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S.C. Supreme Court

APPENDIX-A

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State of South Carolina

County of Lee

Unula Abebe,  
Plaintiff

Post Conviction Relief  
2010-CP-31-00052

vs.

The State of South Carolina,  
Defendants

February 25, 2014  
Bishopville, S.C.

BEFORE THE HONORABLE James C. George, Jr., Judge.

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

The Applicant Abebe,  
Pro se

Mr. Daniel Gourley,  
Attorney for the Defendant

Margaret T. Sullivan,  
Court Reporter

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| <u>WITNESS</u> | <u>DIRECT</u>  | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|----------------|----------------|--------------|-----------------|----------------|
| Unula Abebe    |                |              |                 |                |
|                | by the Court   | 3            |                 |                |
| Paul Fata      |                |              |                 |                |
|                | by Mr. Gourley | 5            |                 |                |

## Unula Abebe-by the Court

1 THE COURT: We will go on the record now in the  
2 matter of Mr. Abebe. 2010-CP-31-0052. Mr. Abebe, you  
3 can call your frist witness.

4 THE PLAINTIFF: I don't have any  
5 witnesses, except myself.

6 THE COURT: You can have a seat, and be  
7 sworn in the witness chair.

8 Unula Abebe, Being first duly sworn,  
9 testified as follows:

10 THE BAILIFF: State your name, and spell  
11 your last for the record.

12 A Unula Abebe. A-B-E-B-E.

13 THE COURT: And Unula is U-N-U-L-A?

14 A Yes, sir.

15 THE COURT: Mr. Abebe, this is your  
16 application for post-conviction relief for a  
17 conviction in Lee County on April 1, 2009, for  
18 assault on a correctional officer. I will be glad  
19 to hear your testimony.

20 A Well the claims I raise is, Brady  
21 violations and prosecutor misconduct related to,  
22 you know, I forgot my records, man. But my Brady  
23 claim is that Mr. Fata didn't give me anything.  
24 Any kind of discovery. None whatsoever. And I  
25 was taken to trial. You know discovery is a

Unula Abebe-by the Court

1 continuing duty upon both of us, you know, the  
2 defendant and the State. So even though he didn't  
3 give me discovery before trial, he still had the  
4 duty to give it to me during trial. And he didn't  
5 give me anything. So I feel like I am denied my  
6 right to a fair trial.

7 THE COURT: Okay. Any other grounds that  
8 you would like to raise?

9 A My other grounds was my innocence. And I  
10 was denied a fair trial, because I was unable to  
11 actually prove my innocence. And my other claim  
12 was selective prosecution. Well It was a -- I was  
13 choked by a correction officer, and they didn't  
14 prosecute him. But when they claim that I  
15 assaulted an officer, they prosecuted me.

16 THE COURT: And I believe the allegations  
17 were that you had stabbed him with a shank or  
18 something like that. That's what the allegations  
19 were?

20 A Yes, that's the allegations.

21 THE COURT: Okay. Any additional  
22 testimony you would like to give?

23 A No, sir.

24 THE COURT: You can step down. Any  
25 additional witnesses, Mr. Abebe?

Paul Fata-by Mr. Gourley

1           A    No, sir.

2           THE COURT: Mr. Gourley, anything from the  
3 State?

4           MR. GOURLEY: If I may just ask a series  
5 of questions.

6           THE COURT: Oh, I'm sorry. I completely  
7 forgot. I'm sorry, Mr. Abebe, have a seat.

8           MR. GOURLEY: Your Honor, actually on  
9 second thought, I don't have any questions.

10          THE COURT: Thank you. First witness for  
11 State. Or anything from the State?

12          MR. GOURLEY: Yes, Your Honor. We would  
13 call Mr. Fata.

14          THE COURT: Mr. Fata, come on up.

15                 Paul Fata, being first duly sworn,  
16 testified as follows:

17          THE BAILIFF: Come around, please. State  
18 your name and spell your last for the record.

19          A    Paul Fata. F-A-T-A.

20          DIRECT EXAMINATION MR. GOURLEY:

21          Q    Mr. Fata, can you just kind of briefly  
22 explain what occurred in this case in regards to  
23 the State's position, regarding Brady?

24          A    This was a case where Mr. Abebe was  
25 charged with assaulting a correction's officer.

Paul Fata-by Mr. Gourley

1 He took a shank and stabbed him in the chest. I  
2 think it would have really caused some injury, but  
3 it hit his -- hit the officer's name tag, and  
4 deflected the blow. Mr. Abebe was tried on  
5 April 1st 2009, for assaulting a correction's  
6 officer. Judge King tried the case, and he got  
7 two years.

8 Q Did you all talk or get along, or anything  
9 like that?

10 A Yeah, I don't recall any conversations  
11 with him. I do know that we tried to get him an  
12 attorney; have an attorney appointed, which we do  
13 in every case. And I don't -- and I believe he  
14 declined to have to an appointed attorney. And I  
15 think that's in the record where Judge King found  
16 that he was going to represent himself.

17 MR. GOURLEY: Okay. I beg the court's  
18 indulgence, Your Honor.

19 THE COURT: All right.

20 Q Mr. Fata, was any discovery request ever  
21 made?

22 A No.

23 Q So Mr. Abebe never filed a formal motion  
24 and---

25 A Never received it. I looked through the

Paul Fata-by Mr. Gourley

1 file before I got here, and there's no request for  
2 Mr. Abebe for discovery. And I would have given  
3 it to him had he made the request.

4 MR. GOURLEY: Thank you, Mr. Fata.

5 THE COURT: Any questions, Mr. Abebe?

6 THE APPLICANT: No, Your Honor.

7 THE COURT: You can step down. Additional  
8 witnesses for the State?

9 MR. GOURLEY: No, Your Honor.

10 THE COURT: Do you have anything else,  
11 Mr. Abebe?

12 THE APPLICANT: Yes. I would just like to  
13 state on the record that requests under the  
14 current Brady law, request is not required. It  
15 still requires internal discovery regardless of  
16 the request.

17 THE COURT: Now, of course you, apparently  
18 you're familiar with the fact that an actual paper  
19 motion can be made under Rule 5 and Brady. Did  
20 you make any paper motions just for my education?

21 THE APPLICANT: No, Your Honor. I was  
22 with the understanding that regardless of a  
23 request, I read the cases regardless of a request,  
24 you know, they are still supposed to turn over  
25 discovery.

1 THE COURT: All right.

2 THE APPLICANT: So I felt that it was my  
3 need to make a discovery request.

4 THE COURT: Mr. Gourley, what's the  
5 State's position on the fact that an actual  
6 formal Motion is not necessary?

7 MR. GOURLEY: Your Honor, to be honest, I  
8 am not quite sure. I will be happy to brief the  
9 issue for you.

10 THE COURT: Mr. Abebe says, of course you  
11 heard what he said. I guess one question I could  
12 have asked Mr. Fata. Mr. Fata, was there anything  
13 exculpatory in the file to your knowledge?

14 MR. FATA: To my knowledge, I don't think  
15 so, Your Honor. The filing the usual, you know,  
16 the statements from the witnesses, the knife, the  
17 photographs, that sort of thing.

18 THE COURT: All right.

19 MR. GOURLEY: Your Honor, if I may,  
20 Mr. Abebe has not shown what exactly was not  
21 turned over.

22 THE COURT: Well he couldn't, unless it  
23 was turned over.

24 MR. GOURLEY: And whether it would have  
25 been any benefit to his trial.

1 THE COURT: Okay.

2 MR. GOURLEY: It's his burden of proof,  
3 Your Honor.

4 THE COURT: Mr. Abebe, anything else you  
5 would like to offer to me?

6 THE APPLICANT: Yes, Your Honor. I mean,  
7 at trial, was basically silent. You know, I  
8 couldn't say anything.

9 THE COURT: You were silent?

10 THE APPLICANT: Yes. I mean, I tried to  
11 just listen to the evidence, because, you know,  
12 they didn't give me anything. So I was unable to  
13 put up any kind of defense to defend myself. I  
14 didn't know what was going on. It was just like  
15 came the report.

16 THE COURT: Thank you, sir. Anything else  
17 from the State?

18 MR. GOURLEY: Nothing further, Your Honor.

19 THE COURT: Mr. Abebe, the way this  
20 process, and by the way, anything else you would  
21 like to tell me?

22 THE APPLICANT: No, Your Honor.

23 THE COURT: The way this process will work  
24 is, I am going to give Mr. Gourley until a week  
25 from today to give me the benefit of any research

1 he has on whether or not a written Brady motion is  
2 necessary before exculpatory material must be  
3 turned over. After I receive that, whatever I  
4 might get, and by the way send a copy to  
5 Mr. Abebe.

6 MR. GOURLEY: Yes, Your Honor.

7 THE COURT: Whatever you get. I will be  
8 making a decision to either grant or deny your  
9 request. An order will be issued. You will get a  
10 copy of that. You will have 30 days from the date  
11 of your receipt of that order, to appeal.

12 THE APPLICANT: Would you remind if I  
13 respond to any brief on my behalf?

14 THE COURT: I will give you likewise,  
15 7 days after you get that him, to respond to me.  
16 You must mail it to me at my address. Thank you.

17 MR. GOURLEY: Thank you, Judge.

18 --End of Requested Transcript of Record--  
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on February 25, 2014, in Common Pleas Nonjury Court, Lee County, Bishopville, South Carolina.

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

1-12-15  
DATE

Margaret T. Sullivan  
COURT REPORTER  
My Commission expires: 9/7/2021

APPENDIX - B

State of South Carolina )  
 )  
County of Lee )  
 )

ORIGINAL

The State of South Carolina,  
Plaintiffs  
vs.

Transcript of Record  
09-GS-31-023

Unula Abebe,  
Defendant

April 1, 2009  
Bishopville, S.C.

Before The Honorable Howard P. King, Judge.

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

Mr. Paul Fata,  
Attorney for the State

Mr. Abebe,  
pro se

Margaret T. Sullivan,  
Court Reporter

|   | <u>WITNESS</u>    | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|---|-------------------|---------------|--------------|-----------------|----------------|
| 1 | Jury qualified    | 5             |              |                 |                |
| 2 | Jury impaneled    |               | 9            |                 |                |
|   | Jury sworn        | 13, 21        |              |                 |                |
| 3 | Opening Remarks   | 13            |              |                 |                |
|   | Opening Statement |               |              |                 |                |
| 4 | by Mr. Fata       | 21            |              |                 |                |
|   | Louis Lorrick     |               |              |                 |                |
| 5 | by Mr. Fata       | 24            |              |                 |                |
|   | Keith Lloyd       |               |              |                 |                |
| 6 | by Mr. Fata       | 34            |              |                 |                |
|   | by Mr. Abebe      |               | 36           |                 |                |

|    | <u>No.</u> | <u>Exhibits</u><br><u>Description</u> | <u>Id.</u> | <u>Ev.</u> |
|----|------------|---------------------------------------|------------|------------|
| 9  | S-1        | Photograph                            | 26         | 26         |
| 10 | S-2        | Photograph                            | 29         | 29         |
|    | S-3        | Shank                                 | 31         | 31         |

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1 THE COURT: Call the next matter.

2 MR. FATA: Your Honor, the State calls  
3 Indictment No. 2009-GS-31-23. The State versus  
4 Unula Abebe. Indictment for assaulting a  
5 correctional officer.

6 THE COURT: Bring the defendant in,  
7 please. Mr. Abebe, if you will have a seat at  
8 that table right here.

9 MR. FATA: Here is my witness list, judge.

10 THE COURT: This is the case of the State  
11 versus Unula, U-N-U-L-A Abebe. Earlier this  
12 week, Mr. Abbe appeared before the court. At  
13 which time he was advised of his right to  
14 counsel, and I stated we would appoint counsel  
15 for him if he wished to have counsel. After  
16 explaining all of his constitutional rights,  
17 the defendant, Mr. Abebe, made a free and  
18 voluntary decision to represent himself in this  
19 case. As he has a constitutional right to do.  
20 So he is going to be appearing in this case as  
21 his own lawyer.

22 He is also as you have noticed, he has  
23 ~~appeared here in a prison uniform. However,~~  
24 it is not prejudicial to Mr. Abebe because the  
25 offense for which he is charged with is

1           assaulting a correctional officer. Which would  
2           only occur if he was in custody. He has pled  
3           not guilty to this charge, and that is what the  
4           jury is going to have to decide. There is no  
5           prejudice for him appearing in this prison  
6           uniform, because the offense would only occur  
7           if in fact he was incarcerated at the time of  
8           the alleged offense.

9           We are going to draw a jury in this case.  
10          Mr. Abebe is going to represent himself. I  
11          have explained to him some of the procedure by  
12          which jury selection is done. And we will go  
13          through the selection process. I will tell you  
14          that I am precluded, of course, by my position,  
15          of giving advice to Mr. Abebe as to how he  
16          should proceed, and what he should ask. He is  
17          charged with following the procedures that  
18          anybody who appears in this court with or  
19          without a lawyer, must abide by. So he must  
20          also abide by the rules just like anyone else.

21          All of this was explained to him at the  
22          time he was given the opportunity to have  
23          appointed counsel. He has declined that. And  
24          has indicated he wishes to represent himself  
25          and he wishes a jury trial.

1           Mr. Abebe, have I correctly recited what  
2           has gone on in the last couple of days with  
3           regard to your matter?

4           THE DEFENDANT: Yes, sir.

5           THE COURT: That being the case, Madam  
6           Clerk, would you see that Mr. Abebe gets a copy  
7           of the jury venire? Ladies and Gentlemen, the  
8           State has called the case of The State versus  
9           Unula Abebe. Who is charged in the Bill of  
10          Indictment returned as a true bill of the grand  
11          jury of Lee County with the offense of assault  
12          on a correctional officer.

13          The indictment which is not evidence in  
14          this case, but is simply a summary of the  
15          charges against the defendant. And the charges  
16          that he did on or about February 6th 2001, ..  
17          violate South Carolina law; in that, he did  
18          assault an employee of the state or local  
19          correctional facility. Specifically, Louis  
20          Loring, at the Lee Correctional Institute. And  
21          said officer was -- officer was performing job  
22          related duties, by striking him in the chest  
23          with a homemade shank.

24          That is the allegations of the indictment.  
25          And I tell you that is not evidence in this

1 case. But I tell you that so you can determine  
2 if you know anything about the case, or  
3 anything that would prevent you from giving  
4 both sides a fair and impartial trial.

5 Mr. Abebe represents himself. And he has  
6 already stood up. Mr. Abebe, I would ask that  
7 you stand and face the jury so that they can  
8 get a good look at you. Thank you, you may be  
9 seated. The State of South Carolina is  
10 represented by Mr. Fata, and you have already  
11 met Mr. Fata. Before we select a jury, I need  
12 to ask you some questions. Please give your  
13 attention to these questions. If any of them  
14 apply to you, then respond accordingly.

15 Is any member of the jury panel related by  
16 blood or connected by marriage to the  
17 defendant, Unula Abebe? If so, please stand.

18 (Whereupon, no response.)

19 THE COURT: The following individuals may  
20 appear as witnesses in this case. I would ask  
21 if these witnesses are present, to maybe stand  
22 and face the jury when your name is called and  
23 then be seated. Lloyd Greer, South Carolina  
24 Department of Corrections. Louis Lorrick,  
25 South Carolina Department of Corrections.

1 Keith Lloyd, Department of Corrections. And  
2 Michael Williams, South Carolina Department of  
3 Corrections. Thank you, gentleman, you may be  
4 seated.

5 Is any member of the jury panel related by  
6 blood or connected by marriage to any of the  
7 proposed witnesses? If so, please stand. Yes,  
8 sir, your name?

9 THE JUROR: Alvin Dukes. 33.

10 THE COURT: Mr. Dukes, who are you related  
11 to?

12 THE JUROR: Louis Lorrick.

13 THE COURT: What is the relationship?

14 THE JUROR: Nephew.

15 THE COURT: Thank you, sir. Does any  
16 member of the jury panel know anything about  
17 the facts of this case as I have briefly  
18 recited them to you? If so, please stand.

19 (Whereupon, no response.)

20 THE COURT: Has any member of the jury  
21 panel formed or expressed an opinion as to the  
22 guilt or innocence of the defendant, Unula  
23 Abebe? If so, please stand.

24 (Whereupon, no response.)

25 THE COURT: Is any member of the jury

1 panel aware of any interest, any bias or any  
2 prejudice for or against the defendant? If so,  
3 please stand.

4 (Whereupon, no response.)

5 THE COURT: Other than what has been  
6 disclosed to me, can each member of the jury  
7 panel give to the state and the defendant a  
8 fair and impartial trial? If not, please  
9 stand.

10 (Whereupon, no response.)

11 THE COURT: Other than what has been  
12 disclosed to me, does any member of the jury  
13 panel know of any reasons whatsoever why he or  
14 she should not serve as a juror in this case?  
15 If so, please stand.

16 (Whereupon, No Response.)

17 THE COURT: Are there additional questions  
18 on behalf of the state of the jury panel, Mr.  
19 Fata?

20 MR. FATA: No, sir, Your Honor.

21 THE COURT: Mr. Abebe?

22 THE DEFENDANT: No, sir, Your Honor.

23 THE COURT: Counsel, come to the corner.  
24 Mr. Abebe, you can stay right there. We will  
25 just come right here.

1           (Whereupon, the judge confers with  
2 attorney and defendant.)

3           THE COURT: Madam Clerk, if you will give  
4 us a jury please. Ladies and Gentlemen, you  
5 have been through this process once this week,  
6 so you already kind of know the process. Your  
7 names will be mixed up and drawn out  
8 individually. When your name is called, please  
9 come to the front of the courtroom, and turn  
10 around with your back towards me, and face the  
11 back of the courtroom. And we will go through  
12 this process. Madam clerk.

13           THE CLERK: Juror No. 154 Harvey Moore,  
14 (m-w) accepted. Juror No. 23 Johnnie Cauthen  
15 (f-b) accepted. Juror No. 103 Shirley Price  
16 (f-w) accepted. Juror No. 61 Erica Holloman  
17 (f-b) accepted. Juror No. 100 Shante Pearson  
18 (f-b) state struck. Juror No. 16 Martha  
19 Bramlett (f-w) accepted. Juror No. 116 Willie  
20 Scott (m-b) accepted. Juror No. 82 Sharon  
21 lucky (f-b) accepted. Juror No. 56 Genovia  
22 Hickmon, (f-b) state struck. Juror No. 3  
23 ~~Freddy Anthony state struck. Juror No. 29~~  
24 Teresa Corbett (f-w) accepted. Juror No. 109  
25 Rebecca Williams (f-b) state struck. 109

1 Veronica Rivers (f-b) state struck. Juror 129  
2 Johnnie Tony (f-b) accepted. Juror No. 96  
3 Pamela Moseley (f-w) accepted. Juror No. 125  
4 Russell Stokes (m-w) accepted. Juror No. 55  
5 Lynne Herbine (f-b) accepted.

6 THE COURT: One alternate, please, one and  
7 two.

8 THE CLERK: Juror No. 7 Charles Beasley  
9 (m-w) accepted.

10 THE COURT: Mr. Fata, anything with regard  
11 to the selection of the jury?

12 MR. FATA: Not from the state, Your Honor.

13 THE COURT: Mr. Abebe?

14 THE DEFENDANT: No, sir.

15 THE COURT: Ladies and gentlemen, before  
16 we begin the trial of this case, there are  
17 certain administrative matters I need to take  
18 up. I am going to ask that you go to your  
19 jury room for just a minute. Before I do that,  
20 there are certain things I want to tell you.  
21 First of all, later on in this trial, I will  
22 appoint one of the 12 members of the jury to be  
23 the foreperson for the jury. When I do that,  
24 the foreperson should always sit in the first  
25 seat on the front row.

1           The alternate should always sit where he  
2 is seated. The rest of the seats in the jury  
3 box are not reserved. It does not matter what  
4 order you come in the courtroom. However in  
5 essence, reserve the front seat, the first seat  
6 on the front row, for the foreperson when I  
7 name that foreperson. And the first seat on  
8 the second row for the alternate.

9           Also, It would be improper for you to  
10 discuss this case among yourselves while you  
11 are in the jury room. This is an admonition  
12 that I will continue throughout the trial of  
13 this case. I know that you do not anything  
14 about this matter yet, except for what I told  
15 you basically the case is about. But it would  
16 be improper for you to discuss it among  
17 yourselves, because you have not heard the  
18 evidence in this case.

19           So while you are there in the jury room,  
20 you can talk about anything you want to talk  
21 about, weather, sports, children,  
22 grandchildren, or anything at all, but don't  
23 ~~talk about this case until I tell you it is~~  
24 appropriate to do so. But we will send for you  
25 very shortly, and we will be ready to go

1 forward with it. In the meantime, just relax a  
2 few minutes if you will. When the bailiff  
3 comes back in, if you will go with the bailiff  
4 to the jury room.

5 (Whereupon, the following takes place  
6 outside the presence of the jury.)

7 THE COURT: Mr. Fata, let me talk to you  
8 about a matter. I think that the Defendant, I  
9 realize he is incarcerated, he has not been  
10 prejudiced by the fact that he is incarcerated.  
11 However, I think for the purposes of trying  
12 this case, he ought to have his hands free so  
13 that He can write or make any notes that he  
14 needs to make.

15 I don't have any problem with him  
16 remaining, with his legs remaining shackled, so  
17 he wouldn't be any danger. But I think his  
18 hands should be freed up so he can write. Are  
19 you okay?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Is there anything  
22 before we bring the jury in?

23 MR. FATA: Nothing from the State, Your  
24 Honor.

25 THE COURT: Mr. Abebe, we are ready to go

1 forward with the testimony. Do you have  
2 anything you want you bring up before we bring  
3 the jury out?

4 THE DEFENDANT: No, sir.

5 THE COURT: Bring the jury in, please.

6 (Whereupon, the following takes place  
7 within the presence of the jury.)

8 THE COURT: Thank you very much, Ladies  
9 and gentlemen. We are ready to proceed. We  
10 have taken care of the administrative matters  
11 and things we needed to do. Madam Clerk, you  
12 may swear the jury.

13 (Whereupon, the jury is sworn.)

14 THE COURT: Before we begin the actual  
15 trial of this matter, I thought it might be  
16 helpful to tell you a little bit about how the  
17 trial proceeds. I know all of you have seen  
18 trials on television. But I think you will  
19 find that it is a great deal different than  
20 television. First of all, the State will make  
21 an opening statement. An opening statement is  
22 not evidence. It is simply an outline to help  
23 you understand what the State expects the  
24 evidence to show.

25 The defendant may if he wishes to, present

1 an opening statement but he doesn't have to for  
2 reasons I will explain later. Again, I will  
3 tell you at this time now that we are in the  
4 trial of this case that Mr. Abebe is  
5 representing himself by his own choice. And  
6 under our constitution, he has that right.

7 Following the opening statements, you will  
8 hear the testimony and evidence in this case.  
9 This will consist of testimony from the state  
10 witnesses, and from any exhibits which might be  
11 introduced into evidence. Following the  
12 completion of the testimony, the attorneys will  
13 again have an opportunity, or Mr. Abebe on his  
14 own behalf, an opportunity to make what is  
15 called a closing statement or its summation to  
16 you. This is an opportunity of the parties to  
17 summarize the case from their perspective  
18 points of view.

19 Again, these summaries or these arguments  
20 are not evidence. And following the closing  
21 statements, I will instruct on the law of South  
22 Carolina as it applies or pertains to the  
23 issues that have arisen in this case. And when  
24 I have completed my instructions to you, you  
25 will be permitted to begin your deliberations

1 in order to reach a verdict.

2 Now, Ladies and Gentlemen, you are now the  
3 jury in this case. And I want to take a few  
4 minutes to tell you something about your duty  
5 as jurors and give you some basic instructions.  
6 I will give you more detailed instructions at the  
7 completion of this case, and they will control  
8 your deliberations. It will be your duty to  
9 decide what the evidence or the facts are. You  
10 and you alone are the judges of the facts.

11 And you will hear the evidence, and decide  
12 what the facts are and then apply those facts  
13 to the law that the court will give to you.  
14 That is how you reach a verdict.

15 In doing so, you must follow the law  
16 whether you agree with it or not. The evidence  
17 will consist of testimony of witnesses,  
18 documents and other things received in to  
19 evidence as exhibits, and any facts on which  
20 the parties agree, or which I may instruct you  
21 to accept. Now you should not take anything  
22 that I may say or do during this trial as  
23 ~~indicating what I think of the evidence, or~~  
24 what your verdict should be.

25 The same law that makes you the judge of

1 the facts, makes me the judge of the law. You  
2 must take the law as I give it to you,  
3 regardless of what you think the law is or  
4 ought to be. If I am wrong on the law, there  
5 is another time and place for that error to be  
6 corrected. But in this case, you must accept  
7 the law as I charge it to you.

8 Now this is a criminal case brought by the  
9 State of South Carolina. And the State charges  
10 the defendant, Mr. Abebe, with the crime known  
11 in the law as assaulting a correctional  
12 officer. The charge against the defendant is  
13 contained in the Indictment, which I hold in my  
14 hand. The Indictment is not evidence of  
15 anything. It is simply a description of the  
16 charge made by the defendant against -- made by  
17 the state against the defendant.

18 The defendant has pled not guilty to this  
19 charge and is presumed innocent unless and  
20 until proven guilty beyond a reasonable doubt.  
21 A reasonable doubt is the kind of doubt that  
22 would cause a reasonable person to hesitate to  
23 act. A defendant has the right not to testify.  
24 Never has to prove innocence, or present any  
25 evidence. The burden of proof is always on the

1 State of South Carolina.

2 Now there are certain things that are not  
3 evidence, and you must not consider them as  
4 evidence. Statements or the arguments of the  
5 attorneys and or the parties in this case, are  
6 not evidence. Questions and objections of the  
7 attorneys are not evidence. And testimony that  
8 I instruct you to disregard is not evidence.  
9 Evidence is only those matters from this  
10 witness stand after the witness has been sworn  
11 does it become evidence.

12 Now evidence may be direct or  
13 circumstantial. Direct evidence is testimony  
14 by a witness about what that witness personally  
15 saw or heard or did. Circumstantial evidence  
16 is indirect evidence. The law permits you to  
17 give equal weight to both. It's for you to  
18 decide how much weight to give to any of the  
19 evidence. Now there are rules of evidence  
20 which control what can be received in court.

21 When one party asks a question or offers an  
22 exhibit and the other party thinks it is not  
23 ~~permitted by the rules, that party may object.~~

24 If I sustain the objection, the question may  
25 not be answered or the exhibit may not be

1 received.

2 If I overrule the objection then the  
3 question may be asked, and the exhibit may be  
4 received.

5 Sometimes it may be necessary for me to  
6 request that you leave the courtroom while I  
7 discuss with attorneys legal questions that  
8 come up during the trial. Do not speculate on  
9 the reasons that you were asked to leave the  
10 room. This is simply used by all courts to  
11 determine legal questions. Now in deciding  
12 what the facts are in this case, you will have  
13 to judge the credibility of the witnesses.  
14 Credibility is simply a legalistic term which  
15 means legal knowing. And that is a matter that  
16 is solely within your province to determine  
17 credibility and believability of a witness.

18 Now there are a couple of things that I  
19 have already told you, but they are important  
20 enough that they bear repeating. First of all,  
21 do not talk to each other about the case until  
22 all the evidence is in, and you have heard the  
23 arguments of counsel or the arguments by the  
24 parties, and the instructions on the law by the  
25 court. Do not let anyone talk with you about

1 the case. If we should take a recess before  
2 you get this case for deliberations, it would  
3 be improper for you to discuss the case with  
4 anyone or to allow anyone to discuss the case  
5 with you.

6 Do not do any research; such as,  
7 consulting dictionaries or other reference  
8 materials. And do not begin your research on  
9 the internet. You have got to decide the case  
10 based upon what you hear in this courtroom, and  
11 not on the basis of information you can obtain  
12 on your own. And finally, do not make up your  
13 mind about what your verdict should be until  
14 you have heard all of the testimony and  
15 evidence in this case, and the instructions on  
16 the law by the court. You will be instructed  
17 when to begin your deliberations by me or the  
18 bailiff. Are there any objections to my  
19 initial instructions to the jury on behalf of  
20 the State, Mr. Fata?

21 MR. FATA: No, sir, Your Honor.

22 THE COURT: Mr. Abebe?

23 ~~THE DEFENDANT: No, sir.~~

24 THE COURT: Ladies and Gentlemen, normally  
25 we would go into opening statements at this

1 time, but I have just been informed that the  
2 jury in another case has reached a verdict, so  
3 we are going to take care of that matter. So I  
4 am going to ask that you to go to your jury  
5 room. Again, relax for a minutes while I take  
6 care of that. Don't discuss this case among  
7 yourselves. As soon as we have completed that  
8 matter, we will have you back and be ready to  
9 go forward in this matter.

10 (Whereupon, the following takes place  
11 outside the presence of the jury.)

12 THE COURT: If you will secure, Mr. Abebe,  
13 while we take care of this other matter.

14 (Whereupon, the court takes a short  
15 recess.)

16 THE COURT: Bring Mr. Abebe back in,  
17 please. We are back on the record with regard to  
18 the matter of the State vs. Unula Abebe. Indictment  
19 No. 09-31-23. The State is presently represented by  
20 Mr. Fata. Mr. Abebe is presently representing  
21 himself. We have now concluded the other matter and  
22 we are ready to go forward on this. And I have  
23 finished my preliminary instructions to the jury.  
24 We will go in to opening statements, and then we  
25 will go in to testimony. Anything before we bring

1 the jury in, Mr. Fata?

2 MR. FATA: No, sir.

3 THE COURT: Mr. Abebe?

4 THE DEFENDANT: No, sir.

5 THE COURT: Bring the jury in.

6 (Whereupon, the following takes place  
7 within the presence of the jury.)

8 THE COURT: Ladies and Gentlemen, we are  
9 ready to proceed. Let me ask this. If you  
10 will notice if you have been doing this as long  
11 as I have, things kind of fade together. Has  
12 the clerk administered an oath to you before  
13 you went out?

14 THE JURORS: Yes.

15 THE COURT: Mr. Fata, do you recall that?  
16 Let's do it again?

17 (Whereupon, the jury is sworn.)

18 THE COURT: The first matter is the matter  
19 of opening statements. For that purpose we  
20 will go now to Mr. Fata.

21 MR. FATA: Thank you, Your Honor. Ladies  
22 and Gentlemen good afternoon. My name is Paul  
23 ~~Fata. And I'm an attorney here in Bishopville.~~

24 And I represent the State of South Carolina in  
25 criminal prosecution. In which they accuse or

1 I haven't presented the Indictment. Accusing  
2 Mr. Abebe of striking or assaulting a  
3 correction's officer. The case is very simple.  
4 It's not a convoluted matter. Either he hit  
5 the officer or he didn't.

6 We're going to present evidence of that.  
7 He was in custody at the time. He was a  
8 prisoner at the Lee Correctional Institution,  
9 which is a prison out here on 341 going toward  
10 Lynchburg. That the officer, Officer Louis  
11 Lorrick; stand up, Louis. Was a correction's  
12 officer at the time. Performing his duties as  
13 a corrections officer. Sit down. And what  
14 happened was he was taking inmate Abebe to the  
15 shower. It's an SMU unit. You are not allowed  
16 to go to and fro on your own. You have to be  
17 escorted in handcuffs.

18 You will see a picture of this shower.  
19 And the shower is a shower with a bar at the  
20 door. Like a cell door with bars on it; that  
21 the correction's officer Lorrick took inmate  
22 Abebe to the shower. Closed the door and was  
23 taking the handcuffs off of him. Inmate Abebe  
24 had a shank. And you've heard of shanks. A  
25 shank is a knife. A homemade knife. And it

1 was a toothbrush filed down. And he reached to  
2 the bar and struck at correctional officer  
3 Lorrick. Hit him in the chest. In fact, he's  
4 lucky. Correction's officer had his name tag.  
5 He's got it on his pocket now. On this day he  
6 was wearing a polo shirt. The officers wear a  
7 lot. A shirt and collar. But he had his name  
8 tag hooked about here. And the shank hit the  
9 name tag about here on the chest. It's a  
10 simple case. He is in prison, in custody, with  
11 correction's Officer Lorrick doing his duty.  
12 He attacked the correction's officer. That's  
13 the case. Thank you.

14 THE COURT: Mr. Abebe, you have a right to  
15 make an opening statement to the jury. Is  
16 there anything you would like to tell them?

17 THE DEFENDANT: I waive the opening  
18 statement, Your Honor.

19 THE COURT: Call your first witness.

20 MR. FATA: We would call correction's  
21 officer Louis Lorrick.

22 THE COURT: All right.

23 Louis Lorrick, after being duly sworn,

24 testified as follows:

25 THE CLERK: State your name for the court,

1 please.

2 A Louis Lorrick.

3 Direct Examination by Mr. Fata:

4 Q You are a correction's officer at Lee  
5 Correctional Institution?

6 A Yes, sir.

7 Q Where is Lee Correctional Institute  
8 located?

9 A Down 341.

10 Q And that is in Lee County, South Carolina?

11 A Yes, sir.

12 Q And how long have you been a correction's  
13 officer?

14 A About 2 and half years.

15 Q And have you been to school and are  
16 certified and so forth?

17 A Yes, I have.

18 Q And where have you worked all, for the  
19 two, two and a half years have you said? Where have  
20 you worked for two and a half years?

21 A I worked in the yard and then lock up for  
22 the past year and a half.

23 Q In the lock up, what do you mean by lock  
24 up?

25 A Special Management Unit.

Louis Lorrick-direct by Fata

1 Q And that's what is so special about the  
2 special management unit? You have to speak in to  
3 that microphone.

4 A They are the ones that are in charge of  
5 the yard.

6 Q And but are inmates are handled  
7 differently in the Special Management Unit than they  
8 are on the yard?

9 A Yes, they're escorted everywhere.

10 Q And they are in a cell most of the time?

11 A Yes.

12 Q How long are they in the cell?

13 A It depends. If we do showers mostly, it's  
14 24 hours a day.

15 Q 24 hours a day. And they have -- they are  
16 taken out of their cell to take showers?

17 A Yes.

18 Q And the showers are located where?

19 A At each end of the dorm.

20 Q And how are they -- when they are out of  
21 their cell, how are they -- are they just free? Are  
22 they restrained in any way?

23 ~~A They're handcuffed behind their back.~~

24 Q They're handcuffed behind their back. And  
25 what is the procedure when you get somebody out of

Louis Lorrick-direct by Fata

1 their room to go the shower? What is the procedure?

2 A You have them back to the door. You open  
3 the food flap, place the cuffs on them. And then  
4 you unlock the door. Take them to the shower. Take  
5 the cuffs off. And then give them 15, 20 minutes to  
6 take a shower. And then place the cuffs on, and get  
7 them brought back to the room.

8 MR. FATA: Could you mark this for me  
9 State's No. 1 for id?

10 (Photograph marked State's Exhibit No. 1  
11 for id.)

12 Q I am going to show you State's Exhibit No.  
13 1 for identification and see if you can identify  
14 that photograph.

15 A The showers are on the south wing.

16 Q And do they indicate the cell door on  
17 that? Is the cell door shown?

18 A Yes, it is right here.

19 MR. FATA: Your Honor, we would move this  
20 into evidence as State's Exhibit No. 1.

21 THE COURT: Any objection, Mr. Abebe?

22 THE DEFENDANT: No, sir.

23 THE COURT: Admitted as State's Exhibit  
24 No. 1 without objection.

25 (Photograph marked State's Exhibit No. 1

Louis Lorrick-direct by Fata

1 into evidence.)

2 MR. FATA: May he come down and show the  
3 jury?

4 THE COURT: Yes, sir.

5 (Whereupon, the witness steps down from  
6 the witness stand.)

7 Q On State's Exhibit No. 1, show the jury  
8 what these doors are right here.

9 A These the shower doors.

10 Q So and now these doors on this end are  
11 what?

12 A That is actually cell doors.

13 Q Okay. Again, down here.

14 A These are the shower doors, and then the  
15 cell doors.

16 Q The are the shower doors are the ones with  
17 the bars. And the cell doors are closed. Now you  
18 indicated when you get somebody out of the cell, you  
19 handcuff them first through the food flap.

20 A Uh-huh. (Affirmative.)

21 Q Where is the food flap?

22 A It is right there below the windows.

23 Q But below the windows on the cell door, is  
24 that correct?

25 A Uh-huh. (Affirmative.)

Louis Lorrick-direct by Fata

1 Q Now what does the inmate do? Just sticks  
2 his hand through? Hands through, and you handcuff  
3 him?

4 A Uh-huh. (Affirmative.)

5 Q And you then open the door and escort him  
6 down to the shower?

7 A Uh-huh. (Affirmative.)

8 Q Did you -- have a seat.

9 (Whereupon, the witness resumes the  
10 witness stand.)

11 Q Did you do this on this day? Did you do  
12 this on February 6th, 2009?

13 A Yes.

14 Q Explain what you did.

15 A It was the fourth person that was let out  
16 for a shower. Three was already in. And then  
17 backed to the door. He come out of the room walking  
18 to the shower, and I went to take his left handcuff  
19 off of him.

20 Q Did you put him in the shower first?

21 A Yes.

22 Q And did---

23 A And locked the cell door.

24 Q As I said, he's in the shower. He's  
25 behind these barred doors?

Louis Lorrick-direct by Fata

1 A Uh-huh. (Affirmative.)

2 Q What happens next?

3 A I took the left handcuff off of his left  
4 wrist. And I grabbed the cuffs, and I pulled his  
5 arm through one of the bars. And he come around in  
6 my chest with the shank.

7 Q So he reached his hands through the bars,  
8 came around and hit your chest---

9 A Yes.

10 Q ---like this. What part of the body did  
11 the shank hit?

12 A It first hit my ID which was right here.  
13 And then it hit the left side of my chest.

14 MR. FATA: Would you mark this as No. 2  
15 for me?

16 Q I show you State's Exhibit No. 2 for  
17 identification. Can you identify this?

18 A It's my chest.

19 Q What is this metal thing?

20 A That's my Id. tag.

21 MR. FATA: Your Honor, we would move this  
22 in as State's Exhibit No. 2.

23 THE COURT: Any objections?

24 THE DEFENDANT: No, sir.

25 THE COURT: State's No. 2 in evidence

Louis Lorrick-direct by Fata

1 without objection.

2 (Photograph marked State's Exhibit No. 2  
3 into evidence.)

4 Q State's Exhibit No. 2 shows the chest  
5 where you were hit with the shank.

6 A Yes, sir.

7 Q Come down and show the jury.

8 (Whereupon, the witness steps down from  
9 the witness stand.)

10 Q First of all, let me ask you what this  
11 metal thing is.

12 A It's part of my ID.

13 Q Your ID was hanging straight here in front  
14 of you? It was hanging like that. Where is the  
15 mark?

16 A Right there.

17 Q Okay. So the shank bounced off your ID  
18 tag on to your chest. So it withstood the blunt  
19 force of the thing.

20 A Yes, sir.

21 Q The force. Shows the photograph here.  
22 This thing part of your ID.

23 A Yes.

24 Q And where were you hit?

25 A Right here.

Louis Lorrick-direct by Fata

1 Q Stand right over here. So is this how it  
2 happened like this?

3 A Well, it bounced---

4 THE COURT: Keep your voice up, because I  
5 have got to hear you and the court reporter has  
6 got to hear you as well.

7 Q So it straight at you this way. Bounced  
8 off your tag, and hit your chest?

9 A Yes.

10 Q Did you see the shank?

11 A Not until later on that day.

12 Q Okay.

13 MR. FATA: Mark this as State's 3 for ID.

14 Q This is State's Exhibit No. 3. Can you  
15 identify that?

16 A That is the shank made out of a  
17 toothbrush.

18 Q Is that what you were stabbed with?

19 A Yes.

20 MR. FATA: Your Honor, we would move  
21 State's Exhibit's No. 3 into evidence.

22 THE COURT: Any objection, Mr. Abebe?

23 ~~THE DEFENDANT: No, sir.~~

24 THE COURT: Admitted in to evidence  
25 without objection. State's No. 3.

Louis Lorrnick-direct by Fata

- 1 Q So now where did this shank come from?
- 2 A It is made out of a toothbrush that are  
3 issued every month.
- 4 Q Okay. And it is filed down on one end?
- 5 A Yes.
- 6 Q And it has a rag around the other end.
- 7 A Yes.
- 8 Q And what is the purpose of the rag?
- 9 A To aim the puncture on. Yes, sir.
- 10 Q To hold on it to?
- 11 A Uh-huh. (Affirmative.)
- 12 Q And the point is to---
- 13 A Stab you.
- 14 Q Is to stab you.
- 15 A Yes.
- 16 Q Stick you.
- 17 A Yes.
- 18 Q And this came from inmate Abebe. And  
19 that's the shank that he stabbed you. He hit your  
20 name tag and then hit your chest.
- 21 A Yes.
- 22 Q Who did you report this incident to?
- 23 A Sergeant Keith Lloyed.
- 24 Q And Keith Lloyd.
- 25 A Uh-huh. (Affirmative.)

Louis Lorrick-direct by Fata

1 Q Do you know what sergeant Lloyd did?

2 A He went and attempted to pull him out of  
3 the shower.

4 Q And what happened?

5 A He refused and attempted to spit on  
6 Sergeant Lloyd.

7 Q And then what happened?

8 A They went to go get a camera, and the MK 9  
9 to pull him out of the shower. He finally comes out  
10 of shower on his own.

11 Q Let me make sure I asked you this. This  
12 prison is in Lee County?

13 A Yes.

14 Q You are a correction's officer?

15 A Yes.

16 Q You were a correction's officer on  
17 February 6th 2009.

18 A Yes.

19 Q In the Lee County Correctional Institute.  
20 Performing your duties as a correction's officer?

21 A Yes, sir.

22 Q Inmate Abebe was in prison at Lee

~~23 Correctional Institute on February 6th 2009.~~

24 A Yes.

25 Q And inmate Abebe attacked you with that

## Louis Lorrnick-direct by Fata

1 shank.

2 A Yes.

3 Q Hitting you on your name tag, and then in  
4 the top of your chest?

5 A Yes.

6 MR. FATA: Answer any questions inmate  
7 Abebe may have.

8 THE COURT: Mr. Abebe, do you have any  
9 questions you would like to ask this witness?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: Thank you. You may step down.

12 MR. FATA: Your Honor, we would call  
13 correction's officer Keith Lloyd.

14 THE COURT: All right.

15 Keith Lloyd, being  
16 first duly sworn, testified as follows:

17 Direct Examination by Mr. Fata:

18 Q Sergeant Lloyd, what is your occupation?

19 A Sergeant over SMU.

20 Q And that's a special management unit?

21 A Yes, sir.

22 Q At Lee Correctional Institute?

23 A Yes, sir.

24 Q Were you working on February 6th 2009?

25 A Yes, sir.

Keith Lloyd-direct by Fata

1 Q And was an incident reported to you on  
2 that date wherein inmate Abebe assaulted  
3 correction's officer Lorrick?

4 A Yes, sir.

5 Q And what happened? What did you do in  
6 response to that?

7 A I went up there. I give him, he was  
8 directed to turn around and be handcuffed. He  
9 refused. I gave him the second directive to turn  
10 around and be handcuffed. At that time, I  
11 administered chemical munitions in the face area.  
12 And after I administered the chemical munitions he  
13 attempted to spit in my face. So when he didn't  
14 spit in my face, but I made a move to the side and I  
15 made a second burst of chemical munitions.

16 Q Chemical munitions is mace or pepper gas.

17 A Pepper gas.

18 Q So you did the second chemical munitions.  
19 What happened next?

20 A Lieutenant Davis came on the wing -- on  
21 the south wing, and he directed me to go up front to  
22 activate Force Movement Team, and bring the other  
23 video camera.

24 Q The Force Movement Team is the team that  
25 goes in and takes these prisoner's out of their

Keith Lloyd-direct by Fata

1 cells when they don't want to come out.

2 A Yes, sir.

3 Q And you all videotaped that.

4 A Yes, sir.

5 Q Was that necessary this time?

6 A When we got back on the wing he was  
7 already handcuffed.

8 Q He was handcuffed?

9 A Yes, sir.

10 Q And so that ended the situation.

11 A Yes, sir.

12 MR. FATA: Answer any questions inmate  
13 Abebe may have.

14 THE COURT: Mr. Abebe, do you have any  
15 questions of this witness?

16 Cross Examination by Mr. Abebe:

17 Q You said I did spit in your face?

18 A I said you attempted to spit in my face.

19 THE COURT: You may call your next  
20 witness.

21 MR. FATA: We would call Mr. Miguel  
22 Williams.

23 Miguel Williams, being first  
24 duly sworn, testified as follows:

25 Q Officer Williams, you are a certified

## Keith Lloyd-direct and cross

1 Correction's officer?

2 A Yes, sir.

3 Q Are you employed with the South Carolina  
4 Department of Corrections in Lee County?

5 A Yes, sir.

6 Q What is your job there?

7 A In contraband.

8 Q Contraband. Were you called to the SMU  
9 unit on February 6th, 2009?

10 A Yes, sir. I was already passing out  
11 legals.

12 Q Passing out legal mail?

13 A Correct.

14 Q Letters from lawyers?

15 A Yes, sir.

16 Q And did you come upon the scene at the  
17 shower where there was a confrontation between  
18 inmate Abebe where he tried to stab correction's  
19 officer Lorrick?

20 A Yes, sir.

21 Q What happened?

22 A Well I overheard them talking and trying

~~23 to get -- sergeant Lloyd was trying to get the~~

24 inmate out of the shower. He refused. He gave him

25 a directive, and he still refused.

Miquel Williams-direct by Fata

1 Q Did he spray him?

2 A I saw when he sprayed him. After he  
3 sprayed him or tried to spray him. He still  
4 wouldn't come out of the shower. After everybody  
5 left, and when the cameras and team, I was still  
6 standing there. I asked him for the object in his  
7 hand. He gave it to me.

8 Q And he gave it to you.

9 A Yes, sir.

10 Q How was he holding the object?

11 A He just had it in his hand.

12 Q Was he holding it sort of like this?

13 A Yes, sir.

14 Q Holding the object like this. Backed up  
15 into the cell. Just holding this up?

16 A Yes, sir. Because he had the sheet. In  
17 the shower they put up the sheet so no one could see  
18 him.

19 Q Yes.

20 A So he was standing behind the sheet still  
21 with the object in his hand.

22 Q You asked inmate Abebe for the shank?

23 A Yes, sir.

24 Q And he handed it to you?

25 A Correct.

Miquel Williams-direct by Fata

1 Q And I am going to show you State's Exhibit  
2 No. 3, do you recognize that?

3 A Yes, sir.

4 Q What is that?

5 A It's a homemade shank.

6 Q That you got off of who?

7 A Inmate Abebe.

8 Q In the SMU unit in the shower?

9 A Correct.

10 MR. FATA: Answer the questions Mr. Abebe  
11 may have.

12 THE COURT: Mr. Abebe, do you have any  
13 questions of this witness?

14 THE DEFENDANT: No, sir, Your Honor.

15 MR. FATA: Your Honor, the State rests.

16 THE COURT: Ladies and Gentlemen, you have  
17 heard the state announce they have rested.  
18 They have concluded their testimony. There are  
19 certain matters of law which I have to take up  
20 with the parties involved. This will take us  
21 about 10 minutes while I go through this  
22 process. I am going to send you to the jury  
23 room. I am going to ask that you not discuss

24 the case among yourselves. I will ask that  
25 while you are there in the jury room, that you

1 would select among yourselves one of the 12 of  
2 you to serve as the foreperson of this jury. I  
3 will allow you to select your own foreperson in  
4 this case.

5 When you come back in, advise me who you  
6 selected. Every person is eligible to be the  
7 foreperson except the alternate. And when you  
8 do that, that foreperson will sit in the first  
9 seat on the front row. If you will do that  
10 while we attend to these matters of law, we  
11 will be ready go forward in about 10 minutes.  
12 Thank you.

13 (Whereupon, the following takes place  
14 outside the presence of the jury.)

15 THE COURT: Mr. Abebe, you have the right  
16 to make any motions you would like to. If you  
17 have any motions to make, I will be glad to  
18 hear from you.

19 THE DEFENDANT: No, sir.

20 THE COURT: Mr. Abebe, let me ask you to  
21 stand. You may be called as a witness to  
22 testify on your behalf. You may call yourself  
23 as a witness if you so desire. I advise you  
24 that have the right to invoke the protections  
25 given to you by the Constitution of the United

1 States and the constitution of South Carolina  
2 that provides that no person shall be compelled  
3 in a criminal case to be a witness against  
4 himself.

5 This provision of the constitutional law  
6 means that you cannot be compelled or required  
7 to testify in this case. It is a right and  
8 privilege which the law extends to you. It is  
9 a personal privilege. Nobody can waive those  
10 rights except you. You have the right not to  
11 testify, but you also have the right to  
12 testify. If you elect not to testify, your  
13 failure to testify cannot be used by the state  
14 as an inference of guilt. And your failure to  
15 testify cannot be considered by the jury in its  
16 deliberations.

17 If you elect to testify and waive the  
18 privileges extended to you by both the United  
19 States and the South Carolina Constitution, I  
20 advise you that you would then assume the role  
21 of a witness in this case if you waive or give  
22 up your constitutional rights and privileges  
23 ~~against self incrimination. This means that if~~  
24 you voluntarily take the witness stand to  
25 testify that you will subject yourself to the

1 same rules that govern other witnesses, and you  
2 may examined or cross examined on any relevant  
3 issues in this case. And you may be impeached  
4 to the same extent as any other witness. All  
5 of which is subject to the rules of law and  
6 rules of evidence.

7 I further advise you that if elect to take  
8 the witness stand and testify, that this  
9 decision on your part must be made freely and  
10 voluntarily, intelligently, and with knowledge  
11 of the protections give to you by the  
12 constitution, and with knowledge of the  
13 consequences of you election to testify. Have  
14 you understood what I have explained to you  
15 about your 5th Amendment constitutional rights  
16 against self incrimination?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions you  
19 wish to ask me about your 5th Amendment rights?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you made a decision as to  
22 whether you do or do not wish to testify in  
23 this case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What is that decision?

1 THE DEFENDANT: I do not.

2 THE COURT: Is that decision on your part  
3 freely and voluntarily made?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, the Court would  
6 find that the defendant having been advised by  
7 the Court of this constitutional rights and  
8 privileges against self incrimination, has made  
9 a free, voluntary, intelligent and knowing  
10 decision not to testify in this case. And the  
11 Court will respect that decision. All right,  
12 Mr. Abebe, thank you. You may be seated. That  
13 will then conclude all the testimony in  
14 connection with this matter.

15 Let me ask you, Mr. Abebe, you said you do  
16 not wish to testify. Do you have any other  
17 testimony or evidence that you wish to present  
18 on your behalf?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Then that will conclude  
21 the testimony in this case. We can go right in  
22 to arguments.

23 ~~MR. FATA: Five minutes, Judge.~~

24 THE COURT: Wait just a minute.

25 Mr. Abebe, since you did not present any

1 evidence, you have the right to present a  
2 closing argument. And the state would have to  
3 open, and you would have right to make the last  
4 argument or statement to the jury. Do you  
5 plan to make any closing statement or argument  
6 to the jury?

7 THE DEFENDANT: No, sir.

8 THE COURT: So we will allow Mr. Fata to  
9 make his argument, and be ready to go forward.

10 From the standpoint of the charges, Mr.  
11 Abebe, and Mr. Fata, my intention would be just  
12 the regular general charge. And to charge the  
13 jury, an assault, not a battery. But advise  
14 them what an assault is. Because under the  
15 statute it does not require a battery.

16 16-3-630, is just an assault. And then to  
17 define an assault. And charge the statute as  
18 to the elements with regard to a correctional  
19 officer in the performance of his duties.

20 All right, we will take about 5 minutes,  
21 and we will be ready to go forward.

22 MR. FATA: Okay.

23 THE COURT: Let me Mr. Abebe, go to room  
24 to relax for a few minutes. And we will be  
25 ready to go forward with the final arguments,

1 instructions to the jury in just a moment.

2 Thank you.

3 (Whereupon, the court takes a short  
4 recess.)

5 THE COURT: We are back on the record in  
6 regard to the matter of the State vs. Unula  
7 Abebe. Mr. Abebe is present. Mr. Fata is here  
8 on behalf of the State.

9 Again, just to make sure that the record  
10 is complete, Mr. Abebe has exercised his  
11 constitutional right not to testify in this  
12 case. I instructed or indicated to the court  
13 that he does not have any additional testimony  
14 or evidence. And thus all the testimony is  
15 complete. The only two things that remain to  
16 be done are the arguments and the instructions  
17 of the court. Or instructions on the law by  
18 the court.

19 I advised Mr. Abebe that he had the right  
20 to make a closing argument after the State made  
21 the first argument, and he has indicated that  
22 he does not wish to do so. Mr. Abebe, I will  
23 ~~call on you again after the state has made any~~

24 argument, if you would like to say by way of  
25 argument to the jury, you may do so. And you

1           may again just advise me that you do not wish  
2           to make any statements to the jury, and we will  
3           go to the instructions.

4           My intention in this case, Mr. Fata, and  
5           Mr. Abebe, rather than use the jury form, is to  
6           do the matter like we have done in the opening.  
7           This indictment appears to be very clean. And  
8           so what I plan to send the indictment to the  
9           jury with the -- to the jury room with the  
10          jury. And allow them to write the verdict  
11          right here.

12          MR. FATA: That's fine.

13          THE COURT: Bring the jury in.

14          (Whereupon, the following takes place  
15          within the presence of the jury.)

16          THE COURT: I take it you are the lucky  
17          person selected as the foreperson.

18          THE FOREPERSON: Yes, sir.

19          THE COURT: Tell me your name.

20          THE FOREPERSON: Deann Bramlett.

21          THE COURT: Ms. Bramlett. The jury has  
22          selected Ms. Bramlett as the foreperson of this  
23          jury. And the other jurors are all present,  
24          and ready to go forward. As I told you before  
25          you went out, Ladies and Gentlemen, the

1 testimony in this case is complete. The only  
2 matters that remain to be done are the  
3 statements by the lawyers and the closing  
4 arguments by the parties. And then I will  
5 instruct you on the law.

6 You will hear first from Mr. Fata on  
7 behalf of the State. And then I will give  
8 Mr. Abebe an opportunity to address you if you  
9 would like to do so. Mr. Fata.

10 MR. FATA: Thank you, Your Honor. Madam  
11 forelady and ladies and gentlemen of the jury,  
12 I thank you for your attention. I noticed  
13 while the witnesses were testifying you were  
14 paying close attention. That being said, it's  
15 a very short case. And straight forward facts.  
16 But it is still an important case. Important  
17 to the state and it is important to inmate  
18 Abebe.

19 Quickly, I just want to go over what  
20 occurred. On February 6th 2009, at the Lee  
21 Correctional Institution, Correction's officer  
22 Lorrick were taking inmate Abebe to take a  
23 ~~shower in one of these shower cells. And he~~  
24 was in the SMU unit which is a 24/7 lock down.  
25 He was out to exercise and take a shower. And

1 Inmate Abebe was handcuffed behind his back.  
2 Correction's officer Lorrick escorted him to  
3 the jail cell with the shower door.

4 Put him in inside. Locked the door.  
5 Unhandcuffed one hand. Inmate Abebe turned  
6 around and stabs at Correction's officer  
7 Lorrick with this. It's called a shank. And a  
8 shank can be just about anything, but in this  
9 case it's a toothbrush. It has been filed down  
10 at the end with the claw on the opposite end.  
11 And you will notice this little, little  
12 whatever you call that thing where your hand  
13 you can slide down, slide down the blade. And  
14 he stabs at Correction's Officer Lorrick with  
15 this.

16 This is against the law for obvious  
17 reasons. We cannot have inmates beating on  
18 correction's officers. It's a tough enough job  
19 with being stabbed and that sort of thing. The  
20 law does not require a battery. His Honor is  
21 going to tell you the difference between an  
22 assault and assault and battery. You will hear  
23 the same two terms, assault and battery. A  
24 battery is simply a touching. You and I shake  
25 hands, or I touch you on the shoulder, that's a

1 battery. Technically. But it is excused  
2 because you stuck your hand out, or I was  
3 touching you on the shoulder to get your  
4 attention. Something like that.

5 An assault is a threat or an action in a  
6 threatening manner, where you have the present  
7 ability to carry it out. So in other words,  
8 instilling fear in somebody. For example, if I  
9 have this, and I stab somebody like that,  
10 that's an assault. I am close enough where I  
11 can stick you with it or whatever. Even though  
12 I don't touch you. In this charge, the state  
13 does not require a battery only an assault.  
14 However in this situation, we have an assault,  
15 coupled with a battery. So we have a threat,  
16 coupled with the actual touching.

17 Now this case is not -- Correction's  
18 Officer Lorrick was not mortally wounded. Was  
19 not, did not require stitches and that sort of  
20 thing. Because what he said, my name tag is  
21 right here. The force hit the name tag and  
22 kind of glanced the blow off of my chest. It's  
23 just a little mark there. Just a little mark,  
24 but remember his honor is going to tell you  
25 that a battery is not required. But we have a

1 battery here.

2 This occurred on February 6th 2009. The  
3 elements of the case are, that a correction's  
4 officer was doing his job and was attacked by  
5 an inmate. That correction's officer Lorrick  
6 was a Correction's officer doing his job at the  
7 time. Inmate Abebe was an inmate being  
8 escorted by Correction's officer Lorrick.  
9 Simply this is the kind of conduct we which  
10 cannot have in our prison. It's just a tough  
11 enough job without being beaten on and stabbed.

12 So inmate Abebe is guilty of this, and I  
13 would ask you to find him guilty. Thank you.

14 THE COURT: Mr. Abebe, do you wish to make  
15 a closing statement to the jury?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Sir?

18 THE DEFENDANT: My name is Abebe. That's  
19 all.

20 THE COURT: Ladies and Gentlemen, you have  
21 now heard the arguments of counsel in this  
22 matter. And the statement of Mr. Abebe. It  
23 now becomes the duty of the court to charge and  
24 instruct you on the law applicable to this  
25 case.

1           The State of South Carolina in this  
2           Indictment charges that the defendant did on or  
3           about February 6th of this year, assault an  
4           employee of a state or local correction's  
5           facility; specifically, Louis Lorrick, of the  
6           Lee County Institute. While the officer was  
7           performing job related duties, by striking him  
8           in the chest area with a homemade shank.

9           To this charge and to this indictment,  
10          the defendant has pled not guilty. This plea  
11          of not guilty by the defendant places the  
12          burden of proof on the state to prove the  
13          guilt of the defendant beyond a reasonable  
14          doubt before you the jury can convict him and  
15          find him guilty.

16          Now of course when I use the word  
17          defendant in these instructions, I refer to  
18          Mr. Abebe. The defendant is presumed in the  
19          law, innocent of the charges contained in the  
20          indictment. The presumption of innocence  
21          accompanies the defendant from his appearance  
22          in court and throughout every stage of this  
23          ~~trial until you the jury have reached a verdict~~  
24          of guilt, guilty based upon the evidence which  
25          satisfies you of his guilt beyond a reasonable



1 reasonable doubt as to the guilt or innocence  
2 of the defendant, he is entitled to that  
3 reasonable doubt a verdict of not guilty. If,  
4 but on the other hand, if you upon the whole  
5 case, you find that the state has proven by  
6 evidence which satisfies you the jury of the  
7 guilt of the defendant beyond a reasonable  
8 doubt, in such circumstances it would equally  
9 be your duty to convict the defendant and find  
10 him guilty.

11 Now, Ladies and gentlemen, during this  
12 trial you and I have certain duties to perform.  
13 These duties are fixed by the law of this  
14 State. The jury is the sole judge of the facts  
15 in this case. The court is the sole judge of  
16 the law. I also have the duty to rule upon or  
17 pass upon the admissibility of evidence offered  
18 during the progress of the trial. The court  
19 determines only whether the evidence is  
20 admissible. The court is not concerned with  
21 its weight or believability. That is up to the  
22 jury.

~~23 In every case tried before -- tried in~~  
24 court before a jury, the jury is the sole and  
25 exclusive judge of the facts. The constitution

1 of this state has declared that the trial judge  
2 shall not comment upon or make any statement to  
3 a trial jury about the facts in a case. It is  
4 your exclusive duty as jurors to determine the  
5 effect, value, weight and the truth presented.

6 Necessarily you must evaluate the  
7 credibility of the witnesses who have  
8 testified. Credibility is simply a legalistic  
9 term meaning believability. I instruct you  
10 that in determining the believability of the  
11 witnesses you may believe one witness as  
12 against several witnesses or several witnesses  
13 as against one witness. You may believe part  
14 of the testimony of the witness and reject the  
15 remaining part of the testimony of that same  
16 witness.

17 You may consider whether any witness has  
18 exhibited any interest, any bias or any  
19 prejudice in the case. Then you may consider  
20 the demeanor or appearance of the witness on  
21 the witness stand. These considerations you do  
22 not exercise arbitrarily but if in your good  
23 judgment there is a sound reason for so doing.  
24 Because your objective, Ladies and Gentlemen,  
25 is to reach the truth or find the truth whether

1           it comes from one or more witnesses. And in  
2           doing so in exercising your mental processes,  
3           and in determining what you consider to be  
4           true, the law simply requires that you exercise  
5           your judgment, your common sense, your sense of  
6           logic and reason and your experience in life.  
7           You then apply these attributes of ability to  
8           the evidence and determine what you consider to  
9           be the truthful evidence.

10           And to these true state of facts as  
11           determined by you the jury, you take and apply  
12           the law as the court now gives it to you, and  
13           thus arrive at a true verdict in this case.  
14           Now as I said, the defendant in this case is  
15           charged with the offense of assault upon a  
16           correctional officer. And I wanted to define  
17           that for you, and give you some other legal  
18           instructions to help you arrive at a verdict.

19           Section 16-3-630 of the Code of Laws of  
20           South Carolina provides that a person convicted  
21           of assault upon an employee of a state or local  
22           correctional facility in performing job related  
23           ~~duties must serve, or must be punished~~  
24           according to the provisions of law.

25           That being the case, I am going to talk to

1           you just a minute about what is an assault. An  
2           assault is an unlawful attempt or offer to  
3           commit an injury upon another person, coupled  
4           with the present ability to complete the  
5           attempt or offer by a battery. Assault has  
6           been defined as placing another in apprehension  
7           of harm. It is not necessary the attempted  
8           assault or harm actually took place. While  
9           words alone do not constitute an assault, if by  
10          words and conduct a person intentionally  
11          creates a reasonable apprehension of bodily  
12          harm, it is an assault.

13                 An assault is an attempt to do violence to  
14          the person of another in a rude, angry or  
15          resentful manner. An assault is intentional  
16          creation of fear of immediate bodily harm. Now  
17          a battery is the use of force against another  
18          resulting in harmful or offensive conduct. It  
19          is the assault brought through to completion.  
20          So you sometimes hear the term assault and  
21          battery. An assault does not require a  
22          touching. It is simply the attempt or ability  
23          to place another in reasonable fear or  
24          reasonable bodily harm. The battery is  
25          carrying through the assault. And the offense

1 in this case does not require a battery. I  
2 will again tell you the statute simply requires  
3 a person convicted of an assault upon an  
4 employee of a state or local correctional  
5 facility performing job related duties must be  
6 punished according to the law.

7 Now I would also tell you that the fact  
8 that a defendant did not take the stand and  
9 testify in his own behalf does not create any  
10 presumption against him. You must not permit  
11 this fact to weigh in the slightest against the  
12 defendant, nor should this fact enter into the  
13 discussions or deliberations in the jury room  
14 in any manner whatsoever.

15 Now, Ladies and gentlemen, it has been  
16 said that when you serve on the jury you are  
17 not partisans or advocates for the State of  
18 South Carolina or for this defendant. You do  
19 not serve as a juror to reward friends or  
20 punish enemies. Obviously such a perverted  
21 system of justice would not be tolerated. You  
22 have been selected by both the state and this  
23 defendant as fair and impartial jurors. It is  
24 your duty then by your joint deliberations to  
25 determine the truth in this case, giving to the

1 defendant the benefit of every reasonable  
2 doubt. And then to the facts that you  
3 determine to be truth, you then take and apply  
4 the law which has been given to you by this  
5 court and arrive at a verdict which does speak  
6 the truth.

7 Because that's what the word verdict  
8 means, Ladies and gentlemen. It comes from the  
9 Latin verb, veredicto, meaning to speak the  
10 truth. And when you have done that, you will  
11 have discharged your duty to the court. Now  
12 the verdict that you render in this case must  
13 be your unanimous verdict. All 12 of you must  
14 agree on the verdict, which you authorize your  
15 forelady to write.

16 And I will tell you that, again, as I did  
17 at the first of this case, you are going to  
18 have the Indictment in the jury room. But the  
19 indictment is not evidence of anything. It is  
20 simply the charges against the defendant. You  
21 will decide the case based upon the evidence  
22 you have heard from this witness stand and from  
23 any exhibits that have been introduced into  
24 evidence. But when you have reached a  
25 unanimous verdict, madam forelady, there is a

1 place on the back of the indictment entitled:  
2 "Verdict," right here, bottom of the corner of  
3 the verdict. And your verdict would be either  
4 one of two things. It would be the one word  
5 guilty if you find the state has proven the  
6 case beyond a reasonable doubt. Or it would be  
7 not guilty if you find the state has not proven  
8 the case beyond a reasonable doubt.

9 You would write what your verdict is,  
10 Madam forelady. The verdict of the entire  
11 jury. Guilty or not guilty. Sign your name  
12 and date it. And notify us and we will return  
13 you to the Courtroom as quickly as possible.  
14 Now I am going to allow you to go to your jury  
15 room. I am going to ask that you not begin  
16 your deliberations just yet. If I don't have  
17 to bring you back in the courtroom, the bailiff  
18 will bring you the indictment upon which you  
19 may write your verdict. And also the exhibits.  
20 And you can notify us as soon as you have  
21 reached a verdict. Everybody but the  
22 alternate, the 12 principal jurors, go to the  
23 jury room please. Thank you.

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

1 THE COURT: Any additions or exceptions on  
2 my instructions to the jury on behalf of the  
3 State, Mr. Fata?

4 MR. FATA: No, sir.

5 THE COURT: Mr. Abebe, do you have any  
6 objections to the instructions I gave the jury?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: If you will give them the  
9 indictment, and tell them they may deliberate  
10 their verdict.

11 (Whereupon, alternate is excused.)

12 (Whereupon, At 4:35 p.m. jury commences  
13 deliberations.

14 (Whereupon, at 4:45 p.m. jury reached  
15 verdict.)

16 THE COURT: Mr. Abebe, if you will have a  
17 seat. Back on the record with regard to the  
18 matter of the State vs. Abebe, 09-GS-31-123.  
19 Mr. Abebe, is here present in the court.  
20 Mr. Fata is here on behalf of the State. I  
21 have been advised that the jury has reached a  
22 verdict. Anything before we bring the jury in,  
23 Mr. Fata?

24 MR. FATA: Nothing from the State, Your  
25 Honor.

1 THE COURT: Mr. Abebe?

2 THE DEFENDANT: No, sir, Your Honor.

3 THE COURT: Bring the jury in please.

4 (Whereupon, the following takes place  
5 within the presence of the jury.)

6 THE COURT: Madam forelady, have you  
7 reached a verdict?

8 THE FORELADY: Yes, sir.

9 THE COURT: Would you hand it up the  
10 bailiff please? From the standpoint of the  
11 form, the verdict appears to be correct.  
12 Mr. Abebe, would you stand? Madam Clerk.

13 THE CLERK: We the jury find the  
14 defendant, Unula Abebe, guilty.

15 THE COURT: Signed by the forelady and  
16 dated today. Okay, if this be your verdict so  
17 say you all. Please signify by raising your  
18 right hand.

19 (Whereupon, all jurors affirm.)

20 THE COURT: Mr. Abebe, you may be seated.  
21 Ladies and gentlemen, this will conclude your  
22 services on this case. And I am going to  
23 ~~excuse you in just a few minutes. I do want to~~  
24 thank you for your services on this case. And  
25 I have told many juries this over the years,

1           that in my view, the jury's role in the fact  
2           finding process is solely for them; that the  
3           trial judge should not comment on the verdict  
4           of the jury, even after a jury has returned a  
5           verdict. And I make a practice and policy  
6           never to comment on the verdict of the jury.  
7           But I will tell you that there was evidence in  
8           the record by which you could reach the  
9           decision that you did. I will also tell you  
10          that once you have been excused, there is  
11          nothing illegal about you talking to anyone  
12          about your service on this case. It is  
13          practice I don't approve of, but it is not  
14          illegal. You can talk to anyone or not talk to  
15          anyone. But if anyone wants to talk to you  
16          about your service and you don't want to talk  
17          about it and they continue to harass you, you  
18          let the court personnel know. This is the last  
19          case which we will select a jury on this week.  
20          You are excused for the remainder of the week.  
21          I want to thank you on behalf of the State for  
22          your services this week.

23                       (Whereupon, the jury is dismissed.)

24                       THE COURT: Mr. Abebe, do you have any  
25                       motions you would like to make at this time?

1 THE DEFENDANT: No, sir.

2 THE COURT: Mr. Abebe, the jury having  
3 found you guilty, it now becomes the duty of  
4 this court to impose the appropriate  
5 punishment. Before I call on you, I will ask  
6 if Mr. Fata has anything that you would like to  
7 add, or I will be glad to hear from Mr. Lorrick  
8 who is the victim in this case. If there is  
9 anything he would like to tell me.

10 MR. FATA: The only thing we have, Your  
11 Honor, is to go over the record. And  
12 Mr. Lorrick does not wish to address the  
13 record.

14 THE COURT: What is his record?

15 MR. FATA: A juvenile record in 2002,  
16 burglary first degree. He was sentenced to  
17 D.J.J. not to exceed his 21st birthday. Then  
18 he had a failure to comply with a directive in  
19 2003. That appears to be a Magistrate Court  
20 level case. He has a resisting arrest in 2003.  
21 He had, I guess what he is currently serving  
22 time for, manufacturing, distribution,  
23 et. cetera, of ice, crack or crank, two counts.

---

24 And he had a PWID two counts in 2006. He  
25 received 10 years on each. Concurrent. And

1 that's the record we have.

2 THE COURT: Mr. Abebe, is that the correct  
3 recitation of your criminal record?

4 THE DEFENDANT: That's part of it.

5 THE COURT: There is more than that?

6 THE DEFENDANT: Pending charges.

7 THE COURT: Pending charges. But they are  
8 not convictions.

9 THE DEFENDANT: No, sir.

10 THE COURT: And what are you serving time  
11 for now, Mr. Abebe, 10 years on the drug  
12 charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And what is your max out on  
15 those?

16 THE DEFENDANT: It's probably 2011, 2012.

17 THE COURT: Is there anything you would  
18 like to tell me in connection with this matter?

19 THE DEFENDANT: No, sir.

20 THE COURT: Sir, the Sentence of the Court  
21 is that you are committed to State Department  
22 of Corrections for a term of 2 years.  
23 Consecutive to the sentence being served.

24 MR. FATA: Thank you, Your Honor. We have  
25 no other business today.

C-E-R-T-I-F-I-C-A-T-E

1  
2  
3  
4  
5  
6 I, Margaret T. Sullivan, Court Reporter, for the  
7 Third Judicial Circuit of the State of South Carolina,  
8 do hereby Certify that the foregoing is a true, accurate  
9 and complete Transcript of Record of the proceedings had  
10 and evidence introduced in the above captioned case,  
11 relative to appeal, in General Sessions Court, on  
12 April 1 2009, for Lee County, Bisopville, South  
13 Carolina.

14 I do further that I am neither kin, counsel nor  
15 interest to any party hereto.  
16  
17  
18

19 6-21-10  
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 10-03-11  
20  
21  
22  
23  
24  
25

# APPENDIX - C

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEE )

INDICTMENT FOR  
ASSAULTING A CORRECTIONAL OFFICER

At a Court of General Sessions, convened on March 26, 2009, the Grand Jurors of LEE County present upon their oath:

That UNULA ABEBE did in Lee County on or about February 6, 2009, violate Section 16-3-630 of the Code of Laws of South Carolina (1976), as amended, in that he did assault an employee of a state or local correctional facility, to-wit: LOUIS LORICK, of the Lee Correctional Institute, while said officer was performing job-related duties, by striking him in the chest area with a homemade shank.

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

  
SOLICITOR

WITNESSES

SCDC

Investigator Lloyd Greer

DOCKET NO. 2009-GS-31- 23

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

MARCH TERM 2009

THE STATE

vs.

UNULA ABEBE

ARREST WARRANT NUMBER

K243593

D/A: 02/06/09

ACTION OF GRAND JURY

*Jane Bell*

*Margaret A. Durand*

Foreperson of Grand Jury

*March 26, 2009*

VERDICT

*Guilty*

*Mandy Bramlett*

*4-1-09*

Foreperson of Petit Jury

Date:

Indictment for

ASSAULTING A CORRECTIONAL OFFICER

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE VS.  
Unwula Abebe  
AKA:  
Race: B Sex: M Age: 20  
DOB: 7/2/85 SS#: 269-11-1172  
Address:  
City, State, Zip  
DL# SID#

INDICTMENT/CASE#:  
2005 -GS- 40 - 4335  
AW#: DPO5209  
Date of Offense: 11/10/03  
S.C. Code §: 44-53-445(6)(2)  
CDR Code #: 0111018  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
TO: Distribution of crack within proximity of school/park  
in violation of § 44-53-445(6)(2) of the S.C. Code of Laws, bearing CDR Code # 0111018  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant  
cap at 15 years CC

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ 1000; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: 4/24/06  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.

SPECIAL CONDITIONS:

|   |   |
|---|---|
| <input type="checkbox"/> RESTITUTION: <input type="checkbox"/> Heard, <input type="checkbox"/> Waived, <input type="checkbox"/> Ordered | PTUP _____  |
| Total: \$ _____ plus 20% fee: \$ _____  | _____ days/hours Public Service Employment          |
| Payment Terms: _____  | Obtain GED _____                                    |
| <input type="checkbox"/> set by SCDPPPS _____   | Attend Voc. Rehab. or Job Corp. _____               |
| Recipient: _____  | May serve W/E beginning _____                       |
| *Fine: _____  | Substance Abuse Counseling _____                    |
| §14-1-206 (Assessments 107.5%) _____  | Random Drug/Alcohol Testing _____                   |
| §14-1-211(A)(1) (Conv. Surcharge) \$100 _____   | Fine may be pd. in equal, consecutive weeks/monthly |
| §14-1-211(A)(2) (DUI Surcharge) \$100 _____   | pmts. of \$ _____ beginning _____                   |
| §56-5-2995 (DUI Assessment) \$12 _____  | \$ _____ paid to Public Defender Fund               |
| § 35.13 (Public Def/Prob) \$500 _____   | Other: _____  |
| §73.3, 1B TP (Law Enforce. Funding) \$25 _____  |   |
| §33.7, 1B TP (Drug Court Surcharge) \$100 _____   |   |
| §50-21-114(BUI Breath Test Fee) \$50 _____  |   |
| §56-5-2942(J) (Vehicle Assessment) \$40/ea _____  |   |
| 3% to County (if paid in installments) _____  |   |
| TOTAL _____   |   |

06 APR 25 PM 5:00  
RICHLAND COUNTY  
DEFENTION CENTER

Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.  
PRESIDING JUDGE [Signature]  
Judge Code: 21 101515  
Sentence Date: 4/24/06

Barbara A. Scott  
Clerk of Court/ Deputy Clerk  
Court Reporter: J. Williams

# APPENDIX - E

Mr. Unula B. Abebe # 285447  
Affiant:

# COMPLAINT AFFIDAVIT

I, Unula B. Abebe, am making this criminal complaint to the Eleventh Circuit Solicitor's office because I have been made a victim of a crime and the State should prosecute I being duly sworn, deposed and says:

1. My name is Mr. Unula Boo-Shawn Abebe and I am the Affiant of this Affidavit.
2. I am over the age of 18 and I am competent to testify.
3. On or about December 17 2013, officer Herald of the McCormick Correctional Institute, tried to blackmail me into engaging into homosexual activities with him, i.e. he threaten to file prison charges against me for exhibitionism if I didn't show him my penis. Ofc. Herald is a white male, approx 6'1" 230lbs with a low cut hair and approx 35 years old.
4. I reported his actions to the Division of Investigation, but received no response.
5. On or about the night of February 24 2014, while in the S.M.U dorm of the McCormick Correctional Institute, I was taken out of my cell #A-101 by officer Mr. Sowell, in handcuffs, then escorted to the shower cage to bathe because I had to go to court that following day (3-25-14).
6. After showering, Mr. Sowell placed me back into handcuffs and secured them with a black box but he did not lock the black box with the master lock as required.
7. He let me out of the shower cage then escorted me back to my cell.
8. Once I got in front of the cuff's while saying "LET ME GO ahead and get the black box!" Suddenly reached for the cuff's while saying "LET ME GO ahead and get the black box!"
9. When he grabbed the black box, which was on the cuff's behind my back, I felt one of his fingers slide partially down the top of my butt crack, right before he grabbed the black box.
10. His actions was so sudden that I didn't have time to move my hands away from my butt to prevent any inappropriate touching and I didn't expect him to even reach for the box because he's not suppose to take the box off until I'm locked behind my cell door.
11. When he sexually assaulted me, I was already in front of my cell which is in clear view of the S.M.U control booth.
12. At the moment of assault, I was preoccupied with looking at Sergeant Stevenson who was sitting in the booth watching us. To me, that was odd because she normally do not pay any attention to her officers taking inmates back to their cells nor to the shower and that's what had my attention when Mr. Sowell sexually assaulted me.
13. She was watching us when he did it but since I was facing her she couldn't see my back until I turned sideways and when I turned sideways, Mr. Sowell sexually assaulted me while she watched.
14. Mr. Sowell is an openly gay male and he has said that Sergeant Stevenson is a gay female. I heard him say it personally.
15. On two occasions, once during the month of March and again during the month of April, officer Mr. Jones who works in my dorm (S.M.U) brought me my lunch tray to my cell door and as I walked from my bed to my cell door I saw that his eye's was on my penis area. I did have on clothes but I could still tell that his eye's was on that area.
16. His eye's lingered there until I got to close to the door where he could no longer see the area then he looked up at me with a mischievous smirk on his face then said "What's up man?"
17. This occurred twice as I said in paragraph #15 but the first time I didn't know what to think of it until the second time, that's when I felt sure that he was sexually harassing me. He used to always talk about church so I didn't think he was gay at first.
18. Multiple times afterwards, he would say "What's up man?" to me everytime he sees me, sometimes 3 to 4 times a day. All of this occurred in 2014.
19. I asked other prisoners about him and some said that he did them the same way. I noticed that he wears a wedding ring, so I guess he's bisexual.
20. During the month of July 2014, while in the S.M.U dorm of McCormick Correctional Institute, volunteer chaplin Mr. Frank came to my cell door to discuss the bible.
21. He told me that God will judge me by looking at my backside.
22. I asked him what did he mean by that, i.e. backside and he said that he meant "rear end" but before I could speak out against what I believe was an inappropriate comment he started talking about how god judge people by their pass acts and he said that in a way as if that's what he meant by rear end but I figured that that's just going to be his excuse if I report him for making homosexual comments to me.
23. The administration would probably believe him over me since he's not only a christian, but a volunteer chaplin and the complaint would involve homosexuality.
24. The head warden at this prison is Mr. Leroy Cartledge and he's the brother of the head warden of Perry Correctional inst. name Larry Cartledge.
25. I reported to the district court in 2012 that Larry Cartledge use to allow a male inmate to masturbate in front of him until the inmate ejaculated. The information was reliable. See Abebe v. Green S11-cv-0270 and view my response to the defendants first motion for summary judgment. If it's not under that docket number then try D11-cv-0270. I also may be able to get an affidavit from said inmate.
26. So I wasn't surprised that homosexuality was happening under Leroy's watch. I just never seen it this intense. It's worse here than Lee's Broad River and Perry C.I. Even the chaplin is doing it. The women here act manly and the men girlish.
27. Earlier this year, I received a letter in the mail from a christian woman. The officer that delivered the mail to me was officer Ms. C. Jones.
28. I was told that Ms. C. Jones is biologically related to the Mr. Jones I spoke of in paragraphs 15-19. Once I received the envelope from Ms. C. Jones I noticed that the return address of the writer was cut off the envelope.
29. Afterwards, Mr. Jones came by my door and said "it aint nothing but some fan mail!"

- 30 He said it as if I shouldn't worry about the address being cut off nor writing  
 31 the lady back. HE also said that Ms. C. Jones isn't suppose to be passing out mail, yet she still is  
 32 Once I read the letter, I saw that the lady was talking about the bible and  
 33 Encouraging me to either write her back or to get with the chaplain for help.  
 34 I openly profess not to have a religion but by their actions, I felt that they were  
 35 trying to prevent me from ever becoming christian again by trying to stop me  
 36 from writing the christian lady back.  
 37 I also figured it could be homosexually related i.e. their actions because when  
 38 male christians write me, nothing is wrong with the envelope.  
 39 Mr. Jones speaks about church all the time even though he sexually harass male  
 40 prisoners.  
 41 Lieutenant S. Terry is the head supervisor of my dorm (S.M.U.)  
 42 He hires prisoners out of general populations to work in his dorm as janitors, etc.  
 43 The majority of the inmates he hire are known homosexuals. The ones that are  
 44 hired but are not homosexuals are fired after several months for doing the things  
 45 he allow the homosexual workers to do.  
 46 Last winter L.T. Terry would allow S.M.U inmates into their property bags to get their  
 47 radios according to policy.  
 48 I requested to get my legal material and coat out of my property bag and  
 49 stated specifically in the request form that the legal material is not in my legal  
 50 boxes, it's in my property bag and that I don't know it because I put it there. My  
 51 legal boxes were to full to fit it in them.  
 52 Instead of letting me go into my property bag, he brought my number #2 legal box  
 53 from the property control room. It did not have the specific legal material documents  
 54 I needed for my case.  
 55 Sgt. McDuffie brought the box to my door and I told him that I didn't request  
 56 it so take it back, he said no.  
 57 I said that I refused to accept it, then he said, in a threatening manner that  
 58 I was going to accept the box.  
 59 I was trying to stay out of trouble so I accepted the box, but I also wrote  
 60 L.T. Terry another request about the mistake he made. It was hand delivered by off.  
 61 Durant. I saw when he handed it to L.T. Terry.  
 62 He didn't respond to the request and later announced that no more inmates  
 63 will be allowed into their property bags for anything.  
 64 So not only did I not get the legal material but I also had to suffer the winter  
 65 without a coat. And it'll be the same for this winter.  
 66 L.T. Terry refused to come pick up the legal box to take it back to the property  
 67 control room I had it for several months. I wrote property control twice but it wasn't  
 68 until the second time that an officer i.e. off. Blair came to my cell to get it.  
 69 I needed my coat for, among other things, to wear outside, during recreation in  
 70 the winter. I had to go to court on Dec. 2013 and Feb 2014 without it.  
 71 When winter ended I tried to get recreation but was denied every time for  
 72 months by the officers that work in my dorm i.e. S.M.U. (see paragraph 51 below)  
 73 I complained to L.T. Terry and he said it was because I have my cell window  
 74 covered. I told him that I stopped doing that a month prior and ~~was~~ the only  
 75 reason I had it covered is because officers like Mr. Soell be staring at me. He  
 76 further stated that now I only cover it up when I'm using the bathroom.  
 77 My argument was to no avail. This conversation took place in March 2014 and I  
 78 knew he was being discriminative because the inmate who was in the cell next  
 79 to my cell during these times, use to have his window covered all the time and he  
 80 was still given recreation. He was rewarded for disobeying. I was punished for obeying the rules.  
 81 My recreation has been being denied all year. When I don't have my window  
 82 covered, the officers will write in a rec. log book that it was covered so they can  
 83 the number of inmates they have to give rec to, and I'm one of them.  
 84 Since I've been diagnosed with high blood pressure in 2010, I have been prescribed  
 85 a healthy heart diet meal starting in 2012 at Perry C.I.  
 86 But only at McCormick C.I., officers bring the diet trays to the designated  
 87 inmate separated from the non diets.  
 88 During the months of March, April, May, ~~and~~ June and July, when officer Mr.  
 89 Durant brings me my tray, it's missing the bread sometimes. I get bread with  
 90 every meal.  
 91 This occurred atleast twice a week and sometimes twice a day. But what made  
 92 me notice something wrong was the fact that whenever my tray is missing bread  
 93 its always officer Durant that's bringing it. I don't ever have to point out its  
 94 missing, he points it out to me but gives me the tray anyway then tells me  
 95 some bread. He brings it to me later.  
 96 One two occasions I overheard him telling the same thing to another prisoner  
 97 but after a while I got tired of it because I don't ~~start~~ start eating until I have  
 98 my bread to eat with the rest of my food. But by the time he brings the bread, my food  
 99 be cold. I voiced my complaint to him, loud enough for everybody to hear. He  
 100 stopped messing with my bread but then not only did his co-worker Mr. Brown  
 101 start but also Mr. Jones whose on the other day shirt Brown did it about twice,  
 102 Jones did it about 3-4 times.  
 103 I use to trade other inmates my fruit for their cakes but they stopped wanting to trade  
 104 because they said the fruit now tasted like a fake chocolate tasting was put in  
 105 it and it made them defecate. I tasted the fruit one day and it did taste like  
 106 a laxative but I ate it anyway and I later had to defecate. Both Mr. Jones and  
 107 Durant brought trays with my chopped up fruit tasting that way. See S.C. Code  
 108 16-3-75.  
 109 A lot of times when officer Durant walks by my cell door, he strikes it with his  
 110 key's, startling me. He tries to act like its a mistake but he does it to much for me to  
 111 believe that. One inmate has already thrown keys in his face and mouth because Durant  
 112 kept knocking on his door with the keys every time he walked by. When I told Mr.  
 113 Durant to stop, he didn't but became less frequent. After I told him to stop, L.T  
 114 Terry started doing it as well as Mr. Jones.  
 115 This is the same kind of treatment I was receiving from prison officials  
 116 in 2008-2009 when I was criminally charged with threatening government officials  
 117 and charged with assaulting a prison officer. When I complained to authorities  
 118 nothing happens. When they accus me, I'm charged/prosecuted.

60 An Affidavit describing the foregoing was sent to the INTERNAL AFFAIRS  
of the South Carolina Dept. of Corrections by mail on October 23 2014. And another  
sent to the Eleventh Circuit Solicitors office on November 10 2014 at 105 South  
LAKE DRIVE, Lexington S.C. 29072, by mail.  
61. HERE it is, a month later and I have received NO RESPONSE, nor would so ever.  
62. In 2009 when etc. Loricke alleged I assaulted him, the investigator  
responded immediately

Sworn to and subscribed before me  
this 2<sup>nd</sup> day of June 2015  
1st [Signature]  
Notary public for South Carolina  
My Commission Expires: 8/5/24

151 [Signature]  
Mr. Walter B. Absher #285477  
MCCI/SMU #A-101  
386 Redemption Way  
McCormick S.C. 29839

# APPENDIX-F



Following the Applicant's testimony, Paul Fata (Fata), Esq. was called by the State. Fata testified he represented the State against Applicant. Fata testified that Applicant attempted to stab the correctional officer in the chest. Fata stated he attempted to get Applicant an appointed attorney, but Applicant refused and represented himself. Fata testified that Applicant proceeded *pro-se* and went to trial before the Honorable Howard P. King. Fata stated Applicant was found guilty and received a two year sentence. Fata stated a discovery request was never made and had Applicant made a request for discovery he would have turned it over to Applicant.

The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct.App.1998) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481, (1985). Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. Kennerly, 331 S.C. at 453, 503 S.E.2d at 220. "A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" Bagley, 473 U.S. at 678, 105 S.Ct. at 3381. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342, (1976)

In the instant case, the Solicitor has a duty to disclose any evidence in the prosecution's possession that may be favorable to the accused and material to the guilty or punishment absent a request by the accused. See Kennerly, 331 S.C. 442, 503 S.E.2d, 214 (Ct. App. 1998).

However, Applicant has failed to meet his burden of proof and provide any evidence of probative value that would indicate that Fafa failed to turn over evidence that was in his possession and was either favorable to the accused or material to the guilt or punishment. Porter v. State, 388 S.C. 378, 629 S.E.2d 353 (2006).

### CONCLUSION

Therefore, Respondent submits that Applicant has not met his burden of prove entitling him to relief.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

March 4, 2014

APPENDIX - G

IN THE STATE OF SOUTH CAROLINA  
County of LEE

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT

Unula Boo-shawn Abbe #285447  
Applicant

CASE NO. 2014-CP-31-0052

Applicants Reply to the STATES BRIEF/  
Memoranda of LAW.

vs

State of South Carolina  
Respondent

This case was brought before this court on February 25th 2014 for an Evidentiary hearing. At said hearing, the court heard testimony from both the Applicant and the States witness. After the testimony, the court allowed the state 7 days to Brief on whether a defendant is required to make a "Written" discovery request in order for his to receive, the court also allowed the applicant 7 days to file a Reply Brief after his receipt of the States Initial Brief. I received said Brief on 3-17-14

ARGUMENT

At the 2-25-14 hearing, the States witness did not deny that he did not make any disclosure of any evidence before nor during the April 1st 2009 trial. Granted however, the States witness denied having any exculpatory evidence in his possession.

Exculpatory Evidence is defined as evidence that would free from wrong doing, and prove innocent of guilt, and evidence related to a persons innocence. The States witness, i.e. Mr. Paul Fata, made an untrue statement to the court. Applicant wrote a statement, prior to trial and mailed it to the "Internal Affairs" Division of the South Carolina Dept. of Corrections. See Exhibit-A. Said statement was written in regards to the incident related to the crime applicant was charged with and another incident where a correctional officer i.e. J. Goodman, choked applicant unconscious. See Exhibit-B.

Said statement was contrary with what the victim testified to, i.e. it relayed the incident from what applicant witnessed, and based on the statement, applicant did not assault the victim, but rather, the victim has been, on a continuous basis, sexually assaulting the defendant.

The statement was, indeed, mailed to ~~the~~ a division of the applicants custodian i.e. S.C.D.C., but see U.S. v. Henry 447 U.S. 264 (1980) which illustrates that potentially useful information may come into the possession of the custodian whether or not that information is ultimately admissible.

Whether the prosecutor knew of the existence of the statement or not is irrelevant. The U.S. Supreme Court in Hyles v. Whitley, 514 U.S. 419, and Cigallo vs. United States 405 U.S. 150 held that it is proper to impute to the prosecutor office facts that are known to the police and other members of the investigation team. As Hyles puts it "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the governments behalf in the case, including the police." 514 U.S. at 437, 115 S.Ct. at 1555. See U.S. v. Morris 80 F.3d 1151, 1169-70 (1996) [knowledge of evidence is imputed to the prosecutors only if it lies within an entity that is "part of the team that investigates the case or participate in its prosecution."

In Kyles v. Whitley 1555 S.Ct. at 1568 :

"procedures and regulations can be established to carry [the prosecutors] burden and to insure communication of all relevant information on each case to every lawyer who deals with it." Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766 31 L.Ed.2d 104 (1972). Since then, the prosecutor has the means to discharge the government's Brady responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about, boils down to a plea to substitute the police for the prosecutor and even for the courts themselves, as the final arbiters of the government's obligations to ensure fair trials."

As Applicant stated earlier, the statement contained sworn testimony about the incident surrounding the crime, and a separate one regarding applicant being choked unconscious by the victim's co-worker i.e. J. Goodman. Since the statement concerned the incident with Mr. Goodman, and since his actions is considered an "Assault" the statement was required to be disclosed because it was evidence of selective prosecution. The Supreme Court in U.S. v. Armstrong 517 U.S. 456 at 471-76 (1996), three Justices filed concurring opinions reasoning that the phrase "material to the preparation of the defendant's defense", should include discovery in support of the affirmative defense of selective prosecution.

As Kyles put it ("Materiality under Brady is evaluated in a distinct, cumulative analysis in which "suppressed evidence is considered collectively, not item by item.")

Therefore the statement, witness statements, investigative reports, chain of custody, photos ect were not disclosed and should be considered "together" in determining a Brady violation rather than one-by-one.

In Armstrong, supra, the Supreme Court indicated that the phrase "material to the preparation of the defendant's defense" may be limited to discovery of evidence to rebut the government's case-in-chief. Id. at 462. Therefore and since rebuttal is an argument introduced by the other side in a debate I was entitled to witness statements, photos, investigative reports, chain of custody documents and impeachment evidence. See Brady 473 U.S. at 676-77 (plurality opinion) (Blackmun, J) (both impeachment evidence and exculpatory evidence subject to Brady disclosure)

In this case, impeachment evidence would include Employee disciplinary records, of the testifying victim, and both government testifying witnesses.


And since the state witness did not deny the applicants claim that he i.e. Mr. Fata did not make "any" pre-trial disclosures, it can hardly be argued that a Brady violation did not occur, regardless of him claiming to not have been in possession of any exculpatory evidence. Besides, Applicants prior statement was exculpatory, and imputed to Mr. Fata, yet he failed to discover and disclose.

When considering the States motion for Summary dismissal of an application for post conviction relief (P.C.R.), where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and review those facts in the light most favorable to the applicant. Laamon v. State 611 S.E.2d 494 (S.C. 2005). However, since a hearing was held, the court is now required to determine if the evidence presented entitles applicant to relief. See Gilchrist v. St. 565 S.E.2d 281 (S.C. 2002)

#### CONCLUSION

Because the state's witness did not deny that he fail to disclose any evidence pre-trial and since he did not rebut Applicants allegation of selective prosecution and innocence. And since Applicants P.C.R. application and testimony shows discriminatory effect and discriminatory purpose (see Armstrong supra at 464 "Clear evidence" of both discriminatory effect and purpose) the applicant is entitled to relief on all three of his claims

McCormick S.C.  
Mar. 10 2014

  
Mr. Linola B. Abebe #28547  
MCCI/SMU #A-101  
386 Redemptious Way  
McCormick S.C. 29899

~~SECRET~~

| SENDER: COMPLETE THIS SECTION  | COMPLETE THIS SECTION ON DELIVERY  |
|--|--|
| <p>1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.<br/>2. Print your name and address on the reverse so that we can return the card to you.<br/>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p> | <p>A. Signature<br/>X <i>James Hand</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>  |
| <p>1. Article Addressed to:<br/><i>BCDC<br/>Hwy 104, Brook Line, Pa.<br/>Columbia, Pa. 17010<br/>Attn: National Affairs</i></p>  | <p>B. Received by (Printed Name): <i>James Hand</i> C. Date of Delivery: <i>3-16-29</i></p>  |
| <p>2. Article No. <i>0</i></p>   | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p>  |
| <p>7004 2510 0005 0752 2440</p>  | <p>3. Service Type<br/><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/><input type="checkbox"/> Insured Mail <input type="checkbox"/> G.O.D.</p> |
| <p>PS Form 3811, February 1964</p>   | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>  |

~~SECRET~~

EXHIBIT-B

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF LEE

Ukula B. Abebe # 285447  
~~Declarant~~

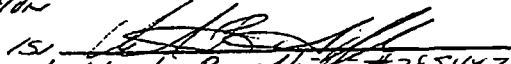
DECLARATION

I, Ukula B. Abebe, declare the following under the penalty of perjury:

1. On or about March 14 2009, I did mail a statement, via certified mail/return receipt, to the S.C.D.C. internal affairs div.
2. Said statement was made under oath and denied the victims allegations that I assaulted him.
3. Said statement stated that the victim has been on a continuous basis, sexual harrassing and assaulting me.
4. The victim no longer works for the Dept. of Corrections.
5. Said statement also mentioned the incident where I was choked unconscious by officer, J. Goodman in 2008.

I state under the penalty of perjury that the foregoing is true to the best of my knowledge and recollection

Date: Mar. 4 2014

  
 151 Ukula B. Abebe # 285447  
 MCCI/SMU # A-101  
 380 Redemption Rd Way  
 McCormick S.C. 29899

# APPENDIX - H

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | THIRD JUDICIAL CIRCUIT       |
| COUNTY OF LEE            | ) | 10-CP-31-0052                |
| Unula Abebe, #285447,    | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | ORDER OF DISMISSAL           |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent,              | ) |                              |



This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 4, 2010. Respondent made its return on February 25, 2011. An evidentiary hearing into the matter was convened on February 25, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and proceeded *pro-se*. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate the applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The applicant was indicted at the March 2009 term of the Lee County Grand Jury for Assaulting a Correctional Officer (2009-GS-31-0023). Applicant proceeded *pro-se* at trial. Following a jury trial before the Honorable Howard P. King, applicant was found guilty. Judge King sentenced applicant to two years imprisonment, to be served consecutively to the sentence being served. The applicant did not appeal his guilty plea or sentence.

## ALLEGATIONS

In his application for post-conviction relief, applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Prosecutorial Misconduct
  - a. "Failure to disclose any required evidence."
  - b. "Selective Prosecution and selective enforcement."
2. Actual Innocence.

## SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, applicant testified on his own behalf. The state presented testimony from Paul Fata, Esquire. This Court also had before it a copy of trial transcript, the Lee County Clerk of Court records, the applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, applicant testified he was charged with assault on a correctional officer. Applicant stated the Paul Fata (Solicitor) failed to turn over any Brady or Rule 5 material. Applicant further stated he was the victim of selective prosecution because the correctional officer was choking him and applicant was defending himself by stabbing the correctional officer.

Following applicant's testimony, solicitor was called to testify by the State. The solicitor testified that applicant was charged with stabbing a correctional officer in the chest. The solicitor testified he tried the case on April 1, 2009 before the Honorable Howard P. King. The solicitor stated applicant proceeded *pro-se* and was found guilty. The solicitor stated Judge King sentenced applicant to two years. The solicitor could not recall any conversations with the applicant and tried to get applicant an attorney. The solicitor stated no discovery motion was ever made and he would have given him discovery material had he made a motion.

Subsequently, the court questioned the solicitor. The solicitor stated applicant made no paper motion. The solicitor further stated that he had no exculpatory or impeaching material.

At the conclusion of the hearing, the Court asked both sides to submit memoranda on the issue of whether Brady material must be turned over to a defendant even when there is no written Brady motion. The Court has reviewed the memoranda submitted by the parties.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that solicitor's testimony is very credible while applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985). In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1 (e), SCRCP; Butler v State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

### **PROSECUTORIAL MISCONDUCT**

#### *Failure to disclose any required evidence.*

This Court finds applicant's allegation that the solicitor failed to turn over any required evidence is without merit. An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's



the extent that this allegation is proper for post-conviction relief, this Court finds that applicant presented no credible testimony in support of his claim. Therefore, this Court finds applicant's allegation is denied and dismissed with prejudice.

This Court further notes that applicant alleged a claim of "Actual Innocence" in his application for post-conviction relief. This Court finds that applicant present no credible testimony on this issue. Furthermore, this Court notes that post-conviction relief is not a proper avenue to challenge the sufficiency of the evidence supporting a jury's conviction. Simmons v State, 264 S.C. 417, 215 S.E. 2d 883 (1974). Therefore, this Court finds this allegation is denied and dismissed with prejudice.

#### ALL OTHER ALLEGATIONS

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

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the applicant has not established any constitutional violations or deprivations that would require this Court

guilt or innocence or was impeaching. Kyles v Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v State, 315 S.C. 385, 434 S.E. 2d 266 (1993). "Impeachment or exculpatory 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." Id., 434 S.E. 2d at 268.

This Court finds the solicitor's testimony credible, while the applicant's testimony less credible. This Court finds it clear that no Rule 5 motion was ever made by applicant. As a result, the State had no duty to respond to a nonexistent motion. This Court further finds that the State must turn over exculpatory evidence even without a written Brady motion. However, the solicitor credibly testified that there was nothing exculpatory to turn over to the applicant. As a result, this Court finds that applicant has failed to meet his burden of proof. Therefore, this allegation is denied and dismissed with prejudice.

#### *Selective Prosecution*

This Court finds applicant's allegation of prosecutorial misconduct in the form of selective prosecution is not a proper claim for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v State, 264 S.C. 417, 423, 215 S.E. 2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v Evatt, 312 S.C. 4, 8, 430 S.E. 2d 517, 520 (1993). The applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. To

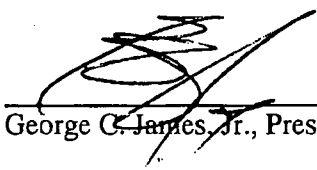
to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that the application must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v State, 305 S.C. 453 (1991), and applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the applicant for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The applicant must be remanded to the custody of the respondent.

**AND IT IS SO ORDERED.**

  
George C. James, Jr., Presiding Judge

April 15, 2014

# APPENDIX - I

defendant the truth on this context

IN THE STATE OF SOUTH CAROLINA  
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS

CASE NO. 10-CP-31-0052

Mr. Unula Abebe #28547  
Applicant

MOTION TO ALTER, AMEND &  
RECONSIDER THE 4-17-14 ORDER

VS.

State of South Carolina  
Respondent

The Applicant Unula Abebe, moves this court pursuant to S.C.R. Civ. P. # 59(c) for Reconsideration of its Judgment order dated 4-17-14 <sup>order</sup> and to Alter and Amend it. Applicant received notice of this judgment on 4-24-14 Applicant base this motion on the following grounds:

1. The court endorsed the states proposed order without ensuring that its content was correct. On page # 2 of said order it is written that I stated that a correctional officer was choking me and I was defending myself by ~~stabbing~~ <sup>stabbing</sup> the officer. I did not say that at all. Thus, the court was not performing its duties of judicial officer diligently, violative of Canon # 3, when it signed a proposed order retaining untrue information.
2. The court endorsed the states proposed order without ensuring that its content was correct. On page # 3 of said order it is written: "At the conclusion of the hearing the Court asked both sides to submit memoranda's" That is not true, the state removed the court's <sup>permission to file</sup> Brief on the issue of Brady, and applicant moved to ~~reply~~ <sup>request</sup> for permission to file a response to the states Brief. The Court did not ask the parties as the order suggest
3. The court violated ~~the states proposed order~~ <sup>428 U.S. 679 (1985)</sup> in its order on page # 4 where it stated that the solicitor general testified had no data to respond to a nonexistent motion. ~~the court~~ <sup>heard</sup> that the state must turn over exculpatory evidence even without a written Brady motion with a vague ruling that the state had no duty to respond to a nonexistent motion. The issue of this case was not if whether the state was required to respond to a "non-existent motion" the issue is whether the state had a duty to turn over favorable evidence regardless of the defense requesting it or not. Thus the court violated Canon 7 (A) by violating Brady.
4. The court failed to rule on whether the evidence Applicant submitted during briefing was exculpatory or not. The court denied signed the states proposed order that ~~incorporated no ruling~~ <sup>incorporated no ruling</sup> made no reference as to the evidence exculpatory of said evidence exhibited in Applicants Brief.
5. The court signed a states proposed order that stated a selective prosecution claim is an appeal issue not a P.C.R. issue and that since it was not raised on Direct Appeal, its procedurally barred by 17-27-20(b). The ~~the~~ court signed the order stating such without even determining if whether such claim was preserved for direct appeal, and if it was not <sup>but because it was</sup> it was preserved for P.C.R. review and not waived by something e.g. a guilty plea.
6. The ~~the~~ court endorsed a proposed order stating that, as to Applicants Accus Actual Innocence claim, Applicant submitted no credible testimony the court failed to consider the evidence submitted in briefs. Further the court signed the order which alleged that the P.C.R. is not for challenging the sufficiency of evidence ~~(note: the additional wording about it being evidence that supported jury conviction. it was )~~ <sup>(note: the additional wording about it being evidence that supported jury conviction. it was )</sup> But that's not true see 17-27-20(a)(6) Applicant is not challenging any evidence, he's producing evidence of his innocence.

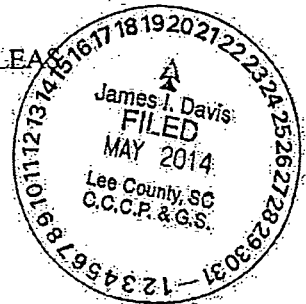
the new order signed by me on the stand. Nothing was said a bar that officer being harmed and I stated that I was not harmed. I am not a defendant.



APPENDIX - J

STATE OF SOUTH CAROLINA )  
COUNTY OF LEE )  
Unula Abebe, #285447, )  
Applicant, )  
vs )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
10-CP-31-52

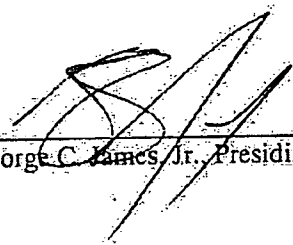


**ORDER DENYING APPLICANT'S  
MOTION TO ALTER, AMEND, AND  
RECONSIDER**

The court has reviewed the applicant's "Motion to Alter, Amend and Reconsider the 4-17-14 Order". The motion was timely made.

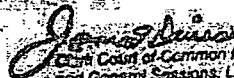
The court has considered the matters raised in the motion and respectfully concludes that the motion must be denied.

**AND IT IS SO ORDERED.**

  
George C. James, Jr., Presiding Judge

May 16, 2014

Certified as a True Copy

  
James J. Davis  
Chief Court of Common Pleas  
and General Sessions, Lee  
County, South Carolina