00</u>	\$ <u>na</u>	\$ <u>na</u>

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case* will be entered after such determination.
- ☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed on the next page.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified in the priority order or percentage payment column on the next page. However, pursuant to 18 U.S.C. § 3664(8), all nonfederal victims must be paid in full prior to the United States receiving payment.

SEE VICTIM(S) LIST ON THE NEXT PAGE

- ☐ If applicable, restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B, may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ fine and/or ☐ restitution.
 - ☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

14(A)4

AO 245B (SCD Rev. 6/05) Judgment in a Criminal Case
Sheet 3 - Supervised Release

DEFENDANT: COLUMBIA
CASE NUMBER: 3:05-559 (001)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 4 years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the Probation Office. (Check, if applicable)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the Probation Office. (Check, if applicable)
- ☐ The defendant shall participate in an approved rehabilitation program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14(A)3

AO 245B (SOD Rev. 6/05) Judgment in a Criminal Case
Sheet 2 - Imprisonment

DEFENDANT: COLUMBIA
CASE NUMBER: 3:05-559 (001)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 60 months.

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at a.m./p.m. on .
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
- ☒ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By _____
Deputy United States Marshal

14 (A) 2

United States District Court **District of South Carolina**

UNITED STATES OF AMERICA

vs.

LATIMORE LERON HOLMES**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: 3:05-559 (001)US Marshal's Number: 12968-171

Thomas B. Levy, Esq.
 Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count one of the Indictment on 12/28/2005
☐ pleaded nolo contendere to count(s) on which was accepted by the court.
☐ was found guilty on count(s) on after a plea of not guilty.

Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense</u> <u>Concluded</u>	<u>Count</u> <u>Number(s)</u>
<u>21:841(a)(1) and 841(b)(1)(B)</u>	Please see indictment	<u>5/4/2005</u>	<u>one</u>

The defendant is sentenced as provided in pages 2 through of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.
☒ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court or United States attorney of any material change in the defendant's economic circumstances.

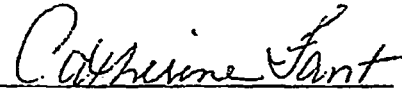
3/23/06
 Date of Imposition of Judgment

[Signature]
 Signature of Judicial Officer

Matthew J. Perry, Jr., Sr., U.S. District Judge
 Name and Title of Judicial Officer

March 27, 2006
 Date

This Motion is pursuant to Circuit Rule 5, upon compliance by the prosecution with the defendant's previous Motion for Discovery and Disclosure based upon the same circuit court rule. The duty to make said disclosure is a continuing duty up to and during trial.



Catherine Fant
Assistant Solicitor
Third Judicial Circuit

Sumter, South Carolina

August 5, 2008

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) INDICTMENT NO.: 2005-GS-43-33

The State,)
v.) SUPPLEMENTAL
MARK A. McCOY,) RULE 5 DISCLOSURE AND
) MOTION FOR RECIPROCAL
) DISCOVERY AND DISCLOSURE
Defendant.) OF EVIDENCE

TO: I. S. LEEVY JOHNSON, ATTORNEY FOR DEFENDANT:

In response to your request for Disclosure under Rule 5, the State provides the following:

1. Statements –
Robyn Levern Dukes – August 10, 2004 – Three (3) Pages
Jeffrey Burgess – June 9, 2004 – Two (2) Pages
Jeffrey Burgess – June 10, 2004 – Two (2) Pages
Frank Nelson – June 9, 2004 – Two (2) Pages
Joseph Sumpter – August 16, 2004 – Two (2) Pages
2. Prior Criminal Record – N/A
- * 3. Documents and Tangible Objects - Available for inspection by appointment upon your request.
4. Reports of Examination and Test: - N/A

Sumter Police Department Automated Fingerprint Identification

- a. Sumter City Investigative Report and Incident Report Case No(s). 04057789 and other relative materials.

Having complied with the defendant's request, the State hereby requests the information subject to disclosure under Rule 5(b)(1)(A)&(B).

The State hereby requests information subject to Rule 5(e)(1) Notice of Alibi; Rule 5(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill; and any intent of the defendant to rely upon the defenses of necessity or self-defense.

The State hereby requests information subject to Rule 5(e)(1) Notice of Alibi; Rule 5(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill; and any intent of the defendant to rely upon the defenses of necessity or self-defense.

This Motion is pursuant to Circuit Rule 5, upon compliance by the prosecution with the defendant's previous Motion for Discovery and Disclosure based upon the same circuit court rule. The duty to make said disclosure is a continuing duty up to and during trial.



Catherine Fant
Assistant Solicitor
Third Judicial Circuit

Sumter, South Carolina

April 21st 2008

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) INDICTMENT NO.: 2005-GS-43-33

The State,)

v.)

ROBIN LAVERN DUKES,)

Defendant.)

RULE 5 DISCLOSURE AND
MOTION FOR RECIPROCAL
DISCOVERY AND DISCLOSURE
OF EVIDENCE

TO: I. S. LEEVY JOHNSON, ATTORNEY FOR DEFENDANT:

In response to your request for Disclosure under Rule 5, the State
provides the following:

1. Statements

Robin Lavern – June 8, 2004 – One (1) Page

WE DO NOT HAVE THIS
(DUKES) RECORD

2. Prior Criminal Record – See Attached - CLERK OF COURT INFORMATION

Drop &
CONVICTED

3. Documents and Tangible Objects - Available for inspection by
appointment upon your request.

4. Reports of Examination and Test:

SLED Drug Analysis Department – SLED Lab No. L04-05850

SLED DNA Analysis – SLED Lab No. L04-05850

* SLED Trace Evidence Department – SLED Lab No. L04-05850

* Polygraph Report

a. Sumter City Investigative Report and Incident Report Case
No(s). 04057789 and other relative materials.

b. Autopsy

c. Evidence Inventory and Chain of Custody – Six (6)

d. Consent to Search

e. Photo of Bicycle

Having complied with the defendant's request, the State hereby requests
the information subject to disclosure under Rule 5(b)(1)(A)&(B).

PAGE 1

SOURCE STACEY BRUNSON

Report of Investigation

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Title of Investigation: MARK MCCOY et al	Investigation Number: 763035-08-0039	Report Number: 21

SUMMARY OF EVENT: Mark MCCOY discussed murdering Donald Pettis with a Source of Information

NARRATIVE:

1. On July 9, 2008, ATF SA Richard Brown and SLED Agent/ DEA TFO Jack Rushing interviewed a confidential source of information (SOURCE). The SOURCE provided information about the murder of Donald PETTIS. PETTIS was murdered in Sumter, SC by Mark MCCOY on June 8, 2004. The SOURCE and Mark MCCOY were close friends at that time. MCCOY discussed murdering PETTIS with the SOURCE. Unless otherwise noted, all of the information listed below was stated by MCCOY to the SOURCE.
2. MCCOY told the SOURCE that PETTIS broke into Ivan SANDERS' store. Furthermore, MCCOY discussed the break in with SANDERS. MCCOY told SANDERS that he, SANDERS, had too much dope to allow a crack head to break into his, SANDERS', store. According to MCCOY, SANDERS told MCCOY to handle it.
3. This led to a fight between MCCOY and PETTIS in which MCCOY shot PETTIS in the back. Robin DUKES was with MCCOY at the time of the fight and subsequent murder.
4. The SOURCE concluded, from speaking with MCCOY and possibly discussions with other unknown parties, that SANDERS wanted MCCOY to kill PETTIS. The SOURCE then immediately stated the belief that MCCOY did not intend to kill PETTIS because MCCOY is too smart to murder someone in the open.
5. SA Brown discussed these opposing statements with the SOURCE. SA Brown asked the SOURCE, if SANDERS ordered PETTIS to be murdered and MCCOY was smart enough to know not to murder someone out in the open where witnesses are present; then why would MCCOY confront and carry out SANDERS' order in the open? The SOURCE acknowledged a possible misunderstanding of what occurred and that SANDERS' ordering MCCOY to handle it, meaning PETTIS, did not mean for MCCOY to kill PETTIS.

Prepared by: J. Richard Brown	Title: Special Agent, Columbia Field Office	Signature: Original Signed by SA Brown	Date:
Authorized by: Patrick M. Dumais	Title: Resident Agent in Charge, Columbia Field Office	Signature:	Date:
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

SOURCE - LATIMORE HOLMES

Title of Investigation: MARK McCOY et al	Investigation Number: 763035 J039	Report Number: 4

6. AARON LUCAS is the brother of MIKE LUCAS. MIKE LUCAS and MCCOY have been partners for many years. MIKE LUCAS spoke with MCCOY and smoothed things over, resulting in MCCOY canceling the "hit" on AARON LUCAS. The SOURCE believes that within two weeks of the murder, the Mother's Boyfriend was assaulted and his throat was cut. He survived the assault.
7. The SOURCE does not know the identities of the people playing horseshoes at the Wilson's house.

ATTACHMENT

Sumter Police Department Incident Report# 04057789, dated 06/08/2004

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PAGE 1-2

SOURCE = LATIMORE HOLMES

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

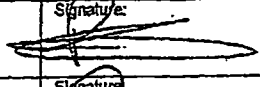
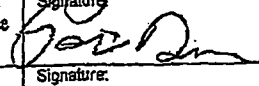
Report of Investigation

Title of Investigation: MARK MCCOY et al	Investigation Number: 763035-08-0039	Report Number: 4

SUMMARY OF EVENT: A CONFIDENTIAL SOURCE OF INFORMATION WITNESSED MARK MCCOY MURDER DONALD PETTIS IN 2004.

NARRATIVE:

1. ATF SA Richard Brown and DEA TFO Phil Ardis spoke with a confidential source of information (SOURCE) concerning a murder committed by Mark MCCOY during 2004. The SOURCE observed MCCOY commit the murder. The SOURCE believes no one is aware that the SOURCE observed the murder. This is the first time the SOURCE has spoken with an investigator about the murder.
2. On June 8, 2004, the SOURCE observed the murder of Donald Tyrone PETTIS. According to the SOURCE, PETTIS was breaking into stores in the Sumter area. One of the stores broken into belonged to Ivan SANDERS. Mark MCCOY and SANDERS figured out who had broken into SANDERS' store. MCCOY and DUKES were planning on beating up PETTIS for breaking into the stores.
3. MCCOY and Robin DUKES aka Robbie DUKES were able to locate PETTIS walking in the vicinity of Edwards Street. The SOURCE was able to observe the murder from a position in a nearby backyard. The SOURCE described MCCOY as wearing camouflage clothing and a black ski mask. The SOURCE recognized MCCOY and observed MCCOY pull a black ski mask down, over his(MCCOY'S) face, prior to the assault. MCCOY began assaulting PETTIS and PETTIS got in a hit on MCCOY. The SOURCE observed MCCOY pull out a silver in color revolver and shoot PETTIS in the back. The SOURCE estimates that PETTIS was only a couple of feet away from MCCOY when the fatal shot was fired. MCCOY only fired one round and PETTIS dropped to the ground; PETTIS did not get back up.
4. The SOURCE identified potential witnesses to the murder. In addition to DUKES, there were 2 people watching from a nearby porch and people playing horseshoes at the Wilson's house, which is across the street from where the murder occurred. Additionally, Linda BROWN watched MCCOY hide the murder weapon under the eave of a nearby CRACK HOUSE. The SOURCE believes that the revolver may have been removed sometime after the murder.
5. According to the SOURCE, AARON LUCAS and AARON LUCAS' Mother's Boyfriend were the 2 people watching from the porch. After the murder, MCCOY took out hits on AARON LUCAS and his Mother's Boyfriend. The SOURCE explained that "hits" refers to MCCOY wanting someone to murder the 2 witnesses.

Prepared by: J. Richard Brown	Title: Special Agent, Columbia Field Office	Signature: 	Date: 1/25/08
Authorized by: Patrick M. Dumais	Title: Resident Agent in Charge, Columbia Field Office	Signature: 	Date: 1-28-08
Second level reviewer (optional): Zeb edee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

PAGE 2



Sumter County Third Judicial Circuit Public Index Search

[New Search](#)[County Home Page](#)[South Carolina Judicial Department
Home Page](#)

Name	Party Type	Case Number	Filed Date	Case Status	Disp Date	Case Type	Case Subtype	Judgment #
Delay, Kimberly	Plaintiff	2007CP4300668	03/30/2007	Dismissed	07/23/2007	Common Pleas	Motor Veh Accid 320	
Delay, Kimberly Rena	Defendant	H108055	04/25/2002	Disposed	07/18/2003	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	H589413	05/08/2008	Disposed	10/13/2008	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J302424	06/08/2007	Disposed	10/22/2008	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303562	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303569	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303570	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303571	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303572	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		

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house, Delay offered insight into McCoy's "business" relationships and friendships that supported the testimony of those witnesses. In so doing, Delay included valuable personal observations such as whether McCoy was right or left-handed and whether she had ever seen him with a handgun.

Finally, Delay confirmed that after the murder she contacted several witnesses on McCoy's behalf to stress the importance of getting their stories straight. She also admitted to discussing various alibi scenarios with McCoy in which she or other associates would claim McCoy was with them during the time frame of the homicide. Although it was painfully obvious that Delay still loved Mark McCoy – she testified to that on the stand – it is my belief that her testimony was truthful and substantially assisted the state in convicting him for the murder of Tyrone Pettis.

Catherine Fant

Catherine Fant
Assistant Solicitor

Subscribed, acknowledged and sworn to before me, this 13th day of October, 2009.

Dorothy L. Baker
NOTARY PUBLIC

My commission expires: 10-8-14, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 INDICTMENT NO.: 2005-GS-43-033

State of South Carolina,)

v.)

Mark A. McCoy,)

Defendant.)

AFFIDAVIT

BEFORE ME, the undersigned Notary, Dorothy L. Baker, on this 13th day of October 2009, personally appeared Catherine Fant, known to me to be a credible person of lawful age, who being by me first duly sworn, on her oath, deposes and says the following.

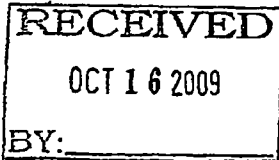
On September 22-25, 2008, the State of South Carolina tried Mark "Wise" McCoy for the murder of Donald Tyrone Pettis, Jr. Because the case against McCoy was based primarily upon eyewitness testimony, it was imperative to have the witnesses corroborate one another. To this end, the state offered the testimony of Kimberly Delay, McCoy's long-time girlfriend.

Initially reluctant to cooperate fully with law enforcement, Delay eventually provided important information, including assisting with a timeline on the day of the Pettis murder and giving context to McCoy's actions. Crucially, Delay was able to establish a vital link between the witnesses who saw McCoy just prior to the shooting and described normal attire and those who saw a masked man in camouflage carry out the actual killing. According to Delay, McCoy had arrived at their residence and changed into camo clothing before leaving for a short time; upon his return, he was sweating profusely and breathing heavily.

Delay was further able to corroborate testimony from several witnesses who were at McCoy's drug house prior to the shooting. Not only did she confirm McCoy's presence at the

EXHIBIT #7

PAGE 1



The State of South Carolina

SCANNED



C. Kelly Jackson
Solicitor

SOLICITOR
Third Judicial Circuit
Sumter County Courthouse
141 North Main Street
Sumter, South Carolina 29150

Phone: (803) 436-2185
Fax: 436-2236

October 13, 2009

Catherine M. Leek, Esq.
Assistant Federal Defender
440 MLK, Jr. Blvd., Ste 400
P.O. Box 996
Macon, GA 31202-0996

RE: Kimberly Delay

Dear Ms. Leek:

I have received your letter regarding Kim Delay and although I am inclined to dismissed the charges still pending against her (which include one additional warrant - J303570 - for distribution within 1/2 mile of a school) I cannot do so at the present time.

Unfortunately, Kim's actions and refusal to testify against Mark McCoy in Georgia signal a potential change of heart that could affect my homicide case in the event of an appellate reversal. For this reason, I feel I must wait until McCoy's appeals are exhausted before dismissing any charges against Kim.

As you requested, I am also attaching an affidavit outlining her cooperation with the state in the prosecution of McCoy's murder trial. Should you have any further questions or concerns, please do not hesitate to contact me at (803) 436-2222.

Sincerely,

Catherine Fant
Assistant Solicitor

/cbf
Enclosure



**FEDERAL DEFENDERS OF THE
MIDDLE DISTRICT OF GEORGIA, INC.**

440 Martin Luther King, Jr. Boulevard
Suite 400
Post Office Box 996
Macon, Georgia 31202-0996

Phone: (478) 743-4747 • Fax: (478) 207-3419 • Toll Free: (866) 517-8892

Cynthia W. Roseberry
Executive Director

Assistant Federal Defenders
C. Brian Jarrard
Catherine M. Leek
D. Nicole Williams
LaRae D. Moore

Research and Writing Specialists
Morad Fakhimi

October 13, 2009

VIA FACSIMILE NO. 803-436-2236

Ms. Catherine Fant
Third Circuit Solicitor's Office
141 N. Main Street
Sumter SC 29150

RE: *U.S. vs. Kimberly Delay, Civil Action No. 3:08-CR-7*

Dear Ms. Fant:

As you know, I represent Kim Delay in a federal case in the Middle District of Georgia. We spoke several months ago as you were preparing for murder trial against Mark McCoy. My client, Kim Delay, ultimately became a witness for the state in that trial and you were able to obtain and conviction and life sentence against Mark McCoy. At that time, you indicated to me that all of Ms. Delay's pending South Carolina charges would be dismissed in return for her cooperation and testimony in the McCoy trial.

The reason why I am contacting you is that we are preparing for Ms. Delay's sentencing on her federal charge. The most current information that I have is that she still has pending SC charges. These warrants are numbered J-303562, J-303569, and J-303572 (Larceny, Possession of Cocaine, Possession of Marijuana). If you are unable to dismiss these charges, please contact me at the above number.

Also, in lieu of subpoenaing you for her sentencing hearing, could you provide me with a signed affidavit of her cooperation and assistance she provided you in the Mark McCoy murder trial.

Sincerely

Catherine M. Leek
Assistant Federal Defender

sd/cml

Title of Investigation: MARK MCCOY et al	Investigation Number: 763035-08-0039	Report Number: 14

15.

26.

ATTACHMENTS

Sumter PD Interview Form, signed by DELAY on 01/22/2008
Sumter PD Report of Investigation, DELAY Interview, dated 01/22/2008
Copy of letter to DELAY from MCCOY, dated 01/09/2008

Use of Investigation:
MARK MCCOY et al

Investigat. Number:
763035-08-0039

Report Number:
14

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22. During October 2007, MCCOY was arrested for a murder allegedly committed in Sumter during 2004.

- MCCOY contacted DELAY from jail and told DELAY where money was hidden in the house and she retrieved the cash.
- DELAY carried the cash, \$17,000 in drug proceeds, to I.S. Levy Johnson's Law Office, located in Columbia, SC. DELAY did not receive a receipt from the law firm for the cash transaction.
- DELAY has never heard MCCOY talk about the murder and she does not know anything about the murder.
- DELAY speaks daily with MCCOY from jail and has received one letter from MCCOY.
- DELAY provided the letter to the interviewers.

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File of Investigator:
TARK McCODY et al.

Investigation Number:
763035-08-0039

Report Number:
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Use of Investigation
LARK McCOY et al

Investigat. Number
763035-08-0039

Report Number
14

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EXHIBIT #5

PAGES 1-5

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of Investigation: MARK McCOY et al	Investigation Number: 763035-08-0039	Report Number: 14

SUMMARY OF EVENT: On January 22, 2008, Kimberly DELAY was interviewed by Investigators with the Sumter Police Department. A Summary of the interview is provided below.

NARRATIVE:

On January 22, 2008, LT F. Bradshaw, LT E. Williams and Detective K. Coker of the Sumter Police Department interviewed Kimberly DELAY. DELAY was provided with a Sumter Police Department interview form which advised DELAY of her Miranda rights. DELAY waived her rights and spoke with the aforementioned investigators. Unless otherwise noted, the following is a summary of the facts provided by DELAY:

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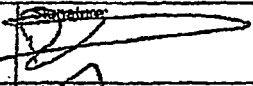
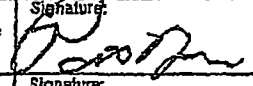
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Prepared by: J. Richard Brown	Title: Special Agent, Columbia Field Office	Signature: 	Date: 4/10/08
Authorized by: Patrick M. Dumais	Title: Resident Agent in Charge, Columbia Field Office	Signature: 	Date: 4-11-08
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

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SUSPECT(S):

3. MCCOY, Mark aka Wise

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23. According to DELAY, MCCOY was locked up in October 2007 for a murder he allegedly committed in 2004. DELAY claims she never heard MCCOY talk about it nor does she know anything about the murder. MCCOY stated she talks with MCCOY daily from jail and has received only one letter from MCCOY. DELAY gave Detective Coker this letter (Exhibit N-10) which is now a part of this file. DELAY claims MCCOY has told DELAY several times he does not know why Attorney Brunson is not trying to get her out of jail. According to DELAY, she believed that MCCOY had hired Attorney Brunson to represent her. Magistrate Tindal contacted Attorney Brunson on January 22, 2008 concerning representation in a preliminary hearing and was told by Attorney Brunson he did not represent DELAY.

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~~Exhibit~~ ~~10~~ ~~11~~ ~~12~~ ~~13~~ ~~14~~ ~~15~~ ~~16~~ ~~17~~ ~~18~~ ~~19~~ ~~20~~ ~~21~~ ~~22~~ ~~23~~ ~~24~~ ~~25~~ ~~26~~ ~~27~~ ~~28~~ ~~29~~ ~~30~~ ~~31~~ ~~32~~ ~~33~~ ~~34~~ ~~35~~ ~~36~~ ~~37~~ ~~38~~ ~~39~~ ~~40~~ ~~41~~ ~~42~~ ~~43~~ ~~44~~ ~~45~~ ~~46~~ ~~47~~ ~~48~~ ~~49~~ ~~50~~ ~~51~~ ~~52~~ ~~53~~ ~~54~~ ~~55~~ ~~56~~ ~~57~~ ~~58~~ ~~59~~ ~~60~~ ~~61~~ ~~62~~ ~~63~~ ~~64~~ ~~65~~ ~~66~~ ~~67~~ ~~68~~ ~~69~~ ~~70~~ ~~71~~ ~~72~~ ~~73~~ ~~74~~ ~~75~~ ~~76~~ ~~77~~ ~~78~~ ~~79~~ ~~80~~ ~~81~~ ~~82~~ ~~83~~ ~~84~~ ~~85~~ ~~86~~ ~~87~~ ~~88~~ ~~89~~ ~~90~~ ~~91~~ ~~92~~ ~~93~~ ~~94~~ ~~95~~ ~~96~~ ~~97~~ ~~98~~ ~~99~~ ~~100~~ ~~101~~ ~~102~~ ~~103~~ ~~104~~ ~~105~~ ~~106~~ ~~107~~ ~~108~~ ~~109~~ ~~110~~ ~~111~~ ~~112~~ ~~113~~ ~~114~~ ~~115~~ ~~116~~ ~~117~~ ~~118~~ ~~119~~ ~~120~~ ~~121~~ ~~122~~ ~~123~~ ~~124~~ ~~125~~ ~~126~~ ~~127~~ ~~128~~ ~~129~~ ~~130~~ ~~131~~ ~~132~~ ~~133~~ ~~134~~ ~~135~~ ~~136~~ ~~137~~ ~~138~~ ~~139~~ ~~140~~ ~~141~~ ~~142~~ ~~143~~ 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I Kimberly Delay, of my own free will, without any promises or threats of any kind, request to speak with Officers of the Sumter Police Department without my attorney, or any other representation present. I initiated this contact, and request on my own behalf.

Kimberly Delay

1-22-08

Date

[Signature]

1-22-08

Date

[Signature]

1-22-08

Date

EXHIBIT #4

PAGES 1-8



SUMTER POLICE DEPARTMENT



INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- RD • YOU HAVE THE RIGHT TO REMAIN SILENT.
- RD • ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- RD • YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.
- RD • IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.
- RD • IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 10:15 AM / P.M. ON JAN 12, 2009 AT LEC BY OFFICER Lt. Brown OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

SIGNED: Kimberly Diley

DATE: 1-22-09 TIME: 10:17 AM

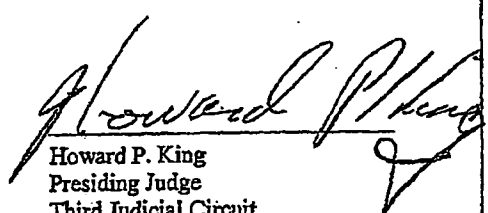
WITNESSES:

[Signature]
[Signature]
[Signature]

1 demonstrate the delay was attributable to the neglect and willfulness of the State. State v. Dukes, 256 S.C. 218, 222,
2 182 S.E.2d 286, 288 (1971).

3
4 South Carolina has adopted the balancing test espoused by the United States Supreme Court, which considers the
5 following factors: 1) the length of the delay, (2) the government's reason for the delay, (3) the defendant's assertion
6 of his right to a speedy trial, and (4) prejudice to the defendant. See Barker v. Wingo, 407 U.S. 514 (1972); Brazell,
7 325 S.C. at 75, State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct. App. 1992); State v. Robinson, 335 S.C. 620, 518
8 S.E.2d 269 (Ct. App. 1999).

9
10 To date, Defendant has served eleven months in jail awaiting trial in this matter after this court denied bond. Time
11 alone is not sufficient. Further, the Defendant has timely asserted his right to speedy trial, but he has not proven any
12 prejudice. The facts do not indicate the State has unreasonably or unnecessarily delayed trial. However, in order to
13 assure that the Defendant's rights are duly protected, the Court hereby orders that the State try the Defendant within
14 one hundred eighty (180) days of this order or the Court will reconsider the matter of bond for the Defendant.

15
16
17 
18 Howard P. King
Presiding Judge
Third Judicial Circuit

19 August 19, 2008
20 Sumter, SC
21
22
23
24
25
26

1 privilege of nondisclosure must give way to the rights of the accused, and the court must balance the public interest
2 in protecting the flow of information of criminal activities against the accused's right to prepare his defense. See id.

3
4 Pursuant to *Brady*, the suppression by the prosecution of evidence favorable to an accused upon request violates due
5 process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of
6 the prosecution. Sheppard v. State, 357 S.C. 646, 659, 594 S.E.2d 462, 470 (2004) (citing Duncan v. State, 281 S.C.
7 435, 315 S.E.2d 809 (1984)).

8
9 Pursuant to Defendant's motion for disclosure of the Solicitor's file, the Court required the State to submit all
10 materials sought by the Defendant and withheld by the State for *in camera* review. See S.C. R. Crim. P. 5(d)(1). The
11 State has done so, and the Court has reviewed the statements and concluded that the witness statements and a report
12 on the investigation which identifies those giving statements contain no exculpatory materials requiring disclosure
13 under *Brady*. See 373 U.S. 83. Further, the Court has balanced the public interest in protecting the witnesses from
14 the risk of harm against the Defendant's right to prepare his defense and has concluded that disclosure of the
15 materials in advance of what is required by S.C. R. Crim. P. Rule 5 is not essential to the Defendant's preparation of
16 his defense.

17 The Defendant's motion is therefore denied.

18 II. Speedy Trial

19
20 The Defendant asserts his right to a speedy trial is violated. The Accused's right to a speedy and public trial
21 is guaranteed by both the state and federal constitutions. See e.g. S.C. Constitution Article I, Section 14, U.S.
22 CONST. amend. VI; S.C. CONST. art. I, §14. The determination of whether an accused has been denied his
23 constitutional right to a speedy trial depends on the circumstances of each case, State v. Brazell, 325 S.C. 65, 75,
24 480 S.E.2d 64, 70 (1997), and protects only against unnecessary or unreasonable delay, State v. Chapman, 289 S.C.
25 42, 344 S.E.2d 611 (1986). To establish the fact that he has been denied a speedy trial, the defendant must

EXHIBIT (F)

AUG 22 2008

RECORDED

STATE OF SOUTH CAROLINA

2008 AUG 19 PM 3:15 IN THE COURT OF GENERAL SESSIONS
IN THE THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

State of South Carolina,

vs.

Mark A. McCoy,

Defendant

) Indictment No.: 2005-GS-43-33

) ORDER DENYING MOTION FOR DISCLOSURE
) OF EVIDENCE, BRADY MOTION, AND MOTION
) FOR SPEEDY TRIALCERTIFIED TRUE COPY
OF ORIGINAL FILED*James C. Campbell*CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter is before the court pursuant to the Defendant's Motion for Disclosure pursuant to S.C. R. Crim. P. Rule 5, and *Brady v. Maryland*, 373 U.S. 83 (1963), and for Speedy Trial.

I. Disclosure

In accordance with S.C. R. Crim. P. 5, the State has given or will disclose all required responses to Defendant's discovery requests except several witness statements which it contends are nondiscoverable and a report which discloses the names of those witnesses. The witness statements are not required to be disclosed until such witnesses testify at trial unless the witness statements contain exculpatory materials and must be disclosed under *Brady*, 373 U.S. 83. See S.C. R. Crim. P. 5 (b)(2) (not authorizing the discovery or inspection of statements made by prosecution witnesses or prospective prosecution witnesses until after a prosecution witness has testified on direct examination...).

Based upon the public policy concern of protecting effective law enforcement and protecting witnesses from potential harm, the prosecution in a criminal case is ordinarily privileged to withhold from an accused disclosure of the identity of persons who furnished information relative to violations of law to officers charged with enforcement. See *State v. Wright*, 322 S.C. 484, 472 S.E.2d 642 (S.C. App. 1996). However, where the informant's identity is relevant and helpful to the defense or is essential for a fair determination of the State's case against the accused, the

EXHIBIT #3(E)

CERTIFIED TRUE COPY
OF ORIGINAL FILED

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS

CLERK OF COURT
THIRD JUDICIAL CIRCUIT
SUMTER COUNTY
SOUTH CAROLINA

2008 JUL 22 PM 3:02

INDICTMENT NO.: 2005-GS-43-033

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

State of South Carolina,

v.

Mark A. McCoy,

Defendant.

ORDER

The above-named defendant is set to be tried September 22, 2008 for the murder of Donald Pettis. On this date the Court held a hearing to consider the defendant's motion to have the court inspect, *in camera*, all evidence the State intends to introduce at trial. The defendant asserts the State is withholding exculpatory evidence in violation of Brady; the State denies such and contends any evidence not disclosed prior to trial does not fall within the purview of Rule 5, S.C.R.Crim.P. or Brady.

Pursuant to the Court's ruling from the bench, the State is hereby ordered to produce within ten (10) days a list of the evidence it believes is not discoverable prior to trial, along with copies of any witness statements not yet disclosed to the defense.

IT IS SO ORDERED:

Howard P. King
The Hon. Howard P. King
Presiding Judge, Third Judicial Circuit

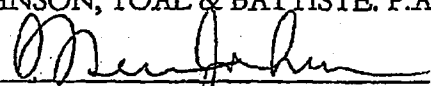
This 22 day of July, 2008

Sumter, South Carolina

171
#2(F)02

all information and evidence obtained by the State or any law enforcement agency during the investigation of the above captioned case so as to enable the trial judge to make an in camera inspection of said information and evidence so as to insure that the State has complied with the requirements of Brady v. Maryland, 373 U.S. 83 (1963).

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

I.S. Leevy Johnson
Attorney for Defendant
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
June 3, 2008

EXHIBIT #3(D)

STATE OF SOUTH CAROLINA)

IN THE GENERAL SESSIONS COURT
IN THE THIRD JUDICIAL DISTRICT

COUNTY OF SUMTER)

State of South Carolina,
Plaintiff,)

Warrant No.(s): F-413307

-vs-)

**MOTION FOR IN-CAMERA
INSPECTION OF THE
PROSECUTOR'S FILE**Mark A. McCoy
Defendant.)

TO: Catherine Fant, Assistant Solicitor for the Third Judicial Circuit

As grounds for the Motion, the defendant offers the following:

1.

THAT the defendant filed a Motion for Discovery in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure on November 9, 2007.

2.

THAT on April 16, 2008, the defendant filed a Motion to Compel requesting that the State comply with the Brady Motion and Motion for Disclosure of Evidence filed on November 9, 2007

3.

THAT pursuant to Rule 5 and Brady v. Maryland, Assistant Solicitor, Catherine Fant, has provided incomplete responses and is intentionally withholding evidence which the defendant upon information and belief feels he is entitled to receive.

4.

THAT Assistant Solicitor Fant disputes defendant's entitlement to statements and other information in her possession.

5.

THAT the prosecution's actions on defendant's request to examine extra-judicial statements made by defendant's confederate, and other witnesses, denies the defendant due process as guaranteed by the Fourteenth Amendment.

WHEREFORE, for these reasons, the defendant respectfully moves this

Honorable Court for an Order requiring the State to make available to the Court

5 / 11 / 08

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

State of South Carolina)

vs.)

Mark A. McCoy,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
IN THE THIRD JUDICIAL CIRCUIT

Warrant No.: F-413307

MOTION TO COMPEL

TO: CATHERINE FANT, SOLICITOR FOR THE THIRD JUDICIAL CIRCUIT:

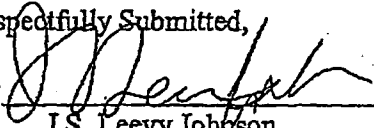
PLEASE TAKE NOTICE that the Defendant, Mark A. McCoy, by and through his attorney, I.S. Leevy Johnson, pursuant to the South Carolina Rules of Criminal Procedure, moves this Honorable Court for the entry of an Order compelling the Solicitor for the Third Judicial Circuit to comply with Rule 5 of the South Carolina Rules of Criminal Procedure.

As grounds for the Motion, the Defendant offers the following:

THAT the Defendant filed a Motion for Discovery in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure on November 9, 2007.

THAT the Solicitor has failed to provide Discovery in accordance with the time limits imposed by Rule 5 of the South Carolina Rules of Criminal Procedure.

Respectfully Submitted,

By: 

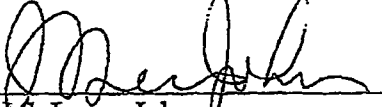
I.S. Leevy Johnson
Johnson, Toal & Battiste, P.A.
P.O. Box 1431
Columbia, South Carolina 29202
(803) 252-9700

material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

5.

To inspect and copy prior to trial any statement of any prosecution witness, or in the alternative, after such witness has testified.

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

E.S. Leevy Johnson

Attorney for Defendant

Post Office Box 1431

Columbia, South Carolina 29202

(803) 252-9700

Columbia, South Carolina
November 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
_____)

IN THE GENERAL SESSIONS COURT
IN THE THIRD JUDICIAL CIRCUIT

The State of South Carolina)

Warrant Number(s): F-413307

Plaintiff,)

-vs-)

MOTION FOR DISCLOSURE
OF EVIDENCE

Mark A. McCoy,)

Defendant.)
_____)

Pursuant to Criminal Practice Rule 108, Defendant herein moves the Court for an Order requesting the prosecution to disclose the following items in the manner requested.

1.

To permit the Defendant to inspect, copy, and photograph any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution the substance of any oral statement which the prosecution intends to offer in evidence at the time of trial made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent.

2.

To furnish a copy of Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

3.

To permit Defendant to inspect and copy books, papers, documents photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant.

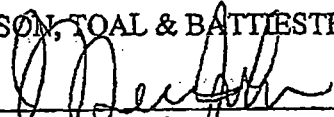
4.

To inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are

5. A copy of any statements made by the informant;
6. A copy of the criminal record, if any, of the informant and other State witnesses;
7. Any information indicating psychological instability or insanity, or habitual drunkenness on the part of the informant, any other State witnesses or the Defendant;
8. Any information indicating that the informant has been furnished drugs. Any information that the informant has any uncharged or unindicted criminal activity. Any information that the informant has been paid in any way by the State or County;
9. Any information contradicting the Defendant's intent to commit the charged offenses;
10. Any information tending to show that someone else actually committed the crime with the Defendant is charged.

To minimize the possibility of unnecessary delay or reversible error, the undersigned further requests that you describe in general fashion any requested information which you are withholding, along with your reasons for doing so. In the absence of such a statement, the undersigned will assume that no requested information has been withheld.

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

I.S. Leevy Johnson
Attorney for Defendant
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
November 9, 2007

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Mark McCoy, #210705,

Case No. 2012-CP-43-01090

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief, filed June 5, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the September 2008 term of the Sumter County Grand Jury for Murder and Possession of Firearm or Knife During the Commission of a Violent Crime (2005-GS-43-033). I.S. Levy Johnson, Esquire, represented him. On September 22-25, 2008, Applicant proceeded to a jury trial before the Honorable Howard P. King. On September 25, 2008, Applicant was found guilty on all counts. Judge King sentenced Applicant to life imprisonment for Murder and five years imprisonment for Possession of a Firearm During the Commission of a Violent Crime, with all sentences to be served consecutively.

A timely Notice of Appeal was filed, and following the submission of an Anders brief, the South Carolina Court of Appeals dismissed the appeal. State v. McCoy, 2011-UP-278 (Ct. App. filed June 8, 2011). The Remittitur was sent on August 11, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. "...failure to continue his objection to the false material evidence being used by the solicitor; that counsel previously had objected to."
 - b. "...failure to request trial judge to instruct the jury on the lesser included offense of voluntary manslaughter."
 - c. "...failure to object to trial judge's instruction to the judge to find applicant guilty of the charge."
2. Prosecutor's misconduct.
 - a. "Violation of Brady v. Maryland 373 US 83 (1963)."
 - b. "Material evidence suppressed by prosecution."
3. Due Process Violation.
 - a. "...when the Magistrate Judge issued arrest warrant based on information that never existed for probable cause."
 - b. "...as a result of prosecutorial misconduct by Solicitor Fant, Special Agent, and Police withholding crucial prosecution's witnesses statements of fact..."
 - c. "...violated by Solicitor Fant's misconduct making promise and favor (agreements) within the criminal justice system with crucial witness and not correcting her false information to the jurors (solicitors)."
 - d. "...as a result of the misconduct by the solicitor, in regard of suppressing evidence that was material, before and during applicant's trial thus the material evidence exposes solicitor deliberately allowing overlooking false testimony from crucial federal inmate witnesses along with solicitor misleading court and juror's with false information herself."
 - e. "...violated by the trial judge's erroneous instruction to find the applicant guilty, even if the evidence does not convince the jury."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague

or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant's "Prosecutor's Misconduct" allegation concerns issues that could or should have been raised at trial or appeal. Thus, this allegation is not a proper matter for post-conviction relief, Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Respondent requests this Court summarily dismiss this claim.

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

November 30 2012

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2012-CP-43-01090

MARK MCCOY, 210705,)

Applicant,)

vs.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter SC 29150

DATED this 30th day of November, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

RECORDED

IN THE COMMON PLEAS COURT

COUNTY OF SUMTER

2013 FEB 11 AM 11:19

MARK A. MCCOY (210705)

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
DOCKET NO.: 2012-CP-43-1090

Applicant

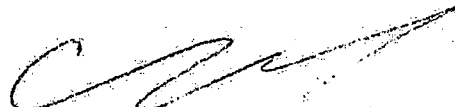
AMENDED APPLICATION
FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA

Respondent,

The Applicant, Mark A. McCoy, through undersigned Counsel wishes to file the following Amendment to his Application for Post Conviction Relief:

SEE ATTACHED PAGES TOTAL NUMBER OF FORTY TWO (42)

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, MARK A. MCCOY

 Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

February 7, 2013

ALIBI DISCLOSED EVIDENCE MATERIALS & FACTS

USING MY EXHIBITS IN MY PCR APPLICATION, ARE MY SUPPORTING FACTS. I'D LIKE TO BRING TO YOUR ATTENTION: STATEMENT OF FACTS MADE BY PROSECUTION'S MOST CRUCIAL FEDERAL INMATE WITNESSES, AND ALSO PROMISED DEAL MADE BY THE SOLICITOR MRS. FANT IN EXCHANGE FOR TESTIMONY PRIOR TO MY (DEFENDANT) TRIAL. INFORMATION THE SOLICITOR WITHHELD FROM THE JUDGE AND DEFENSE THAT WERE EXCULPATORY EVIDENCE. THE EVIDENCE WILL SHOW BRADY VIOLATIONS

1ST BRADY VIOLATION

KIMBERLY DELAY WAS QUESTIONED BY INVESTIGATING DETECTIVE E WILLIAMS (8) EIGHT MONTHS PRIOR TO THE MURDER TRIAL. DELAY WAS CLEARLY ASKED ABOUT THE MURDER DURING THE INVESTIGATION. DELAY STATED AT THIS TIME SHE DID NOT KNOW NOTHING ABOUT THE MURDER, NOR DID I (DEFENDANT) EVER SPEAK TO HER ABOUT THE MURDER IN QUESTION.

YOU WILL FIND DELAY'S STATEMENT OF FACTS IN EXHIBIT # 4^(pg.7) DATED JAN 22, 2008
WHEN DELAY INFORMED LAW ENFORCEMENT (DETECTIVE E WILLIAMS)

DETECTIVE E WILLIAMS INVESTIGATING THE MURDER, WAS WELL AWARE OF DELAY'S STATEMENT OF THESE FACTS. SUMTER LAW ENFORCEMENT WERE IN POSSESSION OF THESE FACTS (8) EIGHT MONTHS PRIOR TO THE MURDER TRIAL.

FURTHERMORE, ATF FEDERAL AGENT R. BROWN WAS ALSO AWARE OF DELAY'S STATEMENT OF FACTS PRIOR TO MY (DEFENDANT) TRIAL. THE FEDERAL AGENT WHOM ALSO WORKED WITH ALL THE FEDERAL INMATE WITNESSES IN SOME FORM OR CAPACITY, POSSESSED DELAY'S STATEMENT OF FACTS, THAT SHE KNEW NOTHING OF THE MURDER. ATF AGENT FILED THE MATERIAL WITHIN HIS REPORT OF INVESTIGATION.

YOU WILL FIND DELAY'S STATEMENT OF FACTS IN EXHIBIT # 5^(pg.4) DATED APRIL 10, 2008
PROCESSED BY THE AGENT.

THE STATE WAS AWARE OF DELAY'S FACTS, PRIOR TO MY (DEFENDANT) TRIAL. (8) EIGHT MONTHS AND (5) FIVE MONTHS RESPECTFULLY.

SOLICITOR FANT WAS AWARE OF THE STATEMENT OF FACTS MADE BY DELAY PRIOR TO THE TRIAL.

THE EXCULPATORY EVIDENCE THE STATE POSSESSED, WAS NEVER GIVEN TO THE DEFENSE, THOUGH THE DEFENSE MADE NUMEROUS EFFORTS TO OBTAIN ANY EXCULPATORY EVIDENCE THE STATE OR ANY OTHER AGENCIES POSSESSED, THROUGH MOTIONS.

YOU WILL FIND MOTIONS IN EXHIBITS #3(A),(B),(C),(D)

SOLICITOR FANT SUPPRESSED THE EVIDENCE, AND DID NOT COMPLY TO THE BRADY REQUIREMENT

DURING THE TRIAL, DELAY'S TESTIMONY WAS EXTREMELY DAMAGING TO THE DEFENSE. IT WAS NOT UNTIL THE NIGHT BEFORE MY (DEFENDANT) TRIAL; AFTER DELAY SPEAKING WITH SOLICITOR FANT, WAS THE FIRST TIME DELAY SPOKE OF THIS TESTIMONY.

(MIRACULOUSLY) *SEE; EXHIBIT PAGE(S) OF TRANSCRIPT #TR 1

DELAY'S TESTIMONY WAS USED AS CRUCIAL EVIDENCE IN HELPING THE STATE GET A CONVICTION. SOLICITOR FANT SUBMITTED TO THE JURY HOW EXTREMELY CREDIBLE DELAY TESTIMONY WAS. *SEE; EXHIBIT PAGE(S) OF TRANSCRIPT #TR 2

ALSO, SOLICITOR FANT WROTE IN A AFFIDAVIT HOW CRUCIAL DELAY'S TESTIMONY WAS IN OBTAINING THE CONVICTION.

YOU WILL FIND IN EXHIBIT #8 (SOLICITOR FANT'S AFFIDAVIT)

THE DEFENSE WAS NEVER MADE AWARE OF DELAY'S PRIOR STATEMENT TO DETECTIVE INVESTIGATING MURDER LT. E WILLIAMS ON JAN 22, 2008. THAT SHE KNEW NOTHING OF THE MURDER, NOR DID I (DEFENDANT) SPEAK TO HER ABOUT A MURDER.

THE DEFENSE WASN'T ABLE TO DEFEND THE DAMAGING TESTIMONY BY DELAY, NOR ABLE TO IMPEACH DELAY'S EXTREME CREDIBILITY. THE DEFENSE WAS TOTALLY IGNORANT TO THE FACT OF THE EXCULPATORY EVIDENCE THAT EXISTED (8) EIGHT MONTHS PRIOR TO

FURTHERMORE, IF THE DEFENSE POSSESSED DELAY'S STATEMENT OF FACTS; (SHE KNEW NOTHING ABOUT THE MURDER), WOULD SOLICITOR FANT WROTE SUCH A STRONG AFFIDAVIT FOR DELAY, OR EXPRESS TO THE JURORS, HOW EXTREMELY CREDIBLE DELAY'S TESTIMONY WAS. ABSOLUTELY NOT!

THIS IS THE 1ST VIOLATION OF THE BRADY COMMITTED BY SOLICITOR FANT SUPPRESSING EXCULPATORY EVIDENCE THE STATE POSSESSED BEFORE THE MURDER TRIAL. THE NEWLY DISCOVERED EVIDENCE REVEALS THE FACT.

EXHIBITS #4 AND 5

DISCOVERED EVIDENCE EXPOSES THE FACT SOLICITOR FANT MADE A PROMISED DEAL WITHIN THE STATE'S (S.C.) CRIMINAL JUSTICE SYSTEM, WITH DELAY MONTHS PRIOR TO MY (DEFENDANT) TRIAL. THE PROMISED PLEA AGREEMENT, WAS EXCHANGE FOR TESTIMONY

HOWEVER, MORE IMPORTANTLY THE SOLICITOR IN CLOSING ARGUMENTS STATED FACTS TO JUDGE AND JURORS THAT NO DEALS OR PROMISES WERE IN PLACE FOR TESTIMONY. SOLICITOR FANT IS INTENTIONALLY DECEIVING AND MISLEADING THE JUDGE AND JURORS THAT NONE OF THE FEDERAL INMATE WERE RECEIVING DEALS IN THE STATES CRIMINAL JUSTICE SYSTEM FOR TESTIFYING IN THIS CASE. MY (DEFENDANT) TRIAL.

*SEE; EXHIBIT PAGE OF TRANSCRIPT #TR 3

I'D LIKE TO BRING THESE AUTHORITIES TO THE FOREFRONT TO BE NOTED;

THE UNITED STATES SUPREME COURT HELD; "A PROSECUTION'S DELIBERATE DECEPTION OF A COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE

GIGLIO V. U.S., 405 US AT 150, 153. 92 S.C.T. 763. 31 LED. 2D 104 (1972)

*PLEASE SEE; THE SOUTH CAROLINA SUPREME COURT HELD; "THE FAILURE TO CORRECT FALSE EVIDENCE IS AS REPREHENSIBLE AS ITS PRESENTATION

WASHINGTON V. STATE. 324 SC. 232. 478 SE 2D 833 (1996)

THE HON. J.P KING WAS UNDER THE IMPRESSION THAT DELAY NOR ANY OTHER STATE WITNESSES WERE NOT BEING PROMISED ANY THING FOR TESTIMONY WITHIN HIS COURTROOM; FROM THE STATE OF SOUTH CAROLINA.

AGAIN THE EVIDENCE WE POSSESS, CLEARLY UNOBT THAT SOLICITOR FANT'S DECEPTION ON THE COURT. PART OF SOLICITOR'S MISLEADING TACTICS.

*SEE; JUDGE KING UNAWARE OF SOLICITOR FANT'S DECEPTION.

EXHIBIT PAGE OF TRANSCRIPT #TR 4

THE NEWLY DISCOVERED EVIDENCE SHOWS AND PROVES WITHOUT DOUBT THE SOLICITOR WITH ALL INTENT DECEIVED THE JUDGE AND JURORS, THAT NO DEALS WERE IN PLACE, FOR DELAY OR ANY OTHER FEDERAL INMATE WITNESSES BY THE STATE. THIS FACT WAS NOT TRUE. SOLICITOR FANT MADE ARRANGEMENT OF PROMISE OF A DEAL WITHIN THE STATE CRIMINAL JUSTICE SYSTEM, WITH FEDERAL INMATE WITNESS DELAY MONTHS PRIOR TO MY (DEFENDANT'S) TRIAL.

SEE; EXHIBIT PAGE OF TRANSCRIPT # TR 3

HOWEVER THE NEWLY DISCOVERED EVIDENCE, SHOWS AND PROVES WITHOUT DOUBT THE SOLICITOR WITH ALL INTENT DECEIVED THE JUDGE AND JURORS, THAT NO DEALS WERE IN PLACE, FOR DELAY OR ANY OTHER FEDERAL INMATE WITNESSES BY THE STATE. THIS FACT WAS NOT TRUE. SOLICITOR FANT MADE ARRANGEMENT OF PROMISE OF A DEAL WITHIN THE STATE CRIMINAL JUSTICE SYSTEM, WITH FEDERAL INMATE WITNESS DELAY MONTHS PRIOR TO MY (DEFENDANT'S) TRIAL.

SEE; MATERIAL EVIDENCE THAT EXPOSES TRUTH.

A LETTER WRITTEN BY DELAY'S FEDERAL ATTORNEY TO SOLICITOR FANT. INQUIRING WHY DELAY'S STATE PENDING CHARGES WERE NOT DISMISSED. DELAY DID HER PART AS WAS DISCUSSED PRIOR TO MY (DEFENDANT) TRIAL. DELAY BECAME A STATE WITNESS GIVING TESTIMONY THAT HELP GIVE ME (DEFENDANT) A NATURAL LIFE SENTENCE.

YOU WILL FIND IN EXHIBIT # 6

SOLICITOR FANT'S LETTER IN RESPONSE TO DELAY'S ATTORNEY; SPEAKS VOLUME AND SUBSTANTIATES MY FACTS. THOUGH SOLICITOR FANT IS WELSHING ON THE AGREEMENT. THE NEWLY DISCOVERED MATERIAL EVIDENCE, ESTABLISHES THAT SOLICITOR FANT PRIOR TO MY (DEFENDANT) TRIAL. A PROMISE OF A DEAL WAS ALREADY IN PLACE, FOR SOLICITOR FANT TO DISMISS DELAY'S STATE CHARGES, IN EXCHANGE FOR HER TESTIMONY. THE SOLICITOR SUPPRESSED THIS FACT.

YOU WILL FIND IN EXHIBIT # 7

THE JUDGE AND JURORS, BUT MOST IMPORTANTLY THE DEFENSE, WAS NOT MADE AWARE THAT THE SOLICITOR FANT PROMISED A DEAL, BEFORE THE TRIAL, WITHIN THE STATE'S CRIMINAL JUSTICE SYSTEM; FOR EXCHANGE OF TESTIMONY BY FEDERAL INMATE WITNESS DELAY. SOLICITOR WITHHELD THIS IMPEACHABLE EVIDENCE FROM THE DEFENSE

US V BAGLEY 473 US AT 667, 676-77 (1985)

IMPEACHMENT EVIDENCE AS WELL AS EXCULPATORY EVIDENCE SUBJECT TO THE BRADY DISCLOSURE; NO DISTINCTION SHOULD BE MADE WITH RESPECT TO CONSTITUTIONAL DISCLOSURE REQUIREMENTS.

GIGLO AT 154-155, SUPRA; AN AGREEMENT MADE WITH A GOVERNMENT WITNESS FOR TESTIMONY IN EXCHANGE FOR MONETARY COMPENSATION OR FAVORABLE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM SHOULD BE DISCLOSED AS IMPEACHMENT EVIDENCE, ESPECIALLY WHERE TESTIMONY IS AN IMPORTANT PART OF GOVERNMENT CASE

THIS IS THE 2ND VIOLATION OF BRADY COMMITTED BY SOLICITOR FANT, INVOLVING KEY STATE FEDERAL INMATE WITNESS DELAY. THE NEWLY DISCOVERED EVIDENCE REVEALS THIS. SEE LETTERS BY DELAY'S FEDERAL ATTORNEY AND SOLICITOR FANT'S IN RESPONSE EXHIBITS #6 AND #7

FURTHERMORE, SOLICITOR FANT DECEIVED THE ENTIRE COURTROOM, AND PRESENTED MISLEADING FACTS. THE EVIDENCE EXPOSES THE SOLICITOR'S MISCONDUCT, WITH MORE TO GO. DEFENSE WAS DENIED THE OPPORTUNITY TO ATTEMPT TO IMPEACH THE CRUCIAL FEDERAL INMATE. THE VIOLATIONS COMMITTED BY SOLICITOR SUPPRESSING MATERIAL EVIDENCE, DENIED ME DUE PROCESS OF THE LAW, AND RIGHT TO A FAIR TRIAL.

ALSO IF NEEDED, THERE'S NEW EVIDENCE TO SHOW SOLICITOR FANT DISPOSED OF DELAY'S NUMEROUS FELONY CHARGE IN THE STATE CRIMINAL SYSTEM IN EXCHANGE FOR THE TESTIMONY DELAY GAVE AT MY (DEFENDANT) TRIAL. DELAY WAS STILL IN FEDERAL CUSTODY WHEN THE CHARGES WERE DISPOSED IN THE STATE.

EXHIBIT #9 - SUMTER COUNTY THIRD JUDICIAL CIRCUIT PUBLIC INDEX SEARCH

U.S. SUPREME COURT HELD, DRIBBY V. MARYLAND. SUPPRESSION BY PROSECUTION OF EVIDENCE FAVORABLE TO THE ACCUSED WHO HAS REQUESTED IT. VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF PROSECUTION.

SOLICITOR FANT AND SPECIAL AGENT (ATF) RICHARD BROWN SUPPRESSED STATEMENT OF FACTS, MADE BY PROSECUTION'S MOST CRUCIAL FEDERAL INMATE STATES WITNESS; LATIMORE HOLMES

LATIMORE HOLMES THROUGH HIS OWN TESTIMONY ADMITTED MAKING A STATEMENT OF FACTS TO SPECIAL AGENT R. BROWN AND DETECTIVE LT. E. WILLIAMS. HOLMES STATED THE TWO LAW ENFORCEMENT OFFICERS WROTE OUT HIS STATE FACTS.

SOLICITOR FANT OBJECTED SAYING "THERE IS NO STATEMENT."

SEE EXHIBIT PAGES OF TRANSCRIPT #5

AFTER MY (DEFENDANT) TRIAL AND CONVICTION. IT WAS FOUND THAT LATIMORE HOLMES STATEMENT OF FACTS DID INDEED EXIST. BEFORE THE TRIAL TOOK PLACE. THOUGH THE DEFENSE REQUESTED BEFORE AND DURING THE TRIAL.

LATIMORE HOLMES FEDERAL INMATE WITNESS STATEMENT OF FACTS WERE TAKEN BY SPECIAL AGENT R. BROWN, (8) EIGHT MONTHS PRIOR TO MY (DEFENDANT) TRIAL ON JAN 25, 2008.

YOU WILL FIND IN EXHIBIT #10

SOLICITOR FANT AND SPECIAL AGENT R. BROWN WITHHELD THE MATERIAL EVIDENCE FROM THE DEFENSE.

PLEASE NOTE: WHEN LOOKED AT HOLMES' STATEMENT OF FACTS IN THE REPORT OF INVESTIGATION. PARAGRAPH NUMBERED [3]. THE ASSAILANT

THE ASSAILANT THEN PULLED OUT A GUN AND SHOT THE VICTIM.

STATE'S ALLEGED EYEWITNESS LATIMORE HOLMES, STATEMENT OF FACTS STIPULATE THERE WAS A FIGHT FIRST, WHICH LEAD TO THE SHOOTING.

THE INFORMATION WITHIN THE REPORT OF INVESTIGATION, SHOW THE INTENT WAS FIGHTING BETWEEN ASSAILANT AND VICTIM. THE HIT BY THE VICTIM ON THE ASSAILANT, THEN THE WEAPON WAS PULLED.

FROM THE CIRCUMSTANCES IN THE REPORT OF INVESTIGATION, THESE FACTS OF EVIDENCE SUPPRESSED BY THE SOLICITOR FANT AND SPECIAL AGENT BROWN, WOULD OF SUPPORTED A LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER.

"VOLUNTARY MANSLAUGHTER IS DEFINED AS THE UNLAWFUL KILLING OF A HUMAN BEING IN THE SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL PROVOCATION
STATE V. DAMON, 285 G.C. 125, 328 SE 2D 628 (1985)

IN RESPECT OF BRADY V MARYLAND, THE EVIDENCE IS MATERIAL EITHER TO GUILT OR PUNISHMENT. IN MY CASE THIS VIOLATION OF BRADY DEALT WITH PUNISHMENT. THE ACTIONS STATE'S WITNESS HOLMES ALLEGED IN THE REPORT OF INVESTIGATION, IF NOT SUPPRESSED BY SOLICITOR FANT, WOULD OF WARRANTED A LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER. SOLICITOR COMMITTED ANOTHER BRADY VIOLATION, WHICH DENIES ME (DEFENDANT) DUE PROCESS OF THE LAW, AND THE RIGHT TO A FAIR TRIAL.

EXHIBITS OF NEWLY DISCOVERED EVIDENCE

DELA'S STATEMENT JAN 22, 2008 TO SUMTER LAW ENFORCEMENT

DELA'S SUMMARY APRIL 10, 2008 ATF REPORT OF INVESTIGATION

SOLICITOR FANT AFFIDAVIT FOR DELAY

DELA'S FEDERAL ATTORNEY MRS. LEEK TO SOLICITOR FANT

SOLICITOR FANT'S RESPONSE LETTER TO FEDERAL ATTORNEY LEEK

SUMTER COUNTY THIRD CIRCUIT (JUDICIAL) PUBLIC INDEX SEARCH

DISPOSE OF DELA'S STATE CHARGES

HOLMES STATEMENT OF FACTS JAN 25, 2008 ATF REPORT OF INVESTIGATION

ALSO, TRIAL TRANSCRIPT MATERIALS

EXHIBIT #4

PAGES 1-8

PAGE 1
INFORMATION
SEEKED

SUMTER POLICE DEPARTMENT

INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- RD • YOU HAVE THE RIGHT TO REMAIN SILENT.
- RD • ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- RD • YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.
- RD • IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.
- RD • IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 10:15 A.M. / P.M. ON JAN 22 2008 AT LEC BY OFFICER Lt. Brown OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

SIGNED: Kimberly DulanDATE: 1-22-08 TIME: 10:17 AM

WITNESSES:

[Signature]
[Signature]
[Signature]

* INVESTIGATING DETECTIVE *
 OF THE
 MURDER CASE

I Kimberly Delay, of my own free will, without any promises or threats of any kind, request to speak with Officers of the Sumter Police Department without my attorney, or any other representation present. I initiated this contact, and request on my own behalf.

Kimberly Delay

1-22-08
Date

[Signature]

1-22-08
Date

[Signature]

1-22-08
Date

#4 (pg 2)

#4-2

~~XXXXXXXXXX~~

SUMTER POLICE DEPARTMENT REPORT OF INVESTIGATION

CASE NUMBER: 07129390	FILE TITLE: "D-MO" ARCHIE, Ca-brall	01-22-2008

RE: Interview of Kimberly DELAY and acquisition of Exhibit N-10

SYNOPSIS:

1. On Tuesday, January 22, 2008 Lt. F. Bradshaw and Detective K. Coker of the Sumter Police Department's OCVC Unit and Lt. E. Williams of the Sumter Police Department's ISD Unit interviewed Kimberly DELAY at the Law Enforcement Center concerning her knowledge of criminal activity and involvement with Mark MCCOY aka WISE.
2. The following details outline that interview and acquisition of Exhibit N-10.

DETAILS:

1. On January 22, 2008 Kimberly DELAY was interviewed by Lieutenants F. Bradshaw, E. Williams and Detective K. Coker of the Sumter Police Department concerning DELAY's knowledge of criminal activity and association with Mark MCCOY aka WISE.
2. Lt. Bradshaw advised DELAY of her Miranda warnings both verbally and had DELAY read, recite and sign the waiver in the presence of Lt. Williams and Detective Coker. DELAY stated she understood her rights, did not have an attorney nor wished to have one during the interview and voluntarily signed the waiver agreeing to be interviewed by the Police Officers.
3. Kimberly DELAY was born and reared in Sumter, South Carolina where she grew up and attended public schools. DELAY stated she is the youngest of three children and has two older brothers. DELAY stated her Mother died when DELAY was two years old and was reared by her Aunt who DELAY calls her Mother. DELAY stated she had a normal childhood and grew up attending church. DELAY graduated from Sumter High School in 2001 where she played basketball and then attended Sumter area TEC for two years seeking a degree in accounting. DELAY stated she never obtained her degree and dropped out of TEC.

4.

#4 p3 1

#4 (Pg. 3)

21

22

23. According to DELAY, MCCOY was locked up in October 2007 for a murder he allegedly committed in 2004. DELAY claims she never heard MCCOY talk about it nor does she know anything about the murder. MCCOY stated she talks with MCCOY daily from jail and has received only one letter from MCCOY. DELAY gave Detective Coker this letter (Exhibit N-10) which is now a part of this file. DELAY claims MCCOY has told DELAY several times he does not know why Attorney Brunson is not trying to get her out of jail. According to DELAY, she believed that MCCOY had hired Attorney Brunson to represent her. Magistrate Tindal contacted Attorney Brunson on January 22, 2008 concerning representation in a preliminary hearing and was told by Attorney Brunson he did not represent DELAY.

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4 (Pg 7)

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SUSPECT(S):

3. MCCOY, Mark aka Wise

EWING #5

PAGES 1-5

PAGE 4

INVESTIGATION
SEEKEDU.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of Investigation: MARK McCOY et al	Investigation Number: 763035-08-0039	Report Number: 14

SUMMARY OF EVENT: On January 22, 2008, Kimberly DELAY was interviewed by Investigators with the Sumter Police Department. A Summary of the interview is provided below.

NARRATIVE:

On January 22, 2008, LT F. Bradshaw, LTE. Williams and Detective K. Coker of the Sumter Police Department interviewed Kimberly DELAY. DELAY was provided with a Sumter Police Department interview form which advised DELAY of her Miranda rights. DELAY waived her rights and spoke with the aforementioned investigators. Unless otherwise noted, the following is a summary of the facts provided by DELAY:

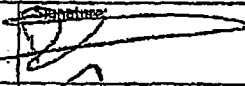
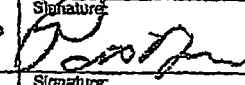
1.

2.

M.

3.

#5 (Pg 1)

Prepared by: J. Richard Brown	Title: Special Agent, Columbia Field Office	Signature: 	Date: 4/10/08
Authorized by: Patrick M. Dumais	Title: Resident Agent in Charge, Columbia Field Office	Signature: 	Date: 4-11-08
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

#5

Use of Investigators:
MARK MCCOY et al

Investigation Number:
763035-08-0039

Report Number:
14

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22. During October 2007, MCCOY was arrested for a murder allegedly committed in Sumter during 2004.
- MCCOY contacted DELAY from jail and told DELAY where money was hidden in the house and she retrieved the cash.
 - DELAY carried the cash, \$17,000 in drug proceeds, to LS. Levy Johnson's Law Office, located in Columbia, SC. DELAY did not receive a receipt from the law firm for the cash transaction.
 - DELAY has never heard MCCOY talk about the murder and she does not know anything about the murder.
 - DELAY speaks daily with MCCOY from jail and has received one letter from MCCOY.
 - DELAY provided the letter to the interviewers.

23.

24.

#5 (pg 4)

Title of Investigation: MARK McCOY et al	Investigation Number: 763035-08-0039	Report Number: 14

25.

26.

ATTACHMENTS

Sumter PD Interview Form, signed by DELAY on 01/22/2008

Sumter PD Report of Investigation, DELAY Interview, dated 01/22/2008

Copy of letter to DELAY from MCCOY, dated 01/09/2008

#5 (PG5)

PAGES 1-11

STATE OF SOUTH CAROLINA)

IN THE GENERAL SESSIONS COURT
IN THE THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER)

The State of South Carolina)

Warrant Number(s): F-413307

Plaintiff,)

-vs-)

BRADY MOTION

Mark A. McCoy,)

Defendant.)

TO: CATHERINE FANT, SOLICITOR FOR THE THIRD JUDICIAL CIRCUIT:

The Defendant herein, by and through his undersigned attorney, hereby requests you pursuant to the authority of Brady -vs- Maryland, 373 U.S. 83(1963), to give him without undue delay any information in your possession or gathered for your use and available to you or which in the exercise of reasonable diligence could be in your possession which tends to show that the Defendant is not guilty of the offenses charged or which tends to show that the Defendant is not guilty of the offense charged or which tends to mitigate the severity of the offenses charged or any sentence which might result therefrom.

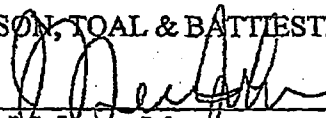
This request includes, but is not limited to, the following:

1. Copies of any statements by the Defendant, co-Defendants or other witnesses containing relevant information or which contradicts any evidence which the State tends to introduce at trial;
2. A list of physical evidence items;
3. Copies of any relevant expert reports;
4. The names and addresses of all witnesses, including law enforcement personnel, having relevant information about the case;

5. A copy of any statements made by the informant;
6. A copy of the criminal record, if any, of the informant and other State witnesses;
7. Any information indicating psychological instability or insanity, or habitual drunkenness on the part of the informant, any other State witnesses or the Defendant;
8. Any information indicating that the informant has been furnished drugs. Any information that the informant has any uncharged or unindicted criminal activity. Any information that the informant has been paid in any way by the State or County;
9. Any information contradicting the Defendant's intent to commit the charged offenses;
10. Any information tending to show that someone else actually committed the crime with the Defendant is charged.

To minimize the possibility of unnecessary delay or reversible error, the undersigned further requests that you describe in general fashion any requested information which you are withholding, along with your reasons for doing so. In the absence of such a statement, the undersigned will assume that no requested information has been withheld.

JOHNSON, TOAL & BATTIESTE, P.A.

BY: 

L.S. Leavy Johnson
Attorney for Defendant
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
November 9, 2007

EXHIBIT # 2(2)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)

IN THE GENERAL SESSIONS COURT
 IN THE THIRD JUDICIAL CIRCUIT

The State of South Carolina)
)

Plaintiff,)
)

-vs-)
)

Mark A. McCoy,)
)

Defendant.)
)

Warrant Number(s): F-413307

MOTION FOR DISCLOSURE
OF EVIDENCE

Pursuant to Criminal Practice Rule 108, Defendant herein moves the Court for an Order requesting the prosecution to disclose the following items in the manner requested.

1.

To permit the Defendant to inspect, copy, and photograph any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution the substance of any oral statement which the prosecution intends to offer in evidence at the time of trial made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent.

2.

To furnish a copy of Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

3.

To permit Defendant to inspect and copy books, papers, documents photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant.

4.

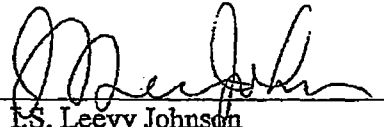
To inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are

material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

5.

To inspect and copy prior to trial any statement of any prosecution witness, or in the alternative, after such witness has testified.

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

L.S. Leevy Johnson
Attorney for Defendant
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
November 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS
IN THE THIRD JUDICIAL CIRCUIT

Warrant No.: F-413307

State of South Carolina)

vs.)

MOTION TO COMPEL

Mark A. McCoy,)

Defendant.)

TO: CATHERINE FANT, SOLICITOR FOR THE THIRD JUDICIAL CIRCUIT:

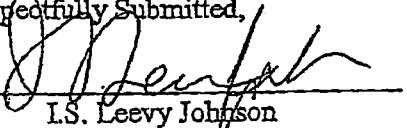
PLEASE TAKE NOTICE that the Defendant, Mark A. McCoy, by and through his attorney, I.S. Leevy Johnson, pursuant to the South Carolina Rules of Criminal Procedure, moves this Honorable Court for the entry of an Order compelling the Solicitor for the Third Judicial Circuit to comply with Rule 5 of the South Carolina Rules of Criminal Procedure.

As grounds for the Motion, the Defendant offers the following:

THAT the Defendant filed a Motion for Discovery in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure on November 9, 2007.

THAT the Solicitor has failed to provide Discovery in accordance with the time limits imposed by Rule 5 of the South Carolina Rules of Criminal Procedure.

Respectfully Submitted,

By: 

I.S. Leevy Johnson
Johnson, Toal & Battiste, P.A.
P.O. Box 1431
Columbia, South Carolina 29202
(803) 252-9700

RECORDED

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
 2013 SEP 24 AM 10:48
 COUNTY OF SUMTER)
 JAMES C. CAMPBELL DOCKET NO.: 2012-CP-43-1090
 CLERK OF COURT
 Mark McCoy, 210705 SUMTER COUNTY, S.C.

Applicant) AMENDMENT TO
) POST CONVICTION RELIEF
) APPLICATION
)
 State of South Carolina)
)
 Respondent,)

The Applicant through undersigned Counsel wishes to Amend his Application for Post Conviction Relief filed on June 5, 2012 as follows:

Applicant's right to a fair trial and due process of the law guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina Law was violated as a result of misconduct by Assistant Solicitor Fant, Detective E. Williams and ATF Agent R. Brown suppressing principle State's witness(es) statement of facts from interview with law enforcement months prior to Applicant's trial, along with Assistant Solicitor Fant suppressing her promised deal within the State's criminal justice system in exchange for testimony by crucial state's witness. This material evidence was exculpatory and impeaching evidence, along with evidence that was material to punishment was suppressed by the State.

Rule(5) Brady v Maryland Violations, Prosecutorial Misconduct.

Applicant's right to a fair trial and due process of the law guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated as a result of Solicitor Fant allowing the presentation of known perjured testimony by crucial State's witnesses. Assistant Solicitor intentionally using deception on Judge, jurors and defense

not correcting her nor witnesses false testimony of evidence, also using false misleading Federal documents for evidence before the Judge and jurors.

Prosecutorial Misconduct.

Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to United States Constitution and South Carolina Law was violated as a result of counsel's failure to conduct a reasonable investigation to include interviewing witnesses and conducting an independent investigation to find the facts of the case.

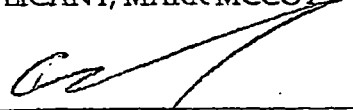
Strickland v Washington, 446 U.S. 668.104 S.Ct 2052 80 LED 624 (1984)

Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina Law was violated as a result of Counsel's failure to call witness(es) who had reasonable probability to change the outcome. Instead Counsel did not put up a defense.

Strickland v Washington.

RESPECTFULLY SUBMITTED ON BEHALF OF

APPLICANT, MARK MCCOY



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

September 23, 2013


U.S. Department of Justice

*Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W., Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/isoao)*

Requester: Mark McCoy

Request Number: 2013-2221 Date of Receipt: 8/19/2013

Subject: Self

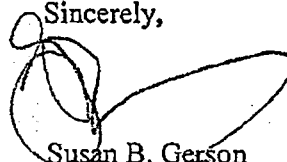
Dear Requester:

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph(s) checked below apply:

1. ☐ A search for records located in EOUSA - _____ has revealed no responsive records regarding the above subject.
2. ☒ A search for records located in the United States Attorney's Office(s) for the _____ District of South Carolina _____ has revealed no responsive records regarding **Jammia Heyward Proffer Agreement**.
3. ☐ After an extensive search, the records which you have requested cannot be located.
4. ☐ Your records have been destroyed pursuant to Department of Justice guidelines.
5. ☐ Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

This is the final action on this above-numbered request. You may appeal this decision on this request by writing to the **Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001**. Both the letter and envelope should be marked "FOIA Appeal." Your appeal must be received by OIP within 60 days from the date of this letter. If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. §16.9.

Sincerely,


Susan B. Gerson
Assistant Director

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,) Cr. No. 3:05-559
)
)
VERSUS) Columbia, SC
) November 20, 2008
)
LATIMORE LERON HOLMES,)
)
Defendant.)
-----)

TRANSCRIPT OF MOTION TO REDUCE SENTENCE HEARING
BEFORE THE HONORABLE MATTHEW J. PERRY, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Appearances:

For the Government: STANLEY D. RAGSDALE, ESQ.
Assistant U.S. Attorney
1441 Main Street, Suite 500
Columbia, SC 29201

For the Defendant: JAMES P. ROGERS, ESQ.
Assistant Federal Public Defender
1901 Assembly Street, Suite 200
Columbia, SC 29201

Court Reporter: Gary N. Smith, CM
901 Richland Street
Columbia, SC 29201
(803) 256-7743

Stenotype/Computer-Aided Transcription

1 THE COURT: All right. I'm entering an order
2 appointing the Office of Federal Public Defender to represent
3 the defendant in this matter, and it is done.

4 Mr. Rogers --

5 MR. ROGERS: Thank you, Your Honor.

6 THE COURT: -- you are on board.

7 MR. ROGERS: Yes, sir.

8 THE COURT: All right. Mr. United States Attorney.

9 MR. RAGSDALE: Thank you, Your Honor, may it please
10 the court. At this time we would call the case of United
11 States versus Latimore Leron Holmes, Criminal Number 3:05-559.

12 Mr. Holmes is present, along with his attorney,
13 Mr. Rogers, and we are here on the government's motion to
14 reduce his sentence pursuant to Rule 35(b) of the Federal Rules
15 of Criminal Procedure.

16 THE COURT: Very good.

17 Ms. Adams, may I have a copy -- well, perhaps I have
18 one here -- the judgment, the amended judgment. All right.
19 The court observes that Mr. Holmes appeared and was sentenced
20 by this court -- all right, Mr. Holmes was sentenced by this
21 court on March 20, 2006, to imprisonment for a period of 60
22 months, together with, of course, the other provisions that
23 were imposed upon him. The requirement of the service of a
24 period of supervised release -- what was that, three years? --
25 and as has just been stated, the government now moves for a

1 downward departure. And I will be glad to hear your reasons
2 and your suggested -- the suggested and the extent of the
3 departure, Mr. Ragsdale.

4 MR. RAGSDALE: Very well. Thank you, Your Honor, may
5 it please the court. Your Honor, what precipitated this motion
6 was there was a trial in Sumter County General Sessions Court,
7 a defendant named Mark McCoy, who goes by the street name of
8 Wise.

9 Mr. Wise was not aware of it, but we had him on our
10 radar screen up here federally, although it looks like now we
11 won't have to prosecute him because he's doing a life sentence
12 in state court, plus five years, thanks to Mr. Holmes, in large
13 part.

14 But as I said, we were looking at him. They have
15 pending federal drug charges in Georgia, and Mr. Wise was
16 facing these state murder charges, murder of an individual with
17 whom he had -- he had encountered this individual, they had
18 crossed paths. He felt like this individual had broken into a
19 store of an -- of a friend of Mr. Wise's, so Mr. Wise ended up
20 killing this person.

21 So, anyway, they didn't have all that great a case
22 against Mr. Wise at the state court level. By happenstance --
23 or, well, what happened was, I received a letter from
24 Mr. Holmes, and it was in -- it was in 2007. I can't remember
25 the month.

1 But in any event, Mr. Holmes said, "I have
2 information regarding the murder that was committed by Mr. Wise
3 and I believe that authorities would be interested in that
4 information."

5 So not knowing the value of it, I passed it on to
6 ATF, to Richard Brown here with the ATF, who followed up and
7 who brought the information that Mr. Holmes provided to the
8 attention of the state authorities.

9 The Sumter County Solicitor's Office, based on
10 hearing that, got a writ and used Mr. Holmes at the trial of
11 Mr. Wise. Catherine Fant was the assistant solicitor in that
12 case. I asked her to prepare a summary of Mr. Holmes'
13 testimony and its value in those proceedings.

14 And it's very brief, so I will hand that up to the
15 court rather than read it. But I think the court will get from
16 this the critical value he provided in the case.

17 THE COURT: Thank you. I would like -- Mr. Rogers --

18 MR. ROGERS: I have a copy.

19 THE COURT: You have a copy of it?

20 MR. ROGERS: Yes, Your Honor.

21 THE COURT: All right. I'm entering this letter as a
22 part of the record.

23 And Mr. Ragsdale, you -- I'm going to invite further
24 comments by you concerning any suggested extent of the
25 departure that you would now recommend.

1 MR. RAGSDALE: Yes, sir, Your Honor. As the court
2 has observed from this letter, Mr. Holmes was a really critical
3 witness for the state.

4 THE COURT: Yes.

5 MR. RAGSDALE: And assisted -- he was the only
6 eyewitness. I remember the days that Mr. Rogers and I were in
7 state court, and some of the evidence that they would have in
8 cases. But he was obviously a very important witness against a
9 very dangerous individual. As a result of that, Mr. Wise
10 received a sentence of life plus five years.

11 So based on that and that alone, I sought authority
12 from my office, and received authority, to recommend that
13 Mr. Holmes' sentence be cut in half; basically from 60 months
14 to 30 months.

15 Now, I would also mention, in my duty of candor to
16 the court, that I overlooked -- in my internal request, the
17 internal office deliberations, and the ATF agent brought it to
18 my attention this afternoon -- Mr. Holmes provided additional
19 assistance that was not part of my calculation or
20 recommendation.

21 He provided assistance against an individual named
22 Emil Eaglin, who I prosecuted a couple of years ago, and he
23 also cooperated in the Georgia prosecution -- or the Georgia
24 case against Mr. Wise, and I was not aware of that until this
25 afternoon.

1 But the information that Mr. Holmes provided against
2 Mr. Wise on the Georgia drug cases assisted in getting Mr. Wise
3 indicted federally in Georgia. So, I didn't take that into
4 account. I just wanted to bring that to the court's attention,
5 the additional cooperation. I do have the authority, based on
6 his state court involvement, to recommend 30 months.

7 THE COURT: But he has rendered further assistance?

8 MR. RAGSDALE: Yes, sir, but I did not -- quite
9 frankly, I did not take that into account. But Richard Brown,
10 who's happy to enthusiastically support the recommendation for
11 a reduction of sentence here, if the court would want to hear
12 from him --

13 THE COURT: Yes, I would be pleased to hear from him.

14 And Mr. Rogers, do you need any --

15 MR. ROGERS: We briefly talked and I'm confident what
16 he says will be in my client's best interest.

17 THE COURT: Very good. All right.

18 MR. RAGSDALE: Would the court care to hear from the
19 agent?

20 THE COURT: Yes, I would be pleased to.

21 AGENT BROWN: Hello, Your Honor.

22 THE COURT: Yes.

23 AGENT BROWN: Mr. Holmes has been very valuable --

24 THE COURT: Yes. And you are Mr. --

25 AGENT BROWN: Richard Brown, sir, with ATF.

1 THE COURT: Yes, all right. Proceed.

2 AGENT BROWN: Yes, sir. He had a lot of historical
3 drug information that was very important in getting Mr. Mark
4 McCoy, a/k/a Wise, indicted in Georgia. I'm the case agent on
5 that.

6 I have been looking at Mr. McCoy for a very long
7 time. He's very violent, very dangerous. There was a lot of
8 threatening of witnesses and witness tampering prior to his
9 state trial. Very dangerous individual that Mr. Holmes was
10 very important in getting off the street.

11 And like I said, also with the case against Emil
12 Eaglin, important information there. And then there's also a
13 lot of information that he provided that -- individuals I
14 know -- there's one that is under indictment out of Florence,
15 federally indicted on a drug conspiracy. I believe his
16 information will help in that case whenever it does go to
17 court, as well as a bunch of other individuals that he may
18 potentially be able to cooperate on later on down the line.

19 MR. RAGSDALE: And Mr. Brown was involved in the
20 state court prosecution. I believe he testified to the jury
21 about what proffer agreements are. So he was involved and
22 understands that the solicitor was very appreciative of
23 Mr. Holmes' testimony and evidence in that case.

24 THE COURT: Very good. Thank you.

25 AGENT BROWN: Thank you, Your Honor.

1 MR. ROGERS: May it please, Your Honor.

2 THE COURT: Mr. Rogers.

3 MR. ROGERS: Your Honor, I think that based on
4 everything that Mr. Holmes has done and all the assistance that
5 he has provided, the government and the state, I would ask you
6 to consider a sentence of time served.

7 As Mr. Ragsdale indicated, he had already gotten
8 authority, based on Mr. Holmes' assistance in the state court
9 matter in Sumter, to get a sentence down to 30 months.

10 Those efforts by Mr. Holmes were over and above. As
11 you can tell by Assistant Solicitor Fant's letter, that
12 Mr. Holmes was a crucial witness in that murder trial, that he
13 was the only eyewitness. And not only that, he helped persuade
14 another witness to come forward and give testimony for the
15 government.

16 So, those two things, according to Assistant
17 Solicitor Fant, greatly increased her ability to prosecute
18 Mr. McCoy. So, based on that information, Mr. Ragsdale was
19 able to get approval down to 30 months.

20 I believe the additional information against
21 Mr. Wise -- I'm sorry, against Mr. McCoy -- that resulted in
22 the indictment in Georgia, as well as the information that
23 Mr. Holmes has already provided against Mr. Eaglin, and based
24 on what I have been told, which resulted in an increased
25 sentence for Mr. Eaglin, would warrant a sentence of time

1 served.

2 It's not often that I as a defense attorney will have
3 positive things to say about an increased sentence, but in this
4 instance, because it will inure to the benefit of Mr. Holmes, I
5 think that testimony is worth an additional 30 months. And I
6 would ask the court to consider -- I mean -- yes -- that
7 testimony and that information is worth an additional 30
8 months. Therefore I would ask the court to respectfully
9 consider reducing Mr. Holmes' sentence to time served, as well
10 as reducing his supervised release. As I understand now it's
11 four years supervised release.

12 THE COURT: It's four years?

13 MR. ROGERS: Four years, based on the -- based on the
14 J and C I'm reading. So, for those reasons, Your Honor, I
15 would ask you to rule for time served.

16 MR. RAGSDALE: Beg the court's --

17 THE COURT: Does the government have a reaction to
18 that request?

19 MR. RAGSDALE: I beg the court's indulgence one
20 moment?

21 THE COURT: Yes. Yes.

22 MR. ROGERS: In light of Mr. Ragsdale's clarification
23 of Mr. Holmes' position, I understand now that he only has 24
24 months left to serve. So I would ask the court to reduce his
25 sentence to reflect -- to reduce that 24 months so that he

1 would not have to serve any more time.

2 THE COURT: Now, your original request was that the
3 amended sentence be that of a sentence to time served?

4 MR. ROGERS: That's correct. So, I'm asking the
5 court to reduce an additional 24 months, at this time, as of
6 today, so that as a practical matter he would not have to serve
7 any more time. He has 24 months more to serve --

8 THE COURT: Well, wouldn't time served, assuming I
9 accepted your request, accomplish that?

10 MR. ROGERS: Yes, sir.

11 THE COURT: All right. Does the government have any
12 reaction to that request?

13 MR. RAGSDALE: No, sir.

14 THE COURT: All right. You may bring your client
15 forward, Mr. Rogers.

16 Mr. Holmes, refresh me, please, how old are you now?

17 THE DEFENDANT: 33.

18 THE COURT: How much education have you had?

19 THE DEFENDANT: 12 years. I took a lot of courses,
20 you know, in the different prisons I have been to. A lot of
21 what they call -- I forgot the name -- programming, get
22 certificates where you program computer classes, small
23 appliances, inside out, dealing with outside world, community,
24 things like that. I took about 24 of them while I was in.

25 THE COURT: What family do you have?

1 THE DEFENDANT: Right here? Got my aunt --

2 THE COURT: Well, I want to know, are your parents
3 living --

4 THE DEFENDANT: No, my mother --

5 THE COURT: -- are you married?

6 THE DEFENDANT: -- my mother is dead. I got my
7 future wife with me here, my aunt, my grandfather, and my other
8 aunt.

9 THE COURT: I see. Have you got brothers and
10 sisters?

11 THE DEFENDANT: Yeah, I got one brother. Kids, six
12 kids. One brother. Father is still living. He's in and out
13 of my life a little bit.

14 THE COURT: What is your occupation? I know, of
15 course, you have been in custody now for a while, and I need to
16 know, what do you do for a living?

17 THE DEFENDANT: Well, I used to sell drugs for a
18 living, but now -- I mean, we got a family business that my
19 aunt and them running, and I'm getting back out here to get in
20 and help them run it --

21 THE COURT: What is the nature of that business?

22 THE DEFENDANT: It's a convenience store slash
23 restaurant.

24 THE COURT: Now you say your previous occupation has
25 been that of dealing in drugs?

1 THE DEFENDANT: Yes, Your Honor, it was.

2 THE COURT: Do you now realize that that was a bad
3 choice?

4 THE DEFENDANT: Oh, yes, sir. It was a very bad
5 choice.

6 THE COURT: Do you realize that the congress has
7 passed laws prohibiting engaging in drug trafficking?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And has laid out very strict and very
10 serious consequences. Do you realize that?

11 THE DEFENDANT: Yes, Your Honor, sir, I do.

12 THE COURT: In imposing the sentence upon you, of
13 course, this court acted with respect to and in accordance with
14 not only the statute, but in accordance with the guidelines
15 that governed the disposition of your case at that time.

16 The guidelines at that time were mandatory. They are
17 no longer mandatory, they are now advisory. But even so, the
18 court is required to pay attention to them.

19 So dealing in drugs is ill advised. Drugs can --
20 well, they are serious. Dealing in drugs is very, very
21 serious. Do you have any children?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: Six.

25 THE COURT: Six children?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How old are they?

3 THE DEFENDANT: 17, 14, 13, 13, 10, and two.

4 THE COURT: Well, you haven't set a very good example
5 for them, have you?

6 THE DEFENDANT: No, sir.

7 THE COURT: You realize, of course, that -- well, you
8 have already indicated that you realize that your involvement
9 in the drug field has been a mistake?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now I know you are and have been in
12 custody for quite some time. Do your children go to school?

13 THE DEFENDANT: Yes, sir, all except for one of them,
14 the two-year-old.

15 THE COURT: How old is that child?

16 THE DEFENDANT: Which one? The one that doesn't go
17 to school?

18 THE COURT: The one that does not go to school?

19 THE DEFENDANT: Two years.

20 THE COURT: Oh, two years. Okay. You agree that
21 those children need to go to school?

22 THE DEFENDANT: Yes, sir, school and college.

23 THE COURT: And that they need to get as much
24 education as they can?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you agree that if they follow your
2 example, they will suffer serious consequences?

3 THE DEFENDANT: Yes, sir, that's my old example.
4 Won't follow that one.

5 THE COURT: You are in this court today wearing a red
6 suit. You, I would imagine, do not wish to spend the rest of
7 your life wearing red suits appearing before judges?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you agree that you ought to provide
10 guidance for your children?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And try and prohibit them from entering
13 into that field?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, of course, you know that you have
16 got a record that is going to create a problem for you out in
17 the community?

18 THE DEFENDANT: Yes, sir, I know.

19 THE COURT: Are you going to try to live down that
20 record?

21 THE DEFENDANT: I sure don't plan on getting no more
22 record, that's for sure.

23 THE COURT: Where are you going to live, if -- when
24 and if you are released?

25 THE DEFENDANT: Where I would live?

1 THE COURT: Yes.

2 THE DEFENDANT: Me and my future wife have a place.

3 THE COURT: She has a place?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You are in a fortunate position in that
6 the government has come before the court and has reported on
7 the substantial assistance that you have rendered the
8 government and the state authorities. Except for that, I would
9 not be able to do anything for you. Do you understand that?

10 THE DEFENDANT: Yes, sir, I understand that.

11 THE COURT: Do you -- are you going to demonstrate to
12 the government that you are worthy of the efforts that are
13 being made in your behalf?

14 THE DEFENDANT: Oh, yes, sir.

15 THE COURT: I have the request made by your attorney,
16 Mr. Rogers, of the Federal Public Defender's Office, that the
17 amended sentence be one that will release you from further
18 confinement. I can only assume that you want me to do that,
19 don't you?

20 THE DEFENDANT: Yes, sir, I would like for you to do
21 it, yes, sir.

22 THE COURT: Are you going to try and live up to what
23 you have been saying to me?

24 THE DEFENDANT: Yes, sir, try my best.

25 THE COURT: Now you have mentioned that you have

1 members of your family -- did you say your aunt and -- who
2 else?

3 THE DEFENDANT: Two of my aunts, my future wife, and
4 my grandfather.

5 THE COURT: And grandmother?

6 THE DEFENDANT: Grandfather.

7 THE COURT: Grandfather?

8 THE DEFENDANT: Yes, sir, right there (indicating).

9 THE COURT: My sense is they are kind of depending on
10 you at this moment to demonstrate that you are worthy of all
11 the efforts that are being made in your behalf.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you appreciate what they are doing?

14 THE DEFENDANT: Oh, yes, sir, greatly.

15 THE COURT: Are you prepared to demonstrate to them
16 that you are now capable of living a law-abiding life?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that you will endeavor to become a
19 productive law-abiding citizen?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You make that promise to this court?

22 THE DEFENDANT: Yes, sir, I make that promise.

23 THE COURT: Anything further, Mr. Rogers?

24 MR. ROGERS: No, Your Honor, I don't believe so.

25 THE COURT: Anything further for the government?

1 MR. RAGSDALE: No, sir, Your Honor. Thank you.

2 THE COURT: All right. I grant the government's
3 motion for a downward departure, and the court will grant the
4 request of the defendant that Mr. Holmes' amended sentence --
5 the sentence previously imposed is hereby amended -- or rather
6 the sentence previously imposed is hereby vacated and the
7 defendant is hereby sentenced to a term of time served. Time
8 served. The other provisions of the sentence previously
9 imposed remain in effect --

10 Now, you made a request with respect to the
11 supervised release portion, Mr. Rogers?

12 MR. ROGERS: Yes, Your Honor, I was requesting that
13 the four years be reduced as well.

14 THE COURT: Well, I will reduce the four-year
15 supervised release in half. You will have to continue under
16 supervised release and so -- 24 months supervised release.

17 MR. ROGERS: Yes, Your Honor.

18 THE DEFENDANT: Thank you, sir.

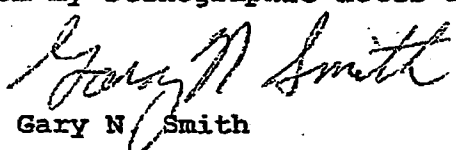
19 THE PROBATION OFFICER: Your Honor, did you ask a
20 question of probation?

21 THE COURT: I did not ask --

22 THE PROBATION OFFICER: Okay, I'm sorry.

23 THE COURT: I reduced the supervised release to 24
24 months. Anything further?

25 MR. ROGERS: No, Your Honor. Thank you.

1 THE COURT: For the government?
2 MR. RAGSDALE: No, sir.
3 THE COURT: Best of luck to you.
4 THE DEFENDANT: Thank you.
5 MR. RAGSDALE: Thank you, Your Honor.
6 THE COURT: Mr. Rogers, I'm signing the judgment, and
7 I understand the effect of that is Mr. Holmes can be released
8 forthwith.
9 MR. ROGERS: He's going to have to go back to
10 Lexington.
11 THE COURT: All right. Whatever is necessary, but I
12 have signed the judgment.
13 MR. ROGERS: Thank you, Your Honor.
14 (Thereupon, the proceedings were adjourned.)
15 * * * * *
16 CERTIFICATE OF REPORTER
17
18 I certify that the foregoing is a correct transcript
19 from my stenographic notes in the above-entitled matter.
20 
21 s/ Gary N. Smith April 18, 2013
22
23 Gary N. Smith, CM
24 Official Court Reporter
25 United States District Court
District of South Carolina

A

WITNESS STATEMENT

Name: James Adam Pleasant

Address: [REDACTED]

DOB: [REDACTED]

SSN# [REDACTED]

Case# 04057789

On June 8, 2004 it was a little after 6 p.m. when I was outside in the yard with my girlfriend, Vera Marshall, chilling out. We were setting on the white bricks in the front of [REDACTED]. The people who live in the house are my girl's people. I was trying to get my grandmother on the phone that's when I noticed two black guys walking down the lane called Kelly, beside the house I was at. One of them was wearing a white tee shirt, blue jeans, slim body and taller then me and I would put him around 6 feet or better. I have seen this guy before walking around the neighborhood before but I don't know his name. The second guy was wearing a cameo jacket and his face was rapped with cameo cloth. You couldn't see his face. This guy was shorter than the other fellow. He was around 5 feet 4 inches tall. The guys turned right onto Edwards Street walking towards Bartlette. I noticed a black guy riding a black bike across the field towards Edwards Street. The next thing I saw was the guys that came off of Kelly Street started swinging at the guy on the bike. The guy on the bike was knocked to the ground. He was hollering I didn't do anything. He got up and started running down Edwards Street towards me. I saw the guy that was wearing the cameo pull out a black gun from his waist band and point it at the guy running away. I turned and started running across the street. As I got to the other side of the street that's when I heard one gun shot. I stopped and turned around, that's when I saw that the guy had been shot in the back and the guys were gone along with his bike. He was hollering for someone to help him while he was on the ground. Everybody came running out of the house and Vera, my girlfriend, hollered for someone to call the police. A few seconds later the police showed up.

Signed: James PleasantDate: 6-8-04Witness: Det. B. Smith, S. P. 1

Witness: _____

SUMTER POLICE DEPARTMENT

INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- 1 RLD YOU HAVE THE RIGHT TO REMAIN SILENT.
- 2 RLD ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- 3 RLD. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.
- 4 RLD. IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.
- 5 RLD. IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 8:20 A.M./P.M. ON June 8th 2004 AT Sumter Police Dept. BY OFFICER Det. Mike Morris OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

6 SIGNED: [Signature]
DATE: 6-8-04 TIME: 8:22

WITNESSES:

[Signature]
[Signature]

SUSPECT STATEMENT

I, Robyn Levern Dukes HAVE BEEN ADVISED OF MY CONSTITUTIONAL RIGHTS AND HAVING SIGNED A WAIVER OF THOSE RIGHTS, DO HEREBY GIVE THE FOLLOWING STATEMENT, FREELY, AND VOLUNTARILY, WITHOUT FEAR OR THREAT OR PROMISE OF REWARD TO DETECTIVE M. Morris WHO HAS IDENTIFIED HIMSELF AS A POLICE OFFICER OF THE SUMTER POLICE DEPARTMENT.

June 8, 2004 9:43 pm

NAME: Robyn Levern Dukes

ADDRESS: [REDACTED], Sumter, SC

DOB: [REDACTED]

SSN # [REDACTED]

Phone # [REDACTED]

CASE# 04057789

Today, I met up with a guy I know as Tyrone. I don't his last name, but I went to Church with him years ago. They call his Grandmother "Sister Carter." She is like my Grandmother, she takes me as one of hers. I met up with Tyrone on the corner of Bartlette Street and Purdy Street. We started just walking together, and talking. We went on Sampson Street, and made a right on Kelly Street, and went to Edwards Street. We made a right on Edwards Street and was walking back towards Bartlette Street. When we got up near the corner of Bartlette Street and Edwards Street, a guy came up riding up on a blue bicycle, he was wearing a camouflage jacket, camouflage mask, and blue jeans and white tennis shoes. He pulled out a gun, a chrome gun, what looked like a semi-auto, a big one. Tyrone then said, "I ain't done nothing, I ain't done nothing." I didn't hear the guy with the gun say nothing, but I turned and ran and so did Tyrone. Tyrone ran back towards Kelly Street, and I ran through the field on Edwards Street. I heard one shot. I didn't turn to see what was going on, but I heard Tyrone say somebody call the Police. I ran through the field on Edwards to Bartlette Street, then to Blanding Street, and then to Oakland Street. I saw Jeff Burgess on Oakland Street. I ask him for his bicycle, and told him that Tyrone had been shot. I rode his bicycle down Salem Street to Dingle and went home. I walked inside of my house and spokeed to my Grandmama, and then went back out and stood on the front porch and was talking to my Uncle Frank Nelson and my girlfriend. Then the Police swarmed in and jumped out and asked where Robyn Dukes. I told them, "I'm right here."

I NAME: Robyn Dukes DATE: 6-8-04
 WITNESS: Det. [Signature] WITNESS: Det. [Signature]

INCIDENT REPORT
City of Sumter Police Department
(LIEUTENANT'S TYPE)

*Blow Up

Case # _____
 Date: _____
 Time: _____

I submit the following: As I was responding to a 10-75 (shooting
on Edwards St., the first officer on scene, Cpl. Gay,
put a B.O.L.O. out on the radio for a Robin Dukes.
I was familiar where Mr. Dukes had been staying on
Dingle St. As I arrived at that residence on Dingle
St., Cpl. Shiver assisted me. As officers approached the
residence, Mr. Dukes stepped out of the residence. Myself
and Cpl. Shiver at that time detained Mr. Dukes. I
then read Mr. Dukes his Miranda rights and asked
him if he understood them as I read them to him
and he said "Yes." Mr. Dukes then agreed to answer
any questions. Mr. Dukes stated in reference to the
shooting incident that he and his cousin was approached
by a black male wearing a black mask over his face,
a camouflage coat, and white shoes. Mr. Dukes stated the
unknown subject shot his cousin. Mr. Dukes said he then
fled the scene in fear. He stated the unknown subject was
also heading towards Barlowe St.

Robert Thomas
 Officer's Printed Name

Robert Thomas 1025
 Officer's Signature

 Supervisor's Printed Name

 Supervisor's Signature

INCIDENT REPORT
City of Sumter Police Department
(LIEUTENANT'S TYPE)

Case # _____

Date: _____

Time: _____

I submit the following: I was responding to a shooting call on Edwards St. when I heard the name Robin Dukes come over the radio as a suspect in the shooting. I knew that Dukes hangs out between [redacted] & [redacted] Dingle St. I approached [redacted] Dingle and Dukes was standing on the front porch. I then took Dukes into custody and he was given his miranda wrights by Ptl. Thames before asked any questions. Dukes said he understands his rights and wanted to talk. Dukes said he was walking with his cousin when a B/m in a cami jacket approached his cousin and pulled out a handgun. Dukes said he started running when the B/m in the cami shot his cousin.

C. Shires

Officer's Printed Name

Supervisor's Printed Name



Officer's Signature

Supervisor's Signature

SUMTER POLICE DEPARTMENT

INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

R.L.D. YOU HAVE THE RIGHT TO REMAIN SILENT.

R.L.D. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

R.L.D. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.

R.L.D. IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.

R.L.D. IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 2:27 A.M./P.M. ON August 10, 2004 AT Sumter LEC BY OFFICER Det. Mike Morris OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

SIGNED: [Signature]

DATE: _____ TIME: _____

WITNESSES:

[Signature]
Det. Mike Morris

Suspect Statement

I, Robyn Levern Dukes, of, [REDACTED], have been advised of my constitutional rights and having signed a waiver of those rights do hereby give the following statement freely and voluntarily, without fear or threat or promise of reward to Detective R. S. Brammon and Detective M. Morris, who has identified himself as a Police Officer of the Sumter Police Department.

Tuesday, August 10, 2004

RLD

On June 8th, 2004, Wise (Marcus McCoy); (De-mo) Demond; "Duke" and I were at Wise's drug house on Blanding Street. It's the white house with a handicap ramp in front of it. I think this was around 3pm or 4 pm or something like that. We were already inside when Tyrone Pettis and Joe Sumpter came up to the house. Joe was riding a black Huffy bicycle and Tyrone was walking beside him. (Tyrone had wanted some dope so Joe took him there. Wise wouldn't deal with Tyrone so Joe had to introduce Tyrone to Wise. Tyrone told Wise that he was the guy with the bag of clothes a couple of nights ago and that he tried to sell them to Wise. That is when Wise said, "oh yeah, I remember". Wise sold Tyrone a dime bag (meaning \$10.00 of crack). Tyrone went into the smoker's room. "Operdella" and "Diamond" were already in the smoker's room getting high. The door to the smoker's room was closed. We stayed in the hallway. Wise called this guy named Ivan Sanders on his Nextel cell phone and said, "I think I got the guy that broke into your store over here at the spot". They were using the speakerphone on the Nextel so I heard Ivan say "yeah", and Wise said, "Yeah, what you want me do". Ivan told him to rough him up and Wise said, "ok, say no more my nigga. Peace". Wise sat there for a minute. At one point, Wise went in the smoker's room and just looked at Tyrone. Then he walked out and went into the back of the house. Joe went in the smoker's room after him. By that time, Tyrone came out the room and they left the house. They left the bicycle in the yard. They walked to the corner of Bartlette and Blanding. Wise came from the back inside of the drug house and said, that he was going across the street to his girl's house. Wise was wearing a sky blue baseball Jersey with white and red trimming, ashy white blue jeans, and some white & blue Nike Air Force Ones. They were low cut. I walked out behind him, he went on across the street and I stood there talking to him for a minute. I asked him when he was going to pay me for washing his truck and he told me that he would pay me when he came back out of the house. That's when Kevin Johnson,

COQDAG
SEE

RLI

Wade S. Folsom
et. R. S. Brammon
M. Morris

Robyn Dukes

RLD

Jeff Burgess, and this guy named "Meatballs" came up in a gold Mazda 626. By that time, Joe and Tyrone had come back from walking down on the corner and that's when Kevin told Joe Sumpter to take Jeff's bike and meet them around the corner. Joe said, "alright". Wise looked at Tyrone and asked, "What's up". Tyrone said, "Nothing, I'm just coming back to talk to my cousin (meaning me, Robyn Dukes). Tyrone and I walked off and left Wise and Joe standing there talking to each other. Kevin and them pulled off.

Tyrone and I walked down Bartlette to Sampson Street just talking about each other's family and how they were doing. We went to "Nut Nut's" house on Sampson Street to get some liquor but there wasn't anyone there so we turned around and went down Kelly Lane and that's when we seen "Nut Nut" and his wife sitting in a Blue & Gold Blazer.

Tyrone asked him for a ride and "Nut Nut" told him he wasn't going that way. I guess he meant to the Southside. We asked him for some liquor before he left but he said he wasn't doing anything today so we kept walking. ^{Bike} [We got to the end of Kelly Lane and turned on Edwards Street going toward Bartlette Street when we saw someone riding down Bartlette Street wearing a camouflage mask and jacket. The guy looked at us and then turned up Edwards Street towards us. I saw that he was riding up on a brand new Blue Murray Mountain bike.] I realized then that it was Wise because I could see his eyes through the mask. He was wearing a camouflage mask, a camouflage jacket along with the same ashy blue jeans and shoes he was wearing earlier when I saw him. He was also on his bicycle that I had seen at his drug house before. ^{Bike} [I remember the bike because I was there when he bought the bicycle from a smoker named "West". (A black guy off of Broad Street).] Anyway, as he came up toward us, Tyrone started hollering, "I didn't do anything, I didn't do nothing". I just stood there. I figured that Wise was fixing to jump off the bike and bust him up. Wise pulls up and immediately pulls out a black .45 caliber handgun that I have seen him carry before and hit Tyrone across the front of his head. ^{check} ^{RESUL}

Tyrone was covering his head up with his hands. As he did this, Wise said, "Quit breaking into people's stores". I recognized the voice as Wise's (Mark McCoy). Tyrone broke out across me, running away from Wise. ^{Bike} [I watched as Wise dropped the bicycle and ran after him, maybe four or five steps.] He had already tucked the .45 away in his left pocket of the camouflage jacket and pulled out a nickel-plated revolver. Wise fired one shot with his left hand at Tyrone. Right after the shot, Tyrone screamed "oh, God,

Wale & Koelger
Det. Russell Brown
Det. [unclear] [unclear]

Robyn Dukes

R1

RLD "somebody help me" before he went down. He went down on his left side, staggering forward using his left hand to keep himself up. Wise just stood there so I broke (meaning ran) across the field. I came out across to Bartlette and Blanding and that's where I saw Wise as he turned onto Blanding Street. He was wearing the same clothes and riding the same bicycle as when he shot Tyrone except that he had taken the mask off and had it in his right hand on the handlebars of the bicycle. He yelled for me to go back on my side of town so I kept running. I saw him turn the bicycle into his girlfriend's yard, right across the street where his drug house is. That was the last time I saw Wise that day. I ran down to Oakland and that's where I saw Jeff Burgess standing with a Black Huffy bicycle. The bicycle had white lettering. I ran up to Jeff and he asked, "what's up" and I told him that someone had just shot Tyrone. He asked "who's that?" and I said, "the guy you saw me with a little while ago". He didn't ask who shot him. I asked him to give me the bicycle so I could get out of there. Jeff got off the bike and handed it to me so I could ride off. I left and went to my grandmother's house on Dingle Street. I parked the bicycle on the front walkway and went inside. I walked in and spoke to my grandmother and then went back outside. I kneeled down, tired. My girlfriend and Frank asked what's wrong and I told them nothing. By that time, the police pulled up and arrested me.

I have seen both of those guns that Wise had with him. Wise keeps them at his girlfriend's (Kim) house across the street and his grandfather's house over by Sumter High School. The first time I saw them was sometime this year at the drug house. The revolver has a walnut brown wooden handle and the .45 caliber is a blue/black steel automatic with dark wooden handles. RLD

NAME: Robert D. [Signature]

WITNESS: Wale Steele

WITNESS: Deanna [Signature]
Det. Mike [Signature]

*Blow up

TR

Det Mike M...

TCR 1544

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

Blow Up
 MARK SANFORD
 Governor

ROBERT M. STEWART
 Chief



TRACE EVIDENCE DEPARTMENT

E. C. J. K. Foisey
 Sumter Police Department
 107 East Hampton Avenue
 Sumter, SC 29150

July 29, 2004
 SLED Lab No: L04-05850
 Your Case No: 04057789
 Incident Date: 06/08/04
 (S) Dukes, Robin
 (V) Pettis, Donald

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no pre-examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
 South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 8: One GSR kit from Donald Pettis

RESULTS:

In the samples submitted in the kit labeled "Pettis, Donald Tyrone Jr.", the quantities of metals detected did not indicate the presence of gunshot residue.

Item 9: One GSR kit from Robin Dukes

RESULTS:

In the samples submitted in the kit labeled "Robyn Levern Dukes", round lead particles were found on the right palm. Round lead particles are one of the components of gunshot residue. The results for the back of the left hand are inconclusive.



Item 10: One white shirt**RESULTS:**

Three holes were found in the white shirt: one hole in the center of the abdominal region, one hole in the lower right front region and one hole in the lower left back region. No pattern of gunpowder residue or lead was detected around the hole in the lower right front. No gunpowder or lead was detected around the hole in the center of the abdominal region and the hole in the lower left back region.

Item 11: One white T-shirt**RESULTS:**

Two holes were found in the white T-shirt (inner garment). These holes are consistent with holes found in the white shirt (outer garment, item# 10)

These examinations were conducted by Senior Agent Hue C. Tang, Forensic Trace Evidence examiner with this Division.



Hue C. Tang
Senior Agent

8/17/04
Date

HCT



STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Mark McCoy, 210705

Applicant

State of South Carolina

Respondent

RECORDED

2013 OCT -2 PM 12:45

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COMMON PLEAS COURT

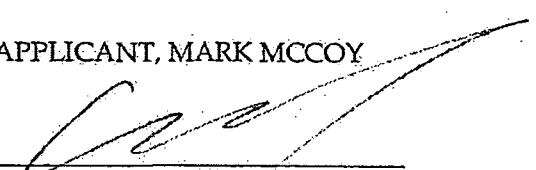
DOCKET NO.: 2012-CP-43-1090

AMENDMENT TO
POST CONVICTION RELIEF
APPLICATION

The Applicant through undersigned Counsel wishes to Amend his Application for Post
Conviction Relief filed on June 5, 2012 as follows:

SEE ATTACHED TOTALING 22 PAGES

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, MARK MCCOY


 Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

October 1, 2013

STATE OF SOUTH CAROLINA **RECORDED**

COUNTY OF SUMTER 2013 OCT -2 PM 12:45

IN THE COURT OF COMMON PLEAS
CLERK OF COURT
SUMTER COUNTY, S.C.C/A No. 2012-CP-43-1090

Mark McCoy -- Applicant,

-Vs-

State of South Carolina -- Respondent,

AMENDED POST CONVICTION RELIEF APPLICATIONPURSUANT TO RULE 15, SCRCPMark McCoy
SCDC# 210705
BRCI
4460 Broad River Rd.
Columbia, SC, 29210

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

RECORDED
2013 OCT -2 PM 12:45JAMES E. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Mark McCoy

) C/A No. 2012-CP-43-1090

Applicant,

)

-Vs-

) AMENDED POST CONVICTION RELIEF

State of South Carolina

) APPLICATION PURSUANT TO RULE 15

Respondent,

)

SCR.CIV.P.

)

COMES NOW, above captioned Applicant, Mark McCoy, by and through attorney of record, Charles T. Brooks, III, who respectfully moves this Honorable Court to amend the Original Application in the above captioned case number pursuant to Rule 15, SCRCiv.P.

Respectfully Submitted,

/s/ Mark McCoy
Mark A. McCoy

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE
TRIAL COURT'S ERRONEOUS REASONABLE DOUBT JURY INSTRUCTION?

Facts

Applicant asserts he was denied his Sixth Amendment right to the effective assistance of counsel when counsel failed to object to the Trial Court's erroneous jury instructions on "reasonable doubt"; and the failure of counsel to object denied Applicant his Fourteenth Amendment right to a fair trial.

During the Court's instructions to the jury the Court gave the following instructions when charging the jury on "reasonable doubt", as was recorded:

The presumption of innocence accompanies the defendant from the time of his arraignment and appearance in this court and continues with the defendant after you retire to the jury room to deliberate your verdict. The presumption of innocence continues in existence to the benefit of the defendant until you, the jury, reach the conclusion that the State has proven the guilt of the defendant beyond a reasonable doubt.

Now, the State is not required to prove the guilt of a defendant beyond all doubt or beyond every doubt, but beyond a reasonable doubt. What is reasonable doubt? It is not an imaginary or fanciful doubt or a weak doubt, it is a substantial doubt. It is a doubt which the words imply, a doubt for which you can give or assign a reason based on the testimony and evidence in this case. A reasonable doubt is not any sort of doubt. You know from everyday life experiences that you may have sort of a doubt about any matter that arises no matter how trivial it may be or how serious it may be. A

reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth hesitate to act,
[Tr.p.189, 11.14-25,- p.190, 11.1-10].

As is seen in the above underlined, the Trial Court has instructed the jury that "reasonable doubt" is not an imaginary or fanciful doubt or a weak doubt, but is a substantial doubt. It is a doubt for which you can give or assign reason." Applicant would assert this comment allowed the jury to find guilt based on a degree below the required by the Due Process Clause.

The Court further instructed the jury as is seen in that "a reasonable doubt is a doubt for which an honest, sincere, conscientious juror "in search of the truth" hesitate to act." Applicant would assert this is a structural error as the Court's charge has impermissibly shifted the burden of proof in violation of the Due Process Clause.

The Court went on to instruct the jury:

The very fact, however, that the jury engages in a full and free discussion of the issue of guilt and non-guilt in the case with the normal conversational ebb and flow on these issues does not automatically mean that reasonable doubt exist in this case or in any other case, [Tr.p.190, 11.19-23].

These considerations you do not exercise arbitrarily, but if in your good judgment, there is sound reason for so doing. Because your objective, ladies and gentlemen is to find the truth, whether it comes from one or more witnesses, [Tr.p.194, 11.14-18].

As is seen here the Court has now charged the jury in a way the jury could have interpreted the instruction to mean that reasonable doubt does not exist, and therefore could have been interpreted as directing a verdict for the State. The instructions were more confusing since the Court instructed the jury that "their job is to find the truth", thus impermissibly shifting the burden of proof in violation of the Due Process Clause.

Applicant would assert the Court's jury instruction on reasonable doubt was so confusing that a reasonable juror could have interpreted the charge as whole to allow finding of guilt based on a degree of proof below that required by the Due Process Clause.

Applicant would assert counsel failure to object denied him his right to the effective assistance of counsel and his right to a fair trial.

DISCUSSION

The error Applicant complains of is identical to those addressed and found reversible error in *State v. Manning*, 495 S.E.2d 372 (S.C.1991). In *Manning* the Court first instructed the jury "that reasonable doubt is a doubt for which you can give a real reason"; the Court further instructed the jury that "a reasonable doubt is a substantial doubt for which honest people, such as you, when searching for the truth can give a real reason." In conclusion, the *Manning* Court found the defective aspects of the trial judge's charge on reasonable doubt rendered it so confusing that a reasonable juror could have interpreted

the charge as a whole to allow a finding of guilt based on a degree of proof below that required by the Due Process Clause. In so holding, the Court said we are aware of the difficulty of defining reasonable doubt to a jury. The Court further concluded the term "reasonable doubt" may be best understood when the jury is simply instructed to give it its plain and ordinary meaning, citing *United States v. Moss*, 756 F.2d 329 (4th Cir.1985). In an abundance of caution the Court suggested that the trial bench give no further definition of that approved in Holland, *infra*,: "A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act."

In *State v. Aleskey*, 538 S.E.2d 248 (S.C.2000), the Court held that jury instructions on reasonable doubt which charge the jury to "seek the truth" are disfavored because they run the risk of unconstitutionally shifting the burden to the defendant, citing *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998). The Needs Court urged trial courts to [avoid] the "seek" language when charging on reasonable doubt.

In *United States v. Gonzales-Balderas*, 11 F.3d 1218 (5th Cir.1994), analyzing a reasonable doubt instruction determined, an instruction stating that the jury is to "seek the truth" is error [if] used in explanation of concept of proof beyond a reasonable doubt, as abstract concept, "seeking the truth" suggests determining whose version of events is more likely true, government's or defendants and thereby intimates preponderance of evidence standard, citing *Cf. Cage v. Louisiana*, 498 U.S. 39, 111 S.Ct. 328 (1990).

The Due Process Clause of the Fourteenth Amendment "safeguard[s] against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt, *Taylor v. Kentucky*, 436 U.S. 478, 98 S.Ct. 1930 (1978).

An instruction is defective [if] a reasonable juror could interpret it to allow a finding of guilt based on a degree of proof below that required by the Due Process Clause, *Cage v. Louisiana*, 498 U.S. 39, 111 S.Ct. 328 (1990)(per curiam).

Such an instruction "could lead the jury into finding no reasonable doubt when in fact there was some", *Holland v. United States*, 348 U.S. 121, 75 S.Ct. 127 (1954).

Our Fourth Circuit Court of Appeals disapproves of judicial efforts to define reasonable doubt absent specific request from the jury, *United States v. Headspeth*, 852 F.2d 753, 755 (4th Cir.1988). A Constitutionally deficient reasonable doubt instructions cannot be harmless error even if evidence of guilt is overwhelming, reversal is required, *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078 (1993). The United States Supreme Court has recognized that certain structural errors are so severe as to render a trial inherently unfair and thus, should not be subjected to harmless error analysis, *Arizona v. Fulminate*, 499 U.S. at 309-10, 111 S.Ct. at 1264-65, see e.g. *Sullivan*, supra.

In construing the instruction, the Court should consider how reasonable jurors could have understood the charge as a whole, *Francis v. Franklin*, 471 U.S. 307, 316 (1985).

In the instant case the reasonable doubt instructions given by the trial Court were extremely confusing and constitutionally

deficient. The instructions mirrored those admonished in Manning, Aleskey, and Needs, Cage and Sullivan, supra, and found reversible.

This Court should have no problem finding counsel rendered ineffective assistance when counsel failed to object to the Trial Court's deficient reasonable doubt instructions.

Applicant respectfully prays this Court will grant a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S INSTRUCTIONS TO THE JURY ON "EXPRESS MALICE" THAT IMPERMISSIBLY COMMENTED ON THE FACTS OF THE CASE WHEN THE TRIAL COURT USED HYPOTHETICAL EXAMPLES OF THE FACTS OF CASE, THAT WERE TO BE DETERMINED BY THE JURY?

Facts

During closing summation the Prosecutions argued that Latimore said he knew Wise [Applicant], had known him for a while, he saw him in camouflage and saw him "pull on a mask" and saw him shoot Tyrone [the victim] in the back. The Prosecution further argued that Applicant allegedly told Roland Bostic that the murder occurred because the victim allegedly broke into someone's store. That he told him about the phone call, and although he didn't mention the name Ivan Sanders, he said whoever he called told him to just let it go. And what was his response? Yeah, right. It's my neighborhood. I own the west side. I'm not letting it go. When asked about it and asking him directly about the victim, Wise [Applicant] said, The nigga just had to get got".

The Prosecution further argued, Ladies and gentlemen, I submit to you that is the essence of this case, that Mr. McCoy [Applicant] had absolutely no respect for the law or even his own neighbors and associates and friends in his own neighborhood. The judge will instruct you on the law and elements of the crimes of murder and possession of a firearm during the commission of a violent crime, [Tr.p.169-p.173].

Coming directly after the State's closing summation the Trial Court charged the jury regarding "express malice", as was recorded:

Express malice is shown when a person speaks words which express hatred or ill will for another "or when the person prepared before hand" to do the act which was later accomplished. For Example: in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind would be express malice, [Tr.p.196, 11.1-6].

Applicant would assert as is seen in the above the Trial Court used hypothetical examples of the facts of case just argued by the Prosecution, and further during the use of "examples" reiterated facts as presented by the Prosecution and told the jury "lying in wait for a person or any other acts of preparation, would be express malice", thus resulting in an impermissible comment of the facts.

Applicant asserts he was denied the effective assistance of counsel when counsel failed to object to the Trial Court's use of "examples" of express malice in the jury instruction that clearly impermissibly commented on the facts of the case that was to be determined by the jury.

DISCUSSION

Applicant asserts that he was denied the effective assistance of counsel when counsel failed to object to the Trial Court's express malice charge that used hypothetical "examples"

of the facts of case. The Trial Court's examples created in effect an impermissible comment of the facts of the that directed a verdict for the State.

Judicial comments on the facts of a case is prohibited in South Carolina, See South Carolina Constitution Art. 5, §17, "A trial judge may not instruct the jury regarding what weight should be given to certain evidence or that certain evidence is or is not entitled to consideration from them.

As the South Carolina Supreme Court said in *State v. Hartley*, 414 S.E.2d 182, at 183:

"A judge shall not charge in respect to matters of fact, but shall declare the law, *State v. Bagwell*, 23 S.E.2d 244 (1942)(A judge cannot express in his charge, or intimate any opinion as to the weight or sufficiency of testimony without violating the prohibition of the Constitution as to charging upon the facts), 75 A.Am.Jur.2d Trial §1203 at 693 (1991)(The trial court may not instruct the jury what weight should be given [to the evidence], or even that any particular evidence is or is not entitled to receive weight or consideration from them), *State v. Edwards*, 120 S.E. 490 (1923)(Wherein our Supreme Court held that the absence of motive is a mere circumstance to be considered by the jury and rejected an instruction that the absence of motive may raise a reasonable doubt as to the defendant's guilt because it was a charge on the facts).

In the instant case the Court's "examples" of express malice reflected the facts of the case and reiterated "points" stressed in the State's closing argument to the jury. The definition included examples which concurred with the State's articulated theory of malice.

This charge only reiterated the facts as put forth by the Prosecution, to where the "express malice" charge could have reasonably been interpreted as a judicial endorsement of the Prosecution's argument. Proving malice was essential to the State's case against Applicant. Since the Court's charge impermissibly skewed the jury's consideration of the facts regarding these issues, Applicant was unduly prejudiced by the error and counsel was ineffective for failing to object to the improper instructions given by the Court.

Applicant would further argue that his Due Process rights to a fair trial were violated as a result of the comments by the Court. For through the doctrine of substantive due process, all fundamental rights comprised within the term of liberty are protected by the Federal Constitution from invasion by the States, *Whitney v. California*, 47 S.Ct. 641 (1927).

The threshold question is whether the comments by the Trial Court were sufficiently conscience-shocking as to implicate substantive due process protections. Applicant contends that they were, because the Trial Court acted intentionally, for the purposes that only served the Prosecution. Here the issue asserted is one protected by the Due Process Clause, when it's violation by the Court served a compelling interest, which amounted to abuse of power sufficient to shock the judicial conscience, *Lewis v. County of Sacramento*, 118 S.Ct. at 1717-18.

Applicant contends that these direct comments by the Trial Court were a direct violation of his rights to a fair trial, and that the only purpose served by this was to direct a verdict for

the State. Furthermore, Counsel was ineffective for failing to object and preserve this meritorious issue for appellate review, as had counsel objected there is a reasonable probability that but for this deficiency the results of the trial as well as the appeal may have been different.

For the aforementioned violations, Applicant respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (C) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S JURY INSTRUCTIONS ON MALICE THAT RESULTED IN A MANDATORY PRESUMPTION WHEN THE TRIAL COURT FAILED TO CHARGE THE JURY THEY COULD "ACCEPT OR REJECT" THE INFERENCE OF MALICE BASED ON THEIR CONSIDERATION OF THE EVIDENCE?

Facts

Applicant asserts he was denied the effective assistance of counsel when counsel "failed" to object to to the Trial Court's jury instructions when the Trial Court "failed" to instruct the jury they could "accept or reject" the inference of malice based on their consideration of the evidence presented by the State. Counsel's failure to object resulted in a mandatory presumption in violation of the Due Process Clause.

The Trial Court told the jury that: "To these charges and to this indictment, the defendant has entered a plea of not guilty. This plea of not guilty places the burden of proof on the State to prove by evidence the guilt of the defendant beyond a reasonable doubt before you, the jury, can find the defendant guilty", [Tr.p.188, 11.14-19].

During the Trial Court's jury instructions the following was recorded:

The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill will or hostility towards another person. It is the intentional doing

of a "wrongful act" without just cause or excuse and with an intent to inflict an injury or under the circumstances that the law will infer an evil intent, [Tr.p.195, 11.8-14].

Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was law accomplished. For example lying in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind would be express malice. Malice may be inferred from conduct showing disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.

A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instructions which may be deadly weapons, a pistol, shotgun, rifle, dirk, dagger, knife, slingshot, metal knuckles, razor are types of deadly weapons. A gun may be a deadly weapon even if it is not operated, [Tr.p.196, 11.1-18].

Now the second crime....

From the onset the Trial Court told the jury the burden of proof was on the State to prove Applicant's guilt beyond a reasonable. As is seen in the above the Court charged the jury they could find the element of malice [if], they, the jury could conclude Applicant committed a "wrongful act". Applicant would assert this charge substantially lightened the State's burden, as the trial record was replete with "drugs", thus the wrongful act. The Trial Court further told the jury that if they didn't find the element of malice from the wrongful act, then malice is inferred "from the use of a deadly weapon." Applicant would

further assert this instruction created a mandatory presumption, especially since the Trial Court utterly "failed" to instruct the jury they could "accept or reject" the inference of malice based on their view of the evidence and give it such weight as they, the jury, so determine.

In State v. Elmore, 308 S.E.2d 781 (S.C.1983), our Supreme Court suggested the following charge:

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

The Court further "cautioned" the bench, that thereafter only slight deviations from this charge would be tolerated (emphasis original), Id. at 784.

Thereafter in State v. Peterson, 287 S.C. 244, 247, 335 S.E.2d 800 (1985), Our Supreme Court said that the trial judge should make it clear that "the jury can "accept or reject" the inference of malice and give it such weight as the so determine.

Applicant here would assert that because the Court failed to instruct the jury they could "accept or reject" the inference of malice from the intentional doing of a wrongful act and the inference of malice from a deadly weapon, the Court's malice charge created a mandatory presumption that denied Applicant his right to a fair trial.

Discussion

In a long line of cases, culminating in *Yates v. Evatt*, 500 U.S. 391 (1991), the United States Supreme Court recognized that the prosecution must prove each and every element of the crime charged beyond a reasonable doubt, citing *In re Winship*, 397 U.S. 158 (1970). The burden of proof on any element cannot be shifted to the defense; because in so doing it decreases the State's burden of proving the crime beyond a reasonable doubt. As early as 1975 the Supreme Court considered a Maine Rule which required the defendant charged with murder to prove that he acted in the heat of passion in order to reduce the homicide to manslaughter. The Court determined that a State could not shift the burden on any element of the crime to the defendant, finding the risk described to be intolerable, reversing the conviction, *Mullaney v. Wilbur*, 421 U.S. 684, 701 (1975).

The Court overturned a another conviction in *Sandstrom v. Montana*, 442 U.S. 510 (1979). Montana law provided that a person could be charged with deliberate homicide when that person "purposely or knowingly" caused the death of another and, at Sandstrom's trial, the trial judge instructed the jury that: "The law presumes that a person intends the ordinary consequences of his voluntary acts, Id at 512. After considering Sandstrom's argument, the Court agreed that the effect of that was to shift the burden of proof to Sandstrom on a critical element of the offense. The Court reiterated that a State must prove every element beyond a reasonable doubt and the defendant cannot be required to prove any elements of his defense or disprove any

element of his crime, holding a "reasonable juror might have interpreted the instruction either as a conclusive presumption or as a burden shifting presumption, but either interpretation, the Court rendered the instruction unconstitutional."

In *Francis v. Franklin*, 472 U.S. 307 (1985), the Court found that the use of a "rebuttable" presumption was also unconstitutional for the same reason set forth in *Sandstrom*.

Following *Sandstrom v. Montana*, *Mullaney v. Wilbur*, and *Francis v. Franklin*, the case of *Yates v. Evatt*, 310 S.E.2d 805 (1982), 474 U.S. 896 (1985) (*Yates v. Aiken*); and 500 U.S. 391 (1991), wound it's way through the judicial system on identical issues. This matter [is] stare decisis in South Carolina.

On remand of the *Yates* case (*Yates v. Aiken*, 474 U.S. 896 (1985)), the Supreme Court of South Carolina noted that the jury instructions at Yates trial suffered from the same infirmities present in Elmore, supra. The Due Process Clause of the Fourteenth Amendment "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged, In re Winship, 397 U.S. 358, 364 [90 S.Ct.1068, 1072 (1970)]. This "bedrock, axiomatic and elementary" [constitutional] principle, *id* at 363 [90 S.Ct.at 1072], prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of it's burden of persuasion beyond a reasonable doubt of every essential element of a crime [citation omitted]. The prohibition protects the "fundamental value determination of our society," given voice in Justice Harlan's

concurrence in Winship, "that it is far worse to convict an innocent man than to let a guilty man go free", 397 U.S. at 372 [90 S.Ct. 1077].

Mandatory presumptions violate the due process clause "if they relieve the State of the burden of persuasion on an element of an offense, Franklin, Sandstrom, Mullaney, Yates, supra.

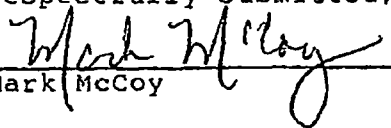
Applicant contends that based upon the case law as presented, there is no doubt that the malice instructions given in Applicant's trial were unconstitutionally mandatory and burden shifting. This may not be considered harmless where there is no other evidence to be considered "overwhelming", or that Applicant could be found guilty on beyond a reasonable doubt. If the jury followed the Trial Court's instructions and it must be presumed that they did, then the Jury had to look no further than the "wrongful act"... [drugs], or the use of a "deadly weapon", and thus committed a "wrongful act without just cause or excuse. In doing so, the Judge instructed the jury to direct a verdict for the State. This is easily seen as the Trial Court "failed" to instruct the jury they could "accept or reject" the inference of malice, and therefore the Court's instructions resulted in an unconstitutional mandatory presumption in violation of the Due Process Clause. As a result Applicant was denied his Sixth Amendment guarantee to the effective assistance of trial counsel and his Fourteenth Amendment right to a fair trial.

Based on the foregoing, Applicant respectfully asks this Honorable Court to grant the requested relief of a new trial.

CONCLUSION

WHEREFORE, based on the foregoing, Applicant respectfully prays this Honorable Court will grant the requested relief of a new trial.

Respectfully Submitted,

/s/ 
Mark McCoy

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)

Mark McCoy) C/A No. 2012-CP-43-1090

Applicant,)

-Vs-)

CERTIFICATE OF SERVICE

State of South Carolina)

Respondent,)

The undersigned hereby certifies he has served a true and correct copy of the enclosed Amended Post Conviction Relief Applicant on Attorney for Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC. 29211, by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this day of September, 2013.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 27 DAY OF SEPTEMBER, 2013

Eugene Keefe
NOTARY PUBLIC

MY COMM. EXPIRES

Respectfully Submitted,

/s/s

Mark A. McCoy
Mark A. McCoy

My Commission Expires April 4, 2018

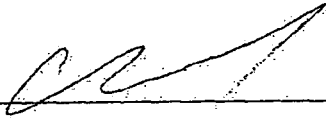
RECORDED

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
COUNTY OF SUMTER 2014 FEB 21 AM 10:55)
MARK MCCOY) DOCKET NO.: 2012-CP-43-1090
Applicant,)
-v-) AMENDMENT TO
STATE OF SOUTH CAROLINA) POST-CONVICTION RELIEF
Respondent,) APPLICATION
_____)

The Applicant, through undersigned Counsel, wishes to file this additional
Amendment to his Post Conviction Relief Application to also include:

ALLEGED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Mark McCoy


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
803-418-5708

February 20, 2014

1 State of South Carolina

2 County of Sumter

3

4 Mark McCoy,
Plaintiff

PCR Hearing
2012-CP-43-01090

5

6 vs.

7 The State of South Carolina,
Defendants

February 27, 2014
Sumter, S.C.

8

9

10

11 Before the Honorable George C. James, Jr.,

12 Judge.

13

14

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

16

17 Mr. Charles T. Brooks,
Attorney for Plaintiff

18

19 Mr. Daniel Gourley,
Attorney for Defendant

20

Margaret T. Sullivan,
Court Reporter

21

22

23

24

25

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Mark McCoy				
2	by Mr. Brooks	7			
	by Mr. Gourley		58		
3	I.S. Levy Johnson				
	by Mr. Brooks	62		82	
4	by Mr. Gourley		75		85
	Kimberly Delay				
5	by Mr. Brooks	90			
	by Mr. Gourley		98		
6	Catherine Fant				
	by Mr. Brooks	100			
7	by Mr. Gourley		110		
	Sergeant Irene Culick				
8	by Mr. Gourley	117			
	by Mr. Brooks		121		
9	Lieutenant Angela Rabon				
	by Mr. Gourley	125			
10	by Mr. Brooks		127		

	<u>EXHIBITS</u>		
	<u>No.</u>	<u>Description</u>	<u>Id. Ev.</u>
13			
14	S-1	Motion for In Camera	79
	P-1	Discovery	16
15	P-2	Letter	29
	P-3	Letter	29
16	P-4	Report of Investigator Holmes-	36
	P-5	Interview Form	97

1 THE COURT: We are on the record now
2 2012-CP-43-1090. And this is the application of Mark
3 McCoy for post conviction relief. Mr. Brooks, are you
4 ready to proceed?

5 MR. BROOKS: Other than what I told you off the
6 record, Judge.

7 THE COURT: Okay, do you need to talk to him?
8 How long is that going to take?

9 MR. BROOKS: I mean, we've had conversations
10 throughout originally, Judge. I just haven't seen him
11 today. He said give me 10 minutes, that's all.

12 THE COURT: Where are you going to go?

13 MR. BROOKS: In the conference back here.

14 THE COURT: Okay. We're going to start right
15 back at 2:15. I hate to be difficult, but this has been
16 kind of a constant thing all week. Two o'clock has got
17 to mean something.

18 MR. BROOKS: I know.

19 THE COURT: Okay, we'll take a 10-minute break.

20 (Whereupon, the court takes a short recess.)

21 THE COURT: Okay, this is again Mark McCoy
22 versus the State of South Carolina 2012-CP-43-1090. You
23 were, Mr. Gourley, first of all, give me a brief
24 history. And then, Mr. Brooks, you can give either an
25 opening remark or call your first witness. I will leave

1 that up to you.

2 MR. GOURLEY: This is Mark McCoy versus the
3 State of South Carolina. Docket No. 2012-CP-43-1090.
4 He is presently confined in the South Carolina
5 Department of Corrections pursuant to an order of
6 commitment with the Sumter County Clerk of Court. He
7 was indicted at the September 2008 term in Sumter County
8 for murder and possession of a firearm during the
9 commission of a violent crime. Mr. I.S. Levy Johnson
10 represented him.

11 On September 22nd through the 25th, 2008, he
12 proceeded to a jury trial before the Honorable Howard P.
13 King. And on September 25th 2008, he was found guilty
14 on all counts. Judge King sentenced the applicant to
15 life imprisonment for murder, 5 years imprisonment for
16 possession of a firearm during the commission of a
17 violent crime. With all sentences to be served
18 concurrently -- or consecutively. A timely notice of
19 appeal was filed. And the following a submission of an
20 Anders brief, the South Carolina Court of Appeals
21 dismissed the appeal. The remittitur was sent on August
22 11th 2011. And subsequently filed a post conviction
23 relief application on June 5th 2012.

24 The petitioner filed several amendments, Your
25 Honor. Those dates include June 5th 2012, September

1 24th 2013, February 8th 2013. And I believe one just
2 recently alleging ineffective assistance of appellate
3 counsel. Your Honor, the State made its return on
4 November 30th, 2012. And he's represented here today by
5 Mr. Brooks.

6 THE COURT: Okay, so the last amendment I have,
7 Mr. Brooks, is clocked in September 24th 2013. And that
8 might not be the only one or the last one that there is.
9 When did you amend to include appellate issues?

10 MR. BROOKS: The appellate issue just this week,
11 Judge. But the one before that, I have got an amendment
12 clocked in on October 7th 2013. That might be the one
13 you are referring to.

14 THE COURT: Is this in Mr. McCoy's words?

15 MR. BROOKS: Yes.

16 THE COURT: The amendments have to be done by
17 you.

18 MR. BROOKS: No, no, no. I submitted it.

19 THE COURT: I know, but you can't submit
20 something he wrote. You're the lawyer. At least that's
21 the way I look at it. In other words, it might have
22 some stuff in there that doesn't belong in there or
23 doesn't communicate things very well, but if you are PCR
24 counsel, you have to go through it, and you have to
25 offer it. That's my -- that seems -- in other words,

1 you all aren't co-counsel. So you are the lawyer. If
2 he sends you something saying hey, I want to amend this.
3 As an officer of the court, you have the obligation to
4 look at it and be the offer. Because sometimes when you
5 know just your signature page is put on the front of it
6 and you say here is an amendment, I don't think that's
7 the way it can be done. I will consider it, if I can
8 understand it. But lots of times as you know, we can't
9 understand what they're trying to say.

10 Do you to tell me about it, or do you want to
11 call your first witness?

12 MR. BROOKS: I'm ready to call my first witness.

13 THE COURT: Okay.

14 MR. BROOKS: I would call Mark McCoy.

15 MR. GOURLEY: Your Honor, if I may, I would ask
16 Mr. Brooks to just put the allegations on the record so
17 that we have a basis of going forward.

18 THE COURT: Well they're in the applications,
19 aren't they?

20 MR. GOURLEY: Yes, sir. In addition to the
21 amendments.

22 THE COURT: Is that one of the rules? Are you
23 talking about so you can follow the---

24 MR. GOURLEY: So we can follow the line and
25 understand what we put on there.

Mark McCoy-Direct by Brooks

1 THE COURT: Mr. Brooks.

2 MR. BROOKS: Judge, we put it in the
3 amendments that we filed. But obviously---

4 THE COURT: Well I am not going to require
5 him to do that. But if they don't cover
6 something that is purportedly in writing, I am not
7 going to consider it unless it's gone over in
8 testimony or other evidence today.

9 MR. BROOKS: We would call Mark McCoy.
10 Mark McCoy, being first duly
11 sworn, testified as follows:

12 THE BAILIFF: State your name and spell
13 your last for the record.

14 A Mark McCoy. M-C-C-O-Y.

15 THE COURT: Mr. Brooks.

16 Direct Examination by Mr. Brooks:

17 Q Mr. McCoy.

18 A Yes, sir.

19 Q How are you today?

20 A I'm fine.

21 Q We are here for your post relief
22 application. And we've alleged allegations to ask
23 the court for a new trial, is that correct?

24 A Yes, sir.

25 Q Now one of the allegations you have raised

Mark McCoy-Direct by Brooks

1 is a Brady violation. Is that correct?

2 A Yes, sir.

3 Q Okay. Is that dealing with a witness in
4 your case by the name of Kimberly Delay?

5 A One of them, yes, sir.

6 Q Can you explain that to the court?

7 A Explain the whole situation or?

8 Q Yeah, explain the whole situation.

9 THE COURT: No, let's go one witness at a
10 time or one violation at a time.

11 MR. BROOKS: Okay.

12 THE COURT: So I can understand it.

13 MR. BROOKS: Okay.

14 Q The Brady violation that you have alleged
15 in your application, and let me ask you this,
16 Mark, for housekeeping matters, because this lady
17 sitting right here next to you is the Court
18 Reporter. So you've going to have say yes and no.
19 You can't just rely on uh-huh and uh-uh, like
20 talking in the conference, because she can't take
21 that down.

22 A Yes, sir.

23 Q Okay. One of your allegations deal with
24 the Brady violation. And it deals I know one
25 particular witness. And we will cover this

Mark McCoy-Direct by Brooks

1 witness first, and that's Kimberly Delay. Is that
2 correct?

3 A Yes, sir.

4 Q There's an alleged violation dealing with
5 her as a witness in your case.

6 A Absolutely, sir.

7 Q She testified in your case.

8 A Yes.

9 Q She testified that basically she knew
10 about you committing this murder, isn't that
11 correct? That's what she said in court.

12 A What she said was that I came to her
13 house, and I changed my clothes and I changed into
14 camouflage. And I left and when I came back maybe
15 5, 10 minutes later, that I was sweating, I think.
16 Sweating. That was it.

17 Q Okay. And you found out that she had
18 given to your knowledge, she had given a statement
19 before that to law enforcement saying something
20 different, isn't that correct?

21 A Oh, absolutely.

22 THE APPLICANT: Your Honor, may I confide
23 in my attorney one second?

24 THE COURT: No.

25 A No.

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1 THE COURT: I mean, he's asking you
2 questions. A request is not going to come from
3 the witness. And if we do take a break, he can't
4 talk to you about his testimony.

5 Q Kimberly Delay.

6 A Yes.

7 Q She gave a statement.

8 A Yes, sir.

9 Q Saying something different.

10 A Yes, sir.

11 Q You discovered that in the course of the
12 federal case that was involved, is that correct?

13 A Yes, sir.

14 Q What did you discover?

15 A What I discovered at the time was, there
16 was a Sumter Police report, an interview, and this
17 interview was done by three investigators. And
18 one of the Investigators was Eugene Williams, a
19 senior detective. And he was the detective that
20 was investigating the murder case. The first
21 issue here is I would like for the court to
22 realize that Eugene Williams when I was initially
23 arrested also, Eugene Williams the senior
24 detective over the investigation office, he was
25 the same officer that spoke with me also. Well he

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1 wanted -- allegedly he wanted to speak with me,
2 but I never spoke to him.

3 Okay, what I found was that Kimberly
4 Delay had made statements to the same
5 investigating officer who is Eugene Williams.

6 Q Okay.

7 A And within this statement that, you know,
8 when the police were questioning her, she said to
9 them----

10 MR. GOURLEY: Your Honor, I would object.
11 That's hearsay.

12 THE COURT: Well---

13 MR. BROOKS: It's not hearsay.

14 THE COURT: Wait just a second. Yes, sir.

15 MR. BROOKS: What he's talking about is
16 the report that he discovered about her initial
17 statement. That's what he is referring to. So
18 it's not being offered to prove the truth of
19 the matter asserted.

20 THE COURT: Yes, sir.

21 MR. GOURLEY: This report isn't into
22 evidence. There is no foundation laid for it.

23 THE COURT: Well I don't know what it is,
24 because I haven't seen them. I've got to look
25 at them. They've got to be marked for ID. And

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1 I've got to look at them to rule on them. So
2 let's, if you're going to talk about a piece of
3 paper with the witness, if you want the record
4 to be clear, you can mark it for ID or you can
5 continue.

6 MR. BROOKS: And Judge, that's why I was
7 asking him to explain and get into then use
8 that---

9 THE COURT: Go ahead.

10 MR. BROOKS: ---as evidence.

11 THE COURT: The objection is overruled at
12 this point.

13 Q Now, Mark.

14 A Yes, sir.

15 Q Go ahead. What did you find?

16 A I found a Sumter Police Department
17 Interview Form with Kimberly Delay signed, and the
18 investigators that were questioning her also
19 signed, which was including Eugene Williams.

20 Q And what is the date of that report?

21 A This is January 22nd of 2008, 8 months
22 before my trial.

23 Q The trial in this case.

24 A Yes, sir.

25 Q And does it, in that package, did it have

Mark McCoy-Direct by Brooks

1 a statement from Kimberly Delay?

2 A Yes, sir.

3 Q What was that statement in that packet?

4 A Well in the package that I found within
5 the Sumter Police Department Interview Form it
6 says here, it says according to Delay, McCoy was
7 locked up 2007 for a murder he allegedly committed
8 in 2004. Delay claims she have never heard McCoy
9 talk about it, nor does she know anything the
10 about murder.

11 Q Now when you went to trial on this case---

12 A Yes.

13 Q ---to your knowledge, did you see this
14 report prior to the beginning of your trial?

15 A No, sir. No, we had no knowledge of it.

16 Q And in that, that statement says she
17 didn't know anything about it.

18 A Absolutely.

19 Q Okay. Now, Mark, when did you get this?

20 A After my trial.

21 Q How did you get it?

22 A Through the feds. I had a---

23 Q Explain.

24 A I had a federal indictment. And I was --
25 after I sentenced to natural life in the state,

Mark McCoy-Direct by Brooks

1 the feds came and picked me up and took me to deal
2 with a federal drug case.

3 Q Okay.

4 A Okay. I was facing a lot of time in the
5 feds, so I was going to go to trial. So my
6 attorney and us, we put in for the motion of
7 discovery.

8 Q And let me ask you, did you have a
9 different attorney on the fed. case?

10 A Yes.

11 Q Who was that?

12 A That was Kim, I think his name is Kim
13 Stevens.

14 Q Go ahead.

15 A And we he put in for the motion of
16 discovery. And when he put in for the motion of
17 discovery, it was about 1,000, approximately maybe
18 1,000 pages. And, you know, with inside that,
19 they had a lot of, like people that were trying to
20 get out of the feds. So, you know, they was
21 coming to try to testify. And there were
22 different statements.

23 Q They had a lot statements from other
24 people.

25 A Yes.

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1 Q Okay.

2 A So what was doing was, me and the
3 attorney, we was focusing on the drug charges,
4 because I was already sentenced for the federal,
5 the murder case.

6 Q Okay.

7 A So---

8 Q And let me ask you this. Did you get that
9 information through the discovery process on your
10 federal case?

11 A Yes.

12 Q That's how you got this statement.

13 A Yes.

14 Q Through your lawyer Kim Stevens.

15 A Yes.

16 Q And attorney Stevens then gave you the
17 discovery.

18 A Material, yes.

19 MR. BROOKS: Your Honor, we would move
20 this into evidence as Applicant's 1.

21 THE COURT: Mr. Gourley.

22 MR. GOURLEY: Your Honor, for the record,
23 I would just object because it hasn't been
24 properly authenticated. He is saying he got it
25 from somebody else.

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1 THE COURT: So you are proposing that the
2 investigator or Ms. Delay would be the one to
3 authenticate it?

4 MR. GOURLEY: Yes, Your Honor.

5 THE COURT: How about the solicitor's
6 office? And it's part of their discovery file.
7 Or, excuse me, part of what received from law
8 enforcement.

9 MR. GOURLEY: Ms. Fant certainly can
10 testify to that.

11 THE COURT: We will mark it for No. 1 for
12 ID right now. I'll rule on that later. I need to
13 take a look at it. Now is his one page?

14 MR. BROOKS: It is four pages. The first
15 page is like the interview form that they have
16 them sign.

17 (Discovery marked Plaintiff's Exhibit No.
18 1 for id.)

19 Q What else did you find?

20 A The State had forwarded the material.
21 This same material that I.S. Levy Johnson and I
22 didn't never receive. The State had forwarded
23 this material to the federal government, to
24 Special Agent Brown. So here, also Special Agent
25 Brown also had knowledge of Kimberly not knowing

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1 nothing about the murder. And I've never spoke to
2 her about this murder case.

3 Q In your -- what is that you got in your
4 hand?

5 A This is also the same thing there. But
6 this here is Special Agent Brown's report of
7 investigation. And this report of investigation
8 also shows---

9 THE COURT: Well that is hearsay. That
10 part is hearsay undoubtedly. You can mark it
11 for id. Build a record with it, and try to
12 convince me it's not hearsay or falls within
13 the exception, but all these people, Special
14 Agent Brown, has nothing to do with the Third
15 Circuit Solicitor's Office.

16 MR. BROOKS: Yes, sir.

17 Q Is that a report, Mark?

18 A What that is is, that's the report of
19 investigation. That was a report of
20 investigations that----

21 Q Is that something you got through the
22 discovery on your federal case?

23 A Yes, sir.

24 Q Through attorney Stevens?

25 A Yes..

Mark McCoy-Direct by Brooks

1 Q Is an additional statement or is it a
2 report documenting the statement from Kimberly
3 Delay?

4 A Yes, sir.

5 Q Is it consistent with the Sumter County
6 Intake Form with the statement from Kimberly
7 Delay, that we've marked as Applicant's No. 1?

8 A Yes, sir.

9 Q Okay. Is there anything else that we
10 haven't covered about Kimberly Delay?

11 A Yes, sir.

12 Q What else?

13 A Also there was another Brady violation
14 that I was alleging.

15 Q About Kimberly Delay.

16 A Yes, sir. My attorney I.S. Levy Johnson
17 submitted a Brady motion and a motion of
18 disclosure of evidence to Solicitor Fant. And
19 within this Brady motion and disclosure of
20 evidence motion that I.S. Levy submitted, there
21 were specific things that he had requested; for
22 instance, like No. 1, was there a copy of any
23 statements or co-defendants or other witness that
24 contain irrelevant information which contradicts
25 any evidence that the State may introduce at

Mark McCoy-Direct by Brooks

1 trial. Names of all the witnesses include and
2 personal, people that have relevant information.

3 THE COURT: If he's going to read, he's
4 going to have to read so we can follow him.

5 Q Is that the Brady motion filed by
6 Mr. Johnson who was representing you?

7 A Yes, it is.

8 MR. BROOKS: And the court would have that
9 in the file. So we don't have to recite the form.

10 A Okay.

11 Q But it was filed.

12 A Yes, It was, sir.

13 Q And that was a part of the file that you
14 got from Mr. Johnson?

15 A Yes. This is exactly the Brady motion
16 that he forwarded -- the Brady motion and motion
17 of disclosure of evidence that he had forwarded to
18 the the solicitor's office.

19 Q But you got that in your personal
20 possession requesting your file from Mr. Johnson.

21 A Yes.

22 Q Now is there anything else about any
23 alleged violations or statements about Kimberly
24 Delay that we haven't already told the court?

25 A Yes, absolutely.

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1 Q What else?

2 A Okay. Within the Brady violation,
3 Kimberly Delay was also promised something. And
4 what she was promised was, in exchange for her
5 testimony that the Solicitor Fant would dismiss
6 all of her charges. The thing about that was,
7 that was impeachable evidence that the jury, the
8 judge, nor I.S. Levy Johnson, my attorney, had
9 knowledge of. Only Solicitor Fant was the one
10 that had knowledge of this.

11 Q Okay.

12 A What she did was, what Solicitor Fant did
13 was, she withheld this information also so that
14 Mr. Johnson could cross examine Kimberly Delay,
15 because we couldn't understand why she was
16 testifying to what she was testifying to. And
17 he -- we never had the opportunity.

18 Q So what you're saying is, Solicitor Fant,
19 your allegation is that Solicitor Fant withheld
20 this information from you and your trial attorney.
21 And that hindered his cross examination.

22 A Absolutely. It prejudiced me. It
23 definitely prejudiced me.

24 Q Okay.

25 A And the way that we discovered this

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1 information about that was Ms. Delay's attorney,
2 our federal attorney, had wrote a letter to
3 Ms. Catherine Fant. And the letter I have here
4 from Catherine Leek, the assistant federal
5 defender who was representing Ms. Delay, I don't
6 know----

7 Q How did you get that?

8 A What happened is---

9 Q Did you get that from your attorney
10 Mr. Stevens in your federal case?

11 A No, no. I didn't get this from my
12 attorney Mr. Stevens. What happened was, my
13 grandfather was going through all his paperwork,
14 which Ms. Delay when she was locked up, she sent
15 the paperwork to my grandfather. And he was going
16 through it, and he sent the letter to me.

17 Q We do have Kimberly Delay here.

18 A Oh, yes. Absolutely.

19 Q So we can deal with her testimony. Is
20 there anything that we haven't covered about any
21 allegations about Kimberly Delay?

22 A Well again, one of my allegations was,
23 that it was a Brady violation when Solicitor Fant
24 didn't allow attorney Johnson or the defense to
25 know that Kimberly Delay was testifying to get a

Mark McCoy-Direct by Brooks

1 reward. And within the Brady motion, we requested
2 this information, and we didn't know it. And the
3 only person that had control over that was---

4 Q Solicitor Fant.

5 A Solicitor Fant, absolutely. And these
6 letters here, I think that the judge really should
7 get an opportunity to look at them. Because what
8 they do is, they will verify that what Solicitor
9 Fant was doing was, respectfully, what she was
10 doing was, she was like underhanding us. And
11 what I mean by that is, she didn't give the
12 proper information that we requested to attorney
13 Johnson. And here, this right here will show that
14 Ms. Fant's letter. And the federal defender
15 letter will verify and show the underhandedness,
16 which will prosecutorial misconduct, that
17 Solicitor Fant was committing intentionally in bad
18 faith. Because here also I mean, see you are
19 making me skip around. But right here, what I
20 would like to show is that, see on page 171, like
21 okay, on page 171, when Ms. Fant was doing her
22 summation, okay just for instance, she said okay,
23 I submit to you the testimony, Kimberly's
24 testimony was extremely credible because she still
25 loves me. And she wasn't up there angry, scorn.

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1 She just was really sad that she had came up here
2 to tell the truth.

3 Well once again, Kimberly wasn't telling
4 the truth. But also Solicitor Fant would not have
5 been able to say that to the jury, if we had known
6 that Kimberly told them prior to my trial, that
7 they didn't know anything; that she didn't know
8 anything.

9 Q So your allegation is that hindered your
10 trial attorney's ability to cross examine and
11 impeach Ms. Delay. Is that correct?

12 A Absolutely. Then also too, once again
13 right here, what Catherine Fant did is, she wrote
14 a letter for Kimberly Delay in a federal sentence.

15 Q She did an affidavit.

16 A Yeah, she did an affidavit. And right
17 here, Ms. Fant signed this. And I mean I don't
18 want the read whole thing. I mean but---

19 Q Let me say, Mark.

20 A Yes.

21 Q Ms. Fant is here.

22 A Absolutely.

23 Q So we can ask her questions about the
24 affidavit.

25 A Well one of the main things that I would

Mark McCoy-Direct by Brooks

1 like to just bring to the attention, at the last
2 paragraph, she says, finally Delay confirmed that
3 the murder she contacted several witnesses on
4 McCoy's behalf stressing the importance to get the
5 story straight. She admitted discussing various
6 alibis and she and other associations---

7 THE COURT: I have no idea what he is
8 saying. He's talking way too fast. If you're
9 going to read---

10 A I'm very sorry, sir.

11 THE COURT: ---I'm the one you have got
12 convince.

13 A Yes, sir.

14 THE COURT: Not Mr. Brooks.

15 A Yes, sir. Okay, Judge James, the
16 affidavit that Ms. Fant wrote was to the
17 federal -- for the federal. Kimberly is getting
18 sentenced in a federal sentence. And what it
19 says here is, the point that I am trying to prove
20 and show is that, she says that although it was
21 painfully obvious that Delay still loves
22 Mr. McCoy, she testified that to the stand, it is
23 my belief that her testimony was truthful and
24 substantial and assisted the State in convicting
25 him of the murder of Tyrone Pettis.

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1 And again, with the affidavit and also in
2 her summation when she spoke to the jury, if we
3 would have had this information, the information
4 went to show that Delay said prior to the
5 trial, well I don't know nothing about the murder.
6 I've never known nothing about the murder. If we
7 would have had this information, Solicitor Fant
8 would not have been able to say these things to
9 the jury.

10 But along with that, Your Honor, again
11 with these letters, and the letters, sir, which
12 you will see, it clearly shows that the intent was
13 in bad faith what Solicitor Fant was doing, when
14 she withheld the evidence from my attorney
15 Mr. Johnson. And is all right to read this letter
16 to you clearly?

17 THE COURT: I am just saying if in
18 response to a question, you do read something,
19 you must read it so I can understand it.

20 A Yes, sir, and I will.

21 THE COURT: So Mr. Brooks, you can go on
22 to the next question, because that's how we have
23 to do it, okay.

24 Q Listen to me, Mark. I'm just trying to
25 get you on concise pattern so that it makes it

Mark McCoy-Direct by Brooks

1 easier for the court to lay out your case.

2 A Okay.

3 Q If you should get a new trial.

4 A Okay.

5 Q Now what you're saying just to sum it up,
6 what you are saying is that Solicitor Fant
7 withheld certain statements of Kimberly Delay that
8 hindered your trial attorney's ability to cross
9 examine and undermine her credibility.

10 A I mean obviously she did.

11 Q And your point is, that that prejudiced
12 you in your trial.

13 A Absolutely.

14 Q And you found out that these statements as
15 a part of your federal case.

16 A Yes.

17 Q After you had already been convicted on
18 this case.

19 A Yes. But also with that in order for the
20 feds. -- in order for the federal government to
21 have -- to obtain this information, the
22 information had came from the State. So the State
23 had sent the information to them.

24 Q So what you're saying is that this
25 information was in the possession of the State and

Mark McCoy-Direct by Brooks

1 Solicitor Fant, prior to your trial.

2 A Absolutely.

3 Q Do we have any other allegations about
4 anybody else or any other witnesses other than
5 Kimberly Delay?

6 A Oh, yes, sir.

7 Q Is there an allegation about Lattimore
8 Holmes?

9 THE COURT: Who?

10 MR. BROOKS: Lattimore Holmes.

11 A Yes, Mr. Brooks. Yes, there is also some
12 allegations about Lattimore Holmes. But in order
13 to prove the allegations that I am alleging about
14 Ms. Fant withholding the evidence of --
15 withholding evidence back from us, I need for the
16 judge to see and realize, and I would like for it
17 to be on record what witnesses evidence.

18 Q I am the last man to try to speak for a
19 judge, particularly Judge James. But I think---

20 A Yes.

21 Q ---you have -- we've said that. That's on
22 record. I just want to make you aware of that.

23 A But the evidence hasn't been introduced
24 to the court. The exhibit, I mean.

25 Q What else do you want to tell the judge

Mark McCoy-Direct by Brooks

1 about these allegations?

2 A The last allegation dealing with Kim Delay
3 with her getting a time cut from Catherine Fant
4 for testifying, the letter from Catherine Fant
5 shows, the letter from Catherine Fant answers
6 totally everything that Catherine Leek the federal
7 attorney asked. And the letter says that was
8 wrote to Ms. Fant, says Dear Ms. Fant, as you
9 know, I represent Kimberly Delay in a federal case
10 in the middle district of Georgia.

11 MR. GOURLEY: Your Honor, I would object
12 to him reading this. Again, Ms. Leek---

13 THE COURT: The letter from Ms. Leek is
14 hearsay. Now if Ms. Fant testifies, she can
15 testify to what she may have done in response
16 to a letter from Ms. Leek. But if you want to
17 protect the record, first, if he's going to
18 read a piece of paper, mark it for ID. Just
19 put a sticker on it.

20 MR. BROOKS: Okay.

21 THE COURT: Then it's at least part of an
22 appellate court record. And that will be
23 Applicant's No. 2.

24 MR. BROOKS: I am going to ask that they
25 be 2 and 3 since it is two different sheets of

Mark McCoy-Direct by Brooks

1 paper.

2 (Letters dated 10/13/09 from Catherine
3 Leek. And 10/16/09 response from Catherine Fant
4 marked Plaintiff's Exhibit Nos. 2 and 3 for Id.
5 only.)

6 THE COURT: So we are not to Lattimore
7 Holmes? We're not talking about Lattimore Holmes?

8 MR. BROOKS: We're not to that yet.

9 THE COURT: I'll cross that out. We're
10 still under Kimberly Delay. Applicant's 2 for Id.
11 at least purports to be a letter offered by who?

12 MR. BROOKS: I'll hand them up to you,
13 Judge. One is a letter from Catherine Leek who is
14 a public defender in middle district of Georgia.
15 And No. 3 is a response from Catherine Fant.

16 THE COURT: Those are marked for Id. Do
17 you need them back?

18 MR. BROOKS: Yes, sir.

19 A Your Honor,---

20 THE COURT: You're not going to read it.
21 The objection to hearsay is sustained at this
22 time.

23 A Okay.

24 THE COURT: Okay.

25 A Yes, sir. Well Catherine Fant is here.

Mark McCoy-Direct by Brooks

1 Q Well she's going to testify---

2 THE COURT: Well you don't read them
3 because you want to, you read if I tell you you
4 can read them, okay.

5 A Yes, sir.

6 THE COURT: The objection is sustained
7 right now.

8 A Okay.

9 THE COURT: It doesn't matter what you
10 think

11 Q You don't need to read it. It's not your
12 letter. Now I think we've covered the issues in
13 regard to Kimberly Delay. And I think we are
14 ready to move on to Lattimore Holmes.

15 A Okay.

16 Q We've got other witnesses including
17 Kimberly Delay here, to ask questions about that
18 we can get into.

19 A Okay. I understand, sir.

20 Q Now you allege this is an allegation about
21 Lattimore Holmes.

22 A One more thing, Solicitor Fant did dismiss
23 the charges.

24 Q Okay.

25 THE COURT: No, you are not going to talk

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1 at the side bar and decide how to ask questions.

2 That's what preparation is for. Sir, this is the

3 last time I am going to tell you. Mr. Brooks

4 asks you questions.

5 A Yes, sir.

6 THE COURT: You answer them. You do not

7 tell him what you want him to ask you.

8 A Okay.

9 THE COURT: Okay.

10 A Yes.

11 THE COURT: And if we don't do it that

12 way, we'll just stop and you can call another

13 witness. Okay.

14 Q Listen to me.

15 A I will.

16 Q We have covered Kimberly Delay.

17 A Okay.

18 Q Ms. Fant is here. And Ms. Delay is here.

19 So there will be some other questions, okay.

20 A Okay.

21 Q Lattimore Holmes.

22 A Yes, sir.

23 Q You brought an allegation, alleged Brady

24 violation about Lattimore Holmes.

25 A Yes, sir.

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1 Q Can you elaborate on that for the court?

2 A Yes, sir. Okay, during my trial, my
3 attorney, Mr. Johnson, was adamant about asking
4 Solicitor Fant was there any information about
5 Lat---

6 Q Well let me ask you for background.
7 Lattimore Holmes was a witness that testified in
8 your case, is that correct?

9 A Lattimore was the only alleged witness.

10 Q We are going to come to that. He was a
11 witness.

12 A Yes, sir.

13 Q Listen to my question.

14 A Yes, sir.

15 Q He was a witness that testified in your
16 case.

17 A Yes, sir.

18 Q In fact, was he the witness that says he
19 saw you shoot the victim?

20 A Yes, sir.

21 Q Okay. Now were there any statements that
22 Lattimore Holmes gave to the police about your
23 case?

24 A Yes, there were, sir.

25 Q And we've alleged a Brady violation about

Mark McCoy-Direct by Brooks

1 that.

2 A Yes, sir.

3 Q Okay. Can you elaborate on that?

4 A Yes, sir. During the trial---

5 Q Okay.

6 A During my trial, my attorney was
7 questioning, Mr. I.S. Levy Johnson, was
8 questioning Lattimore Holmes. And he was asking
9 Lattimore Holmes about did he have a statement.
10 Well Lattimore Holmes testified during my trial.

11 Q And it's in the transcripts.

12 A It's in the transcripts.

13 Q Okay. It's in the transcript.

14 A Yes.

15 Q To the best of your recollection, what did
16 Lattimore Holmes testify to? Did he testify that
17 he had given prior statements?

18 A Yes, absolutely he did.

19 Q Okay. And do you and your lawyer have
20 that?

21 A No. No, we did have that.

22 Q Prior to the trial.

23 A No, we did not.

24 Q And what is the gist of that prior
25 statement?

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1 A The statement that found was Lattimore
2 Holmes, the statement that we didn't have and the
3 information that Lattimore Holmes did give to the
4 special agents, to the police, to the
5 investigators, because he testified was that
6 Mr. Johnson asked him during the trial.

7 Q What is the gist of that statement? That
8 initial statement.

9 A That are many different things that he
10 says in there.

11 Q Listen to me.

12 A I am trying. I don't want to mess up.

13 Q Listen to me.

14 A Yes.

15 Q You have alleged that he has given a prior
16 statement to law enforcement.

17 A Okay.

18 Q That came out during the cross examination
19 by your trial attorney Mr. Johnson.

20 A Yes.

21 Q You didn't have that---

22 A No.

23 Q ---prior to the trial.

24 A No.

25 Q You have since acquired that.

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1 A Yes, sir.

2 Q What is the gist of that prior statement?

3 A Well inside Lattimore Holmes' statement,
4 what he did was, he said that he witnessed a few
5 things.

6 MR. GOURLEY: Your Honor, objection. This
7 is hearsay again.

8 THE COURT: Was it something, Mr. Gourley,
9 that was part of the solicitor's file at the
10 time of the trial?

11 MR. GOURLEY: These are investigator's
12 notes, Your Honor.

13 THE COURT: The investigator is the
14 solicitor.

15 Mr. GOURLEY: Okay.

16 THE COURT: So was it something that was
17 part of law enforcement's file?

18 MR. GOURLEY: I believe so, Your Honor,
19 yes.

20 THE COURT: Was it turned over to the
21 prosecutor?

22 MR. GOURLEY: No, Your Honor, it was not.

23 THE COURT: Was it exculpatory?

24 MR. GOURLEY: No, it was exculpatory.

25 THE COURT: Was it inconsistent with his

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1 trial testimony?

2 MR. GOURLEY: No, Your Honor. And in
3 fact during the transcript, Mr. Holmes says he did
4 not give a statement.

5 THE COURT: He said that.

6 MR. GOURLEY: Yes, Your Honor.

7 THE COURT: Did Ms. Fant know that he had
8 given a statement?

9 MR. GOURLEY: It was not a statement. It
10 was just Investigator's notes regarding.

11 THE COURT: Did he say anything to the
12 police?

13 MR. GOURLEY: They took notes of what he
14 said, Your Honor.

15 THE COURT: Mark it for Id. I assume you
16 have this, Mr. Gourley?

17 MR. GOURLEY: Yes, Your Honor.

18 THE COURT: To the FBI.

19 MR. BROOKS: Correct.

20 THE COURT: No. 4 is marked for Id.

21 (Report of Investigator Holmes, Marked
22 Plaintiff's No. 4. for Id.)

23 Q Now that is that statement Lattimore
24 Holmes?

25 A Yes, it is.

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1 Q And it was prior to your trial.

2 A Yes, it is.

3 Q Can you just tell us, what is the gist of
4 the statement?

5 A Well in this statement what happened is,
6 Lattimore explained to the investigators,
7 explained to the investigator what he allegedly
8 saw. And inside this statement in the report of
9 investigation, what it says is that he said that
10 I walked past him, I put on a mask. And walked
11 out, went through the back yard. And me and the
12 victim allegedly started fighting. And in between
13 the fighting, Mr. Holmes says that the victim hit
14 me. And when the victim hit me, then I allegedly
15 pulled a gun out and shot him.

16 Q Now to the best of your recollection, what
17 did he say at the trial?

18 A At the trial my attorney, Mr. Johnson,
19 asked him -- my attorney Mr. Johnson asked him on
20 page 229 of Lattimore's testimony, and he said,
21 did you see Mark McCoy hit Mr. Pettis. And
22 Lattimore Holmes says, no, sir. I saw him pull
23 out the gun.

24 Q So is it your position that these
25 statements as gave to the FBI and what he said at

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1 trial, is inconsistent with one another?

2 A Absolutely.

3 Q And did you or your lawyer Mr. Johnson,
4 have that statement to give to the FBI. Did you
5 all have that during the cross examination of
6 Lattimore Holmes?

7 A No, sir.

8 Q Is there any other allegation dealing with
9 the witness Lattimore Holmes?

10 A Yes, sir.

11 Q What other allegation, Brady violation
12 about Lattimore Holmes?

13 A Once again, during my trial, there was
14 direct testimony from Lattimore Holmes. Solicitor
15 Fant questioned Lattimore Holmes and said to
16 Mr. Holmes, are you promised anything here today.
17 And Lattimore Holmes said no, I am not promised
18 anything here today. So from the direct evidence
19 that was presented at the trial, excuse me, from
20 the direct evidence that was presented at the
21 trial, from what Lattimore Holmes was saying was,
22 he was just there to testify without---

23 Q Are you saying he basically gave the jury
24 the appearance that he wasn't given any reward to
25 testify.

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1 A Absolutely.

2 Q To your knowledge, did he get some kind of
3 deal?

4 A Yes. Yes, sir.

5 Q To your knowledge what was that deal?

6 A What was the deal was, after that, after
7 the trial, he went back, okay. He went to -- two
8 months after I was already convicted, Lattimore
9 Holmes was released. And he was released on the
10 streets. And his initial sentence was 5 years.
11 And he had only been in prison for 30 months.

12 So what we did was, we asked the federal
13 government for a copy of Mr. Holmes' sentence.

14 Q You said we. Who is we? You and?

15 A My aunt.

16 Q Okay.

17 A Okay. We wanted to see his sentence
18 sheet, so we had got a copy of his sentence sheet.
19 And from within the sentence sheet, it showed that
20 he had been released. So what we did was, we
21 investigated to find out what was he released for.
22 So what they did in the federal system was, he had
23 a reduced sentence hearing. And here is a copy of
24 the reduced sentence hearing. And within it, it
25 shows that the reason that Lattimore Holmes was

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1 released from prison was because of him
2 testifying.

3 Q His cooperation.

4 A His cooperation of testifying in the
5 trial.

6 THE COURT: Would you clarify with the
7 witness, please, what court issued the
8 5-year-sentence.

9 Q Was that the federal court?

10 A That was the federal court.

11 Q of South Carolina?

12 A Well, yes.

13 Q That transcript, that's from judge --
14 which judge is on there?

15 A This is -- the judge that is on there is
16 the Honorable Mathew J. Perry. The senior to the
17 United States District Judge.

18 Q I think that's it for Lattimore Holmes, is
19 that correct?

20 A Well as far as Lattimore Holmes is, yes, I
21 mean that would basically be it. But, again, you
22 know, I don't ask the questions.

23 Q Let me help you out. Now you've also
24 raised, are there any other witnesses pertaining
25 to the Brady violation that you are claiming other

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1 than Kimberly Delay and Lattimore Holmes? Because
2 I believe those are the witnesses that are---

3 A Those were the two principal witnesses.

4 Q In your murder case.

5 A Absolutely. Mr. Holmes and Kimberly.

6 Q Are there any other witnesses you have
7 alleged Brady violations dealing with those
8 particular witnesses and Solicitor Fant in the
9 prosecution?

10 A Yes. Yes, also there was a guy named
11 James Pleasant. James Pleasant in 2004, was out
12 there when the murder took place. With James
13 Pleasant's statements, once again, from the Brady
14 motion that Mr. Johnson had submitted, requesting
15 any kind of evidence that they might have that
16 might contradict the evidence that Solicitor Fant
17 intended to present, we were never given this
18 information.

19 Q What information are you referring to that
20 deals with Mr. Pleasant?

21 A Mr. Pleasant, okay, Mr. Pleasant says
22 like, I have a statement.

23 Q He testified in your trial?

24 A No, he didn't testify.

25 Q Was there a statement given to Mr.

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1 Johnson?

2 A Yes.

3 Q The statement was given to Mr. Johnson?

4 A Yes, this statement was given to him just
5 before the trial started.

6 Q But now, Mark, that might not
7 necessarily--

8 A Absolutely.

9 Q ---be a Brady violation.

10 A Okay.

11 Q Are there any other witnesses?

12 A As far as the Brady violation?

13 Q Right.

14 A No, those two main principal witnesses,
15 Kimberly Delay and Lattimore Holmes.

16 Q Now you also raised some ineffective
17 assistance of counsel dealing with Mr. Johnson.

18 A Yes, sir.

19 Q Do you want to elaborate on that? What
20 are you saying that Mr. Johnson did wrong?

21 A Well dealing with this -- for instance
22 dealing with this witness James Pleasant, what
23 Mr. Johnson did was, right.

24 Q Yeah.

25 A Excuse me. Alleging ineffective

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1 assistance?

2 Q We will come back to that, but let's deal
3 with this issue right now.

4 A Okay. After the trial what Mr. Johnson
5 did was, after the trial, what Mr. Johnson did
6 was, Mr. Johnson put in for a motion for a new
7 trial.

8 Q Okay.

9 A And with the motion for a new trial that
10 Mr. Johnson put in, it was because, one of the
11 main reasons was, because of he was accusing
12 Solicitor Fant of a Brady violation himself.

13 Q Okay.

14 A Saying that this information dealing with
15 James Pleasant, we should have had ahead of time.
16 Because the information describes where the person
17 came from. He describes the size of the person
18 and the gun. And this is a person that was out
19 there the day that it happened.

20 And Mr. Johnson had this in his possession
21 5 minutes before the trial. And he didn't get the
22 opportunity because, I can't say because but why.
23 But he didn't get the opportunity to look at this
24 statement before the trial. We were bombarded
25 with a bunch of information like for instance if

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1 you look at the first page, I just want to, I'm
2 trying to show you what happened.

3 If you look at the first page of the
4 transcripts, you will find that we didn't even
5 have the State's witness list. And we didn't know
6 who was testifying, so when the trial started, we
7 just received the State's witness list. Solicitor
8 Fant had just brought over a new indictment. She
9 brought over a bunch of different people's records
10 and things like that. And this right here, the
11 witness statement from James Pleasant must have
12 slid through, you know, through and Mr. Johnson
13 didn't get an opportunity to read it.

14 But what Mr. Johnson did after the trial,
15 you will see in his motion for a new trial, he
16 said he's accusing Solicitor Fant as
17 deliberately -- with deliberate actions of
18 withholding exculpatory evidence that amounted to
19 prosecutorial misconduct also, dealing with James
20 Pleasant's statement. Now what I'm alleging is,
21 is that we had the opportunity to verify this
22 statement that James Pleasant had wrote, it
23 contradicts the evidence that Solicitor Fant did
24 present at trial. And this guy was out there that
25 day.

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1 See Lattimore Holmes had came and
2 testified and told the police three years later,
3 and some change later, what he was supposed to
4 have knew. So being that Mr. Johnson didn't get
5 the opportunity to call this witness.

6 Q Okay. So, Mark, what you are saying is
7 the issue dealing with Mr. Pleasant is a Brady
8 violation of Solicitor Fant.

9 A Not only -- see, I would allege that it's
10 a Brady violation. But after reading books,
11 reading law books that once she gives it to him,
12 it's in his possession, not it falls on
13 Mr. Johnson.

14 Q Okay. So what are saying Mr. Johnson did
15 wrong with that, or anything else in representing
16 you?

17 A What I am saying is as far as James
18 Pleasant, I feel that if Mr. Johnson would have
19 had the opportunity to take the time to read it
20 and understand it, then we could have called him,
21 James Pleasant as a witness. But however, we
22 didn't get the opportunity to do. So what
23 Mr. Johnson did was 8 days later, in his motion
24 for a new trial, and right here what this does is,
25 it shows -- his motion for a new trial, shows that

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1 he realizes that James Pleasant was clearly a
2 witness that he should have called from his
3 motion, you know. Y'all see that -- I mean, I am
4 not going to read it. I guess I don't read it,
5 but you will see.

6 So now what happened is, once he put in a
7 motion for the new trial---

8 THE COURT: Are you going to mark it, or
9 just talk about it?

10 MR. BROOKS: We're just talking about. I
11 mean, we're just elaborating on it. We may get it
12 in through a particular witness, particularly
13 Mr. Johnson.

14 A So then what happened is the judge denied
15 the motion for a new trial. Saying and he's
16 accusing Mr. Johnson as basically being
17 ineffective, because the Honorable J. B. King
18 (sic) says to him that Mr. Johnson never pointed
19 out. Mr. Johnson had the opportunity to call a
20 continuance. Mr. Johnson never asked for a
21 mistrial. You know, and these are the things
22 that---

23 Q That's in Judge King's order.

24 A Yes.

25 Q Okay.

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1 A So it's like he's basically alleging that
2 Mr. Johnson was ineffective for not calling this
3 witness that had an opportunity that maybe if he
4 testified, there's a chance that the outcome of
5 the trial could have been different.

6 Q Now is there anything else that you are
7 alleging about Mr. Johnson's representation?

8 A There was things that Mr. Johnson could
9 have done that I think, you know, I think
10 hindsight, I think there is things that he could
11 have done. For example, we never had a -- he
12 never got an opportunity to investigate. And he
13 never got a chance to really talk to all the
14 witnesses that weren't able --that were coming to
15 testify in court. But again, the reason that he
16 didn't have the opportunity to speak to witnesses,
17 because Solicitor Fant never let us know. We
18 went into trial in the blind.

19 And with us going into the trial in the
20 blind, Mr. Johnson should ask for a continuance in
21 order for us to get the information, and for him
22 to be able to go and speak to the different
23 witnesses. Because again, we just got -- during
24 the trial, we just got the list of 40 people. The
25 State's witness list. So once he got -- once we