

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUL 26 2010

S.C. SUPREME COURT

JULIUS POWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF LEXINGTON) COURT
3)
4 STATE OF SOUTH)
5 CAROLINA,)
6 -V-) TRANSCRIPT OF
7) RECORD
8 JULIUS POWELL,) 2007-GS-32-04377
9 DEFENDANT.)

10

11

MAY 24TH, 2007

12

LEXINGTON, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE L. CASEY MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 DAYTON RIDDLE, ESQ.

20

21 FOR THE DEFENDANT:

22 LOWELL BERNSTEIN, ESQ.

23

24

25

I-N-D-E-X

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PG.

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GUILTY PLEA:

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SENTENCE:

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CERTIFICATE OF REPORTER:

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19 REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.

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1 (The following proceedings were
2 held on May 24th, 2007.)

3 THE CLERK: Raise your right hand please.
4 THEREUPON,

5 JULIUS POWELL,
6 after having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 THE COURT: Yes, sir, solicitor.

9 MR. RIDDLE: Your Honor, if it please the court.
10 Before you is Mr. Julius Powell he's pleading to these three
11 indictments before you those were the original three charges
12 burglary first, armed robbery and kidnapping. He's
13 pleading -- we've taken the life sentence off the table this
14 is essentially plea negotiations, he's pleading to burglary
15 second under the B section, armed robbery and kidnapping his
16 exposure is ten to 75 on these charges.

17 THE COURT: All right. Mr. Bernstein, you
18 represent Mr. Julius Powell?

19 MR. BERNSTEIN: Yes, Your Honor.

20 THE COURT: Have you explained to Mr. Powell the
21 charges contained in these three indictments, the possible
22 punishments and his rights, including his constitutional
23 right to a jury trial?

24 MR. BERNSTEIN: I have.

25 THE COURT: In your opinion does Mr. Powell

1 understand the charges, the punishments and his rights?

2 MR. BERNSTEIN: He does.

3 THE COURT: How does he indicate to you he wishes
4 to plead, guilty or not guilty?

5 MR. BERNSTEIN: Guilty.

6 THE COURT: Do you agree with his decision to
7 plead guilty?

8 MR. BERNSTEIN: Yes, Your Honor.

9 THE COURT: From your investigation of the facts
10 and circumstances surrounding these cases, do you feel that
11 the state could produce sufficient evidence to convince a
12 jury here in Lexington County of Mr. Powell's guilt beyond a
13 reasonable doubt, and if he were to stand trial on these
14 charges his convictions would be probable?

15 MR. BERNSTEIN: Yes, Your Honor, we've been over
16 the discovery, I've been over that with him, I do think
17 that.

18 THE COURT: Now, has Mr. Powell been ordered to
19 submit to a mental evaluation to determine his competency to
20 stand trial?

21 MR. BERNSTEIN: No, Your Honor.

22 THE COURT: Any question in your mind Mr.
23 Bernstein that Mr. Powell is, in fact, competent to enter
24 this guilty plea?

25 MR. BERNSTEIN: No, he's competent.

1 THE COURT: You are Julius Powell, is that
2 correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Powell, before I can accept your
5 plea of guilty, it's necessary for me to make sure that
6 you're making this plea freely and voluntarily. To do that,
7 sir, I need to ask you a series of questions. At any point
8 during my questioning of you, if you do not understand
9 anything that I say or any words that I use please stop me,
10 Mr. Powell, I will be more than happy to repeat or explain
11 anything I say, sir. Additionally, I'll be more than happy
12 to stop this plea and allow you as much time as you feel you
13 may need to consult with your lawyer Mr. Bernstein, do you
14 understand, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How old are you, Mr. Powell?

17 THE DEFENDANT: 40 years old.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: One year of college.

20 THE COURT: And what kind of work do you do?

21 THE DEFENDANT: I advertise in magazine.

22 THE COURT: You went to Clemson for one year?

23 THE DEFENDANT: No, I'm from New Jersey.

24 THE COURT: Okay. Now, Mr. Powell, have you ever
25 been treated for the abuse of alcohol or drugs or for mental

1 illness?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What have you been treated for and
4 when?

5 THE DEFENDANT: Alcohol I was treated six months
6 before this incident.

7 THE COURT: Did you successfully complete the
8 program or?

9 THE DEFENDANT: Yes, I did. And I was -- my wife
10 and I we was making arrangements for me to go back and I
11 relapse --

12 THE COURT: All right. Now, Mr. Powell, have you
13 taken any medications, drugs or alcohol in the past 24
14 hours?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you today aware of any physical,
17 nervous or emotional problems that might keep you from
18 understanding what you're doing?

19 THE DEFENDANT: No, sir.

20 THE COURT: You know what you're doing, Mr.
21 Powell, is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you agree Mr. Bernstein that Mr.
24 Powell knows and understands and appreciates what he's
25 doing?

1 MR. BERNSTEIN: Yes, Your Honor.

2 THE COURT: Now, Mr. Powell, you heard your
3 lawyer, Mr. Bernstein, tell me that he has explained to you
4 the charges contained in these three indictments, the
5 possible punishments and your rights, including your right
6 to a jury trial and that you understand these things, is
7 that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Powell, you're first before me on
10 Indictment Number 2007-1126, The State versus Julius Powell
11 this is an indictment for burglary in the second-degree, do
12 you understand this charge?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: This indictment, Mr. Powell, alleges
15 that you did here in Lexington County on or about July 4th
16 of 2006 knowingly willfully enter a dwelling of the
17 residence located at 195 Sandy Oak Lane in Gaston, South
18 Carolina its the dwelling of Randy Kirkland without consent
19 and with the intent to commit a crime there in, you broke
20 into Mr. Kirkland's house, you understand this?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You want to plead guilty to burglary
23 in the second-degree, is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Realizing that by doing so Mr. Powell

1 that you can go to jail for 15 years?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Knowing then, sir, that you can go to
4 prison for 15 years by plead guilty to burglary in the
5 second-degree, do you still wish to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Next, Mr. Powell, I have before me
8 Indictment Number 2007-1128, State versus Julius Powell,
9 this is an indictment for armed robbery, do you understand
10 this charge, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: This indictment, Mr. Powell, alleges
13 that you did here in Lexington County on or about July 4th
14 of 2006 knowingly and willfully while armed with a deadly
15 weapon and along with a gun did take and feloniously take
16 from the person or presence of Randy Kirkland by means of
17 force threats or intimidation goods or monies of Randy
18 Kirkland, such goods or monies being described as United
19 States currency. Apparently you robbed Mr. Kirkland of some
20 money, is that what you want to plead guilty to?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You realize that by pleading guilty to
23 armed robbery, Mr. Powell, that you could go to jail for 30
24 years?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Knowing then, sir, that you can go to
2 prison for 30 years by pleading guilty to armed robbery, do
3 you still wish to plead guilty to it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, Mr. Powell, armed robbery is one
6 of those 85 percent service before you're eligible for
7 parole, do you understand that? You got to do 85 percent
8 before you're eligible for parole. So you're looking to up
9 to 30 years but whatever sentence it's 30 -- the minimum on
10 armed robbery is ten years whatever sentence I impose upon
11 you you've got to do 85 percent before you're eligible for
12 parole, do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Knowing then, sir, that you can get up
15 to 30 years a minimum of ten of whatever sentence that I
16 impose upon you you've got to do 85 percent of it before
17 you're eligible for parole, knowing that do you still wish
18 to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Next, Mr. Powell, I before
21 me Indictment Number 2007-1127, The State versus Julius
22 Powell, this is an indictment for kidnapping, do you
23 understand this charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: This indictment, Mr. Powell, alleges

1 that you did here in Lexington County on or about July 4th
2 of 2006 knowingly, willfully and unlawfully haul, abduct or
3 kidnap Randy Kirkland while you were robbing and everything
4 you confined the victim at the residence while codefendants
5 looked for money, that's what the indictment says so that's
6 kidnapping, you want to plead guilty to kidnapping, is that
7 correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, Mr. Powell, you realize that by
10 pleading guilty to kidnapping you can go to jail for 30
11 years?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Knowing then, sir, you can go to
14 prison for 30 years by pleading guilty to kidnapping do you
15 still wish to plead guilty to it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And once again, Mr. Powell, kidnapping
18 is like armed robbery is one of those 85 percent services
19 required before you're eligible for parole, do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Knowing that you still want to plead
23 guilty, is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Powell, are you currently on

1 probation or patrol for any prior offenses?

2 THE DEFENDANT: Not that I know of I did have
3 probation in New Jersey but it was dismissed.

4 THE COURT: All right. Mr. Powell, I can run
5 these sentence on these three indictments consecutively that
6 is put one after the other or add one to the other if I did
7 so you're facing 75 years in the penitentiary, do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Knowing then, Mr. Powell, that you can
11 go to prison for 75 years by pleading guilty to these three
12 charges, do you still wish to plead guilty to them?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Powell, when you plead guilty you
15 have to give up certain basic rights, first of all your
16 right to remain silent which is your right against
17 self-incrimination which is your right to say nothing at
18 all, no one can compel you to come into court to provide
19 evidence or the testify against yourself, do you understand
20 this, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Secondly, Mr. Powell, when you plead
23 guilty you have to give up your right to a jury trial. That
24 is your right for a jury here in Lexington County to decide
25 whether or not you're guilty of these three indictments

1 beyond a reasonable doubt.

2 A jury would base its decision on whatever
3 evidence the state would introduce at trial against you and
4 also on whatever evidence you and your lawyer, Mr.
5 Bernstein, may wish to introduce.

6 Now, Mr. Powell, I emphasize may wish to introduce
7 because in a trial you'd be presumed innocent, would not
8 have to prove anything and you could not be convicted unless
9 the state convinced all 12 jurors of your guilt beyond a
10 reasonable doubt. The jury's decision would have to be
11 unanimous all 12 would have to agree that you robbed,
12 kidnapped and broke into Mr. Kirkland's house, you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Thirdly, Mr. Powell, when you plead
16 guilty you give up your right to confront and to be
17 confronted by the witnesses against you, that is your right
18 to see, hear and cross-examine any witnesses the state may
19 call to testify against you during the trial.

20 And additionally, Mr. Powell, by pleading guilty
21 you give up your right to subpoena and call witnesses on
22 your own behalf, that is someone may testify for you, do you
23 understand this, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, Mr. Powell, do you understand

1 these rights I just mentioned to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand, sir, that when you
4 plead guilty you have to give up these constitutional
5 rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, is that what you want to do?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You want to give up your
10 constitutional rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You realize that you will not receive
13 a jury trial on any of these three charges by pleading
14 guilty to them?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You pleading guilty to kidnapping,
17 that carries 30 years, you pleading guilty to armed robbery
18 that carries 30 years and these two 30 year offenses require
19 85 percent service before you're eligible for parole, you're
20 pleading guilty to burglary in the second degree that
21 carries 15 years. I've explained to you already you're
22 facing 75 years in the penitentiary if I ran all of these
23 sentences consecutively and you're giving up all of your
24 constitutional rights. Now, Mr. Powell, considering what I
25 just said to you, I will ask you once again, how do you wish

1 to plead to these charges, guilty or not guilty?

2 THE DEFENDANT: Guilty, sir.

3 THE COURT: You realize, Mr. Powell, when you
4 plead guilty you admit the truth of the allegations
5 contained in these three indictments against you, you
6 understand that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I tell you that, Mr. Powell, because
9 you may have some defenses to these charges, of course, I
10 have no way of knowing that but you need to realize that by
11 pleading guilty here today you give up any defenses you
12 might have, you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Additionally I tell you that, Mr.
15 Powell, because when you were arrested by Lexington County
16 Sheriff's Department you may have given some type of
17 incriminating statements, that is made some admission or
18 confession about your guilt you need to realize that by
19 pleading guilty here today you waive your right to later on
20 challenge or contest that you gave any statements whether or
21 not they were taken or obtained from you freely and
22 voluntarily in accordance with your conditional rights, do
23 you understand this?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, Mr. Powell, I will ask you once

1 again, did you commit these offenses?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So once again, Mr. Powell, you're
4 telling me that you're pleading guilty to Indictment Number
5 2007-1127 kidnapping, 1128 armed robbery and 1126 burglary
6 in the second-degree because you did here in Lexington
7 County on or about July 4th of 2006 you broke into the
8 residence located at 195 Sandy Oak Lane the home of Randy
9 Kirkland, you held Mr. Kirkland at gun point and y'all
10 robbed him during the course of this home envision, is that
11 correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're pleading guilty to kidnapping
14 burglary in the second-degree and armed robbery because you
15 are guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have there been any plea negotiations
18 again, solicitor?

19 MR. RIDDLE: Other than lowering of the first
20 degree burglary to a second degree burglary those are the
21 only plea negotiations in the case.

22 THE COURT: Okay. Anything additional, Mr.
23 Bernstein, needs to be added to the record in connection to
24 any plea negotiations or any recommendations?

25 MR. BERNSTEIN: No, Your Honor.

1 THE COURT: You still wish to continue to plead
2 guilty, Mr. Powell?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, sir, are you fully satisfied --
5 let me ask you this, has anyone promised you anything or has
6 anyone held out any hope of reward in order to get you to
7 plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anyone threatened you or used
10 force to get you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Has anyone used any pressure or
13 intimidation to cause you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you had enough time to make up
16 your mind as to wheather or not you want to plead guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you pleading guilty of your own
19 free will and accord?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Powell, are you satisfied
22 with the manner which your lawyer here, Mr. Bernstein, has
23 advised and represented you on these charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you talked with him for as long

1 or for as often as you feel it necessary for him to properly
2 represent you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you need any more time to talk to
5 him?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you understood your talks with
8 him?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Powell, has Mr. Bernstein done
11 everything for you you feel he should do or could do on your
12 behalf in advising and representing you on these charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he done anything you feel he
15 should not have done?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you completely satisfied with his
18 services?

19 THE DEFENDANT: I'm happy.

20 THE COURT: Any complaints, Mr. Powell, against
21 anyone at the Lexington County Sheriff's Department?

22 THE DEFENDANT: No, sir.

23 THE COURT: Any complaints against anyone working
24 here in the solicitor's office?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you right now -- have you
2 understood my questions.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything you want to ask me
5 about what I just went over with you, anything at all?

6 THE DEFENDANT: No, sir.

7 THE COURT: Mr. Powell, you realize that you have
8 a right to appeal this guilty plea and whatever sentence I
9 may impose upon you, but if you're going to appeal you need
10 to file a notice of intent to appeal within ten days of
11 today's date, do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Additionally, Mr. Powell, once you're
14 in the department of corrections if you later on find out or
15 feel that you have some complaints against the Lexington
16 County Sheriff's Department, against the solicitor's office,
17 against your lawyer here, Mr. Bernstein, or anybody else
18 involved in your case you need to make those complaints
19 known by filing a post-conviction relief application within
20 one year of today's date, do you understand that, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Very well, solicitor, I'll be happy to
23 hear about it.

24 MR. RIDDLE: Your Honor, if it please the Court.
25 This is relatively complexed factual situation. There's

1 four codefendant involved in this think case, the facts that
2 I'm going to give you come from the victims that were in the
3 house that night as well as from the codefendant's
4 statements who were all willing to testify in this
5 particular case. Your Honor, the incident itself took place
6 on July the 4th of 2006 it happened initially at about
7 11:30 at night Mr. Kirkland here along with his wife and his
8 two children as well as one of his employees who was
9 temporarily staying with them and her child were at their
10 home.

11 Mr. Kirkland was in bed, his wife was up changing
12 their two year old's diaper. The house guest was up and the
13 other two children were already in bed, they were a little
14 bit older and had already gone to bed by 11:30.

15 As Mr. Kirkland is in bed, Your Honor, they hear a
16 loud crash at the back door of the residence where the back
17 door gets kick down by Mr. Powell and one of the other
18 co-defendants involved in this case. They come into the
19 house at that point armed with a long gun hollering ATF, get
20 on the floor. At that point in time, of course, it's
21 pandemonium in the house these folks are coming in dressed
22 all in black screaming at people to get down on the door.
23 Mr. Kirkland has a loaded nine millimeter pistol in his
24 house, he had the gun. He pulled that gun out, when hears
25 ATF, ATF, he lays his gun down.

1 Your Honor, during the course of all of this,
2 Mr. Powell, this Mr. Powell, because it co-defendant's name
3 is Korean Powell. It is Mr. Powell's young cousin or young
4 nephew. This Mr. Powell is obviously the ring leader of
5 this.

6 THE COURT: (Judge points at the defendant.)

7 MR. RIDDLE: Yes, sir. The ring leader of this.
8 They go through the house, holding guns on Mr. Kirkland,
9 holding guns on Ms. Kirkland also pointing a gun at the back
10 of the two year old's head. They go from room to room, Your
11 Honor, not ever turning the lookings on where somebody can
12 ever identify them. Mr. Powell or the co-defendant, the
13 other Mr. Powell, would flip on the light just for an
14 incidence to get a lay out flip them right back off, then he
15 would go into a bedroom where they would shut the door then
16 turn on the lights ransack the bedroom in search of money or
17 other valuables, then flip the light off in that bedroom and
18 then come back out where the people were. It was pretty
19 well orchestrated in terms of preventing the residence of
20 that house from being able to identify anyone.

21 During the search, Your Honor, they obviously the
22 snatch Mr. Kirkland out of his bed and took him in where
23 they confined everybody into the living room area and kept
24 the other two older children separate as I understand it.
25 They searched -- when they searched the bedroom they find

1 Mr. Kirkland's handgun at which point they start using that
2 during the commission of this armed robbery and burglary as
3 well. Your Honor, ultimately this goes on for 10 or 15
4 minutes where they pretty much just destroyed the inside of
5 the house searching for things. The gun is put in
6 Mr. Kirkland's mouth and Mr. Kirkland knows it's loaded
7 because it's his gun that they put in his mouth it's pointed
8 at the back of Ms. Kirkland's head who's seated in the court
9 room with us as well seated right here (indicating) in the
10 white, Your Honor, and also pointed at the two year old
11 daughter by this Mr. Powell (indicating).

12 Your Honor, subsequent to that, they flee the
13 house, the -- they get away that night. Law enforcement
14 doesn't really get a break on the case until someone reports
15 back to Mr. Kirkland that they had been approached by one of
16 the other co-defendants wanting to sell a nine millimeter
17 pistol. That person did not buy the pistol then the
18 co-defendant said, Well, can you give me a ride down to this
19 particular pawnshop. Ultimately law enforcement goes there,
20 then find Mr. Kirkland's nine milliliter pistol it's been
21 pawned by an individual by the name of Freddie Henderson who
22 was not involved in this home evaluation itself he got the
23 gun after the fact and pawned the gun.

24 THE COURT: Uh-huh.

25 MR. BERNSTEIN: He's a relative of Mr. Powell and

1 a neighbor's at that time of Mr. Kirkland's. That's how
2 Mr. Powell targeted Mr. Kirkland's house because he was over
3 at Mr. Henderson's house the neighbor's.

4 Once they arrest Mr. Henderson for receiving
5 stolen goods for having pawned that pistol, Mr. Henderson
6 gives up Mr. Powell, the second Mr. Powell -- Powell who is
7 about 18 years -- 17 or 18 years old at the time, he's Mr.
8 Powell's nephew or cousin. And another individual by the
9 name of Tommy Browder who is a neighborhood kid that lives
10 there. As the facts come out through law enforcement
11 interviewing Mr. Henderson the second Mr. Powell and Mr.
12 Browder what is determined during the course of the
13 investigation is that Mr. Browder, young Mr. Powell and this
14 defendant are at Mr. Henderson's house where Mr. Powell,
15 this Mr. Powell (indicating) comes up with the idea to
16 commit this home invasion, armed robbery. He recruits these
17 two young kids 17, 18 years old to assist him in this.
18 Mr. Powell develops the plan, Mr. Powell procures the
19 weapon, tells everybody to put on blank clothes. Mr.
20 Browder act as a look out. This Mr. Powell and the second
21 Mr. Powell the young Mr. Powell go into the house where this
22 Mr. Powell is the man in charge of this ATF raid.
23 Ultimately, Your Honor, those facts are developed by --
24 because Mr. Koream Powell and Mr. Tommy Browder and
25 Mr. Freddie Henderson the pawnshop guy confessed to their

1 rules in this incident. This Mr. Powell never confesses or
2 gives a statement to law enforcement about his involvement
3 in this something. He was initially questioned by law
4 enforcement just after this happened within a couple of days
5 and denied any involvement in this to law enforcement during
6 the initial phase of this investigation only to be found out
7 later on.

8 Your Honor, as far as a prior record is concerned
9 Mr. Powell's got a record from North Carolina and New Jersey
10 and South Carolina. His South Carolina record is relatively
11 light but he hasn't been here all that long, Your Honor. He
12 shows five aliases and three social security numbers on his
13 wrap sheet. In South Carolina his only convictions to date
14 is criminal domestic violence from 2003.

15 In New Jersey, Your Honor, he did have a fugitive
16 injustice charge but he has a 1986 conviction to commit
17 larceny for which he got a three year sentence, a 1987 for
18 receiving stolen goods that he received looks like 60 days
19 confinement on, a 1990 assault and robbery for which he
20 received a five year sentence, a 1991 assault, robbery,
21 resisting arrest and possession of a weapon for which he
22 received a four year sentence, a 1993 robbery conviction for
23 which he received a -- and possession of handgun for which
24 he received a 10 year sentence and then in North Carolina he
25 had -- oh, excuse me, I'm not finished with New Jersey yet,

1 Your Honor. A 2000 assault, burglary and escape conviction
2 and then additional 2000 burglary and theft conviction and a
3 final receiving stolen property conviction from New Jersey
4 and then I mentioned a fugitive of justice, he was arrested
5 in North Carolina on that charge in 2001 but at that point
6 in New Jersey opted not to expedite him.

7 Your Honor, Mr. Kirkland would like to address the
8 court and then I have a --

9 THE COURT: All right.

10 MR. RIDDLE: Then I have a couple further --

11 THE COURT: Just a moment, sir.

12 What happened to the co-defendants so far?

13 MR. RIDDLE: The co-defendants have not yet plead
14 because they were willing to testify --

15 THE COURT: To testify against --

16 MR. RIDDLE: And I have not dispose of the
17 co-defendants.

18 THE COURT: Okay.

19 MR. RIDDLE: At this point yet.

20 THE COURT: All right.

21 MR. RIDDLE: They obviously are going to receive
22 --

23 THE COURT: Some consideration.

24 MR. RIDDLE: Some consideration.

25 THE COURT: All right.

1 MR. RIDDLE: But they're -- but also, Your Honor,
2 just a long though lines, aside from the individual who
3 pawned the gun you've got a 40 year old man and two 17 year
4 old kids.

5 THE COURT: All right.

6 MR. RIDDLE: I mean we're talking apple and
7 oranges from this individual and the two co-defendants.

8 THE COURT: Now, Mr. Powell, you heard what the
9 solicitor told me in terms of how this matter unfolded, is
10 that substantially correct, that's pretty much how it
11 happened?

12 THE DEFENDANT: Pretty much.

13 THE COURT: All right. And you agree
14 Mr. Bernstein?

15 MR. BERNSTEIN: Yes, Your Honor.

16 THE COURT: Is that your prior record, Mr. Powell?

17 THE DEFENDANT: He was wrong about a few things.

18 THE COURT: Beg your pardon.

19 THE DEFENDANT: A couple of charges was incorrect
20 but.

21 THE COURT: Which ones?

22 THE DEFENDANT: One said burglary that was
23 dismissed.

24 THE COURT: Okay. What else?

25 THE DEFENDANT: And one he had four charges on one

1 two of those were dismissed.

2 THE COURT: All right. But you agree that this is
3 essentially correct Mr. Bernstein also his prior record?

4 MR. BERNSTEIN: As far as I could tell from my
5 review of --

6 THE COURT: All right. Very well, I find that
7 there's a substantial factual basis for your plea, Mr.
8 Powell. I further find your decision to plead guilty to be
9 freely and voluntarily, knowingly and intelligently made,
10 that you had the advice of competent counsel whom you
11 indicated to me you're completely satisfied with therefor I
12 will accept this plea.

13 Solicitor, will be happy to hear anything addition
14 form the state at this time.

15 MR. RIDDLE: Your Honor, Mr. Kirkland --

16 THE COURT: Mr. Kirkland would be happy to hear
17 from you at this time --

18 MR. RIDDLE: Would like to address the court on
19 behalf of himself and his kids and his wife.

20 THE COURT: All right. Yes, sir.

21 MR. KIRKLAND: The night that happened and they
22 done what they done, my wife and child, my two year old,
23 well at that time she wasn't even two, she was going to
24 change her diaper and they kicked the door in right where
25 she was at. And one of them pushed her down on top of the

1 baby and held her down with a long gun. I come running out
2 the bedroom with my pistol with intentions to do whatever I
3 and to do. And when I realized they had my wife and child
4 on the floor I put the gun down because they were hollering
5 they was ATF. And I really didn't know what was going on.

6 In turn, he grabs my gun and sticks it in my
7 month, then grabs my wife by her hair and drags her around
8 picking her up by it and sticks the gun in the back of my
9 two year old's head. And they kept my seven year old and 12
10 year old girl, a friend of mines daughter, in the back of
11 the house away from us, wouldn't let them come towards us.
12 And my -- well, she's seven now she was six when this
13 happened, she had to go through counseling. She won't sleep
14 in her own room, she thinks she's suppose to sleep with us.
15 My two year old walks around checking lots, you know, at
16 night to make sure that the house is locked. And I just, I
17 just, wanted y'all to know, you know, you stick a gun to a
18 two year old's head you're not much of a man to me, you
19 know.

20 And my youngins have to go through counseling and
21 stuff to get over this. My wife I own my own company so I
22 work out of town a lot. I had to quite all of that because
23 they wouldn't stay at the house and I can't blame them, you
24 know. We had to sell our house, we had only been there
25 three months. We had to move. We had to up -- pull our

1 kids up again and move because of this, you know. That' all
2 I want to say.

3 THE COURT: Well, let me tell you this
4 Mr. Kirkland I see this all the time. How you and your
5 family -- first of all I'm happy that nothing happened
6 worse, that nobody got hurt, you didn't get shot and they're
7 lucky that they didn't get shot either so. It's a real
8 terrible situation. I understand how bad it is, this is my
9 line of work and you have my sympathies. It's going to take
10 you time to get over this. Moving will help but it's still
11 going to take a while.

12 MR. KIRKLAND: Right.

13 THE COURT: And you can expect, maybe, the whole
14 family might need some counseling. These are just terrible
15 things.

16 Now, having said that I've got to be fair to you
17 and fair to him.

18 MR. KIRKLAND: Yes, sir.

19 THE COURT: The is a guilty plea it's not a trial.
20 So I'm sure the solicitor has indicated to you what my
21 possession is. I'm not for anybody but I want to tell you
22 as a person, as a man, I understand. And I'm glad that you
23 showed enough restrain under those difficult circumstances
24 not to just start shooting we could have really have a mess.

25 MR. KIRKLAND: Yes, sir.

1 THE COURT: You're fortunate in that regard, you
2 have my deepest sympathies and everything. I want you to
3 know that individual as a person and that does effect some
4 what my sentence but I got two sides of the story.

5 MR. KIRKLAND: Yes.

6 THE COURT: And I hope you and your wife and your
7 kids can put this behind you one day. But it's going take a
8 while. I assure you it's not going to be tomorrow next week
9 or next month or next year, it's going to be a little while
10 but it will come. And I wish you the best of luck in that
11 regards.

12 MR. KIRKLAND: Thank you.

13 THE COURT: All right.

14 Yes, sir, Mr. Bernstein, be happy to hear from
15 you.

16 MR. BERNSTEIN: Thank you, Your Honor. As you are
17 aware I was appointed to represent Mr. Powell January of
18 this year prior to my representation Stanley Myers
19 represented him he was appointed, started in August of 2006.

20 And before I say anything else standing with him
21 are his wife Laurie Powell, his daughter, his sister and his
22 nephew.

23 Your Honor, he is here today before you to plead
24 guilty, acknowledge his responsibility. And I know we had
25 talked at some points about doing the plea in a different

1 way but it was more because of some of the facts and some of
2 the facts about his role, he's not denying --

3 THE COURT: You know, I'm not saying that
4 everything he's totally responsible for. That's why you
5 considered pleading Alford or nolo or something like that
6 but basically that's why the word substantial was used in
7 these situations, it's substantial.

8 MR. BERNSTEIN: And he -- acknowledging guilty on
9 all of those charges the only thing and I don't want to get
10 too much into the facts, you hear it happened and sorry it
11 happened and it was a tragic event. But as far as one of
12 the co-defendant Browder he's the kid who knew the victims,
13 lived in the neighbor and knew the house. I think that
14 those guys who confessed minimum their roles and even
15 mischaracterize or under estimated exactly what their roles
16 were. My client wasn't the person who did everything and
17 held the guns to everybody. Certainly he had a role and
18 it's bad what he did but he couldn't have been the person
19 who was holding the guns to all three people at the same
20 time. So we just want to point that out. When Mr. Riddle
21 said it was apple and oranges from what my client did
22 compared to what the other guys did I differ a little with
23 that.

24 THE COURT: Well, you should, that's your job, Mr.
25 Bernstein, go ahead.

1 MR. BERNSTEIN: Exactly. And my client certainly
2 disagrees with that to some extent. Bad events and we all
3 heard the facts and feel bad for the victims in the case
4 fortunately like you said nobody was hurt or shot and I know
5 the situation could have escalated and been a lot worse.
6 And it's regrettable and I guess stupid of an act that my
7 client committed I don't think he had any intention
8 beforehand to actually hurt anybody. Certainly there may
9 have been the intention to steal or do some things that
10 should have been done in putting yourself in that situation.
11 You never know what's going to happen as a result of that
12 but it was's actually his intent to go in there and shoot
13 somebody and hurt anybody. About he certainly has a lot of
14 regrets and he knows by going forward with this plea that
15 he's suggested to at least ten years the jail. One of the
16 reasons he wanted to plead he was also charged with burglary
17 first which would have subjected him to a mandatory minimum
18 of 15 years so there wasn't --

19 THE COURT: Or a life sentence actually.

20 MR. BERNSTEIN: 15 to life and there's not a lot
21 of plea bargain but a mandatory minimum as well and he
22 understands that there's a high end to the sentence of 75
23 years. We would just -- I'm going to ask you to listen to
24 him, I don't know if his family wanted to speak but he would
25 like to speak to the court at this point.

1 THE COURT: All right. Yes, sir, Mr. Powell.

2 THE DEFENDANT: Yes. Your Honor, I would like to
3 read.

4 THE COURT: Go ahead.

5 THE DEFENDANT: First of all, I would like to
6 apologize to the victims, I'm sorry for the damage that I
7 caused to you and your family, I sincerely apologize.

8 MR. KIRKLAND: Thank you.

9 THE DEFENDANT: I hope you accept my apology.

10 MR. KIRKLAND: I do.

11 THE DEFENDANT: To your wife I apologize, you
12 know, I know it's going to be a lot of issues that you will
13 have to go through but I apologize for being a part of the
14 problem.

15 Your Honor, I am pleading guilty to the charge of
16 burglary, kidnapping and armed robbery. I'm aware that
17 other person involved implicated me in the crime and that
18 and the fact that I did turn myself in is the reason that I
19 stand before you.

20 My intentions was to go to trial, sir, but after
21 speaking with my family and my attorney I felt it best to
22 plead guilty to the charge considering Lexington County high
23 conviction rate. And, you know, the evidence that the state
24 has against me although my attorney did tell me that it's
25 circumstantial -- substantial it is enough to convict me.

1 So I am scared, I'm scared to take a risk for possible life
2 sentence and so I am entering a guilty plea for my part. I
3 do hope, sir, that you will give me the minimum sentence
4 which is the ten years.

5 Your Honor, I am a father of seven children. Two
6 of my sons are in college, one is in the Army. My oldest is
7 23 and he's handicap so he requires a lot of my time. My
8 daughter here is 13 years old and I have two younger
9 children that's five and seven. I've been married for 11
10 years. I've been in South Carolina six years. My wife and
11 I brought our first house two year ago in Irmo. I did start
12 a magazine company and it was active until my arrest.

13 Your Honor, I ask that, that you know that I am
14 not a bad guy, you know, I'm a father, I'm a husband, I'm a
15 man who stands before you, I am pleading guilty. And I
16 place myself at the mercy of this court.

17 THE COURT: All right. Thank you, Mr. Powell.

18 Anything further?

19 DEFENDANT'S DAUGHTER: I would like to say that I
20 want him home with me and he's like my best friend and I
21 love him so much.

22 THE COURT: Thank you, ma'am.

23 Anything further?

24 (There was no response.)

25 THE COURT: Very well. Indictments Number

1 2007-1127, 1128 this is armed robbery and kidnapping
2 sentence 18 years.

3 On Indictment Number 2007-1126 15 years concurrent
4 each with one another.

5 Good luck to you, Mr. Powell.

6 MR. BERNSTEIN: Your Honor, can I just ask that
7 there's no allegation of any type of sexual conduct in this
8 case that you just on the record because of the kidnapping
9 make --

10 THE COURT: All right. That motion is granted, I
11 don't find anything of that, there's been nothing indicated
12 to suggest anything.

13 MR. BERNSTEIN: Yes, sir.

14 MR. RIDDLE: No, sir.

15 THE COURT: All right. We're all on the same
16 page?

17 MR. RIDDLE: Yes, sir. I'm sorry no, sir.

18 THE COURT: We are on the same page?

19 MR. RIDDLE: He's not on the sex offender
20 registry.

21 THE COURT: Okay.

22 THE DEFENDANT: Your Honor, I didn't get the time.

23 THE COURT: Eighteen years.

24 Good luck to you, Mr. Kirkland, you and your wife.

25 I hope y'all get over this one day. I think you will but it

1 will be difficult.

2 Thank you all so very much.

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5 END OF PROCEEDINGS

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1 COUNTY OF LEXINGTON)

2 CERTIFICATE OF REPORTER

3 I, Crystal Roach, hereby certify that I reported
4 the preceding case entitled State of South Carolina V.
5 Julius Powell, Indictment Number 2007-GS-32-04377, at the
6 Lexington County Courthouse, may 24th, 2007.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 36 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Lexington County on this 27 day of March, 2008.

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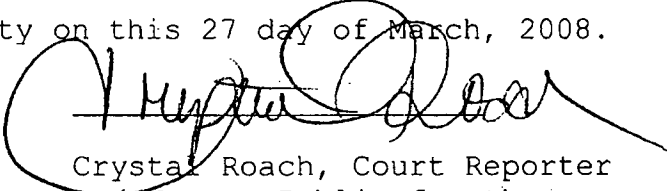
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Crystal Roach, Court Reporter
and Notary Public for the
State of South Carolina my
Commission Expires:
April 21, 2014

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of LexingtonJulius Powell, #322080

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2007CP3204377

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
P.O. Box 205, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence The Court of General Sessions for the Eleventh Judicial Circuit, Lexington, SC
3. Name(s) of co-defendant(s) (if any) Freddie Henderson,
Tommy Browder, Kareen Dashawn Powell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-32-1126, Burglary 2nd degree
 - (b) 2007-GS-32-1127, Kidnapping

(c) 2007-GS-32-1128, Armed robbery

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

(a) May 24, 2007, 15 years imprisonment

(b) May 24, 2007, 18 years imprisonment

(c) May 24, 2007, 18 years imprisonment, all concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

No

8. If you answered "yes" to (7), list:

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I requested that an appeal be filed but counsel told me there

(b) were no appealable issues from a guilty plea

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Guilty pleas were not knowing, voluntary and intelligent
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please see attachment at 11 (a)
- (b) Please see attachment at 11 (b)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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

(a) **This Application for Post-Conviction Relief is the**
 (b) **proper way to raise these grounds for relief**
 (c) _____

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

(a) your arraignment and plea? **Yes**
 (b) your trial, if any? **N/A**
 (c) your sentencing? **Yes**
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **N/A**
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:
 i. **Lowell E. Bernstein**
1019 Assembly Street, Columbia, SC
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. **17 (a) and (c)**
 ii. _____
 iii. _____

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

For guilty pleas and sentences to be vacated, to be
released from custody or a new trial ordered

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

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Julius Powell, #322080, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Julius Powell

SWORN to and subscribed before me this 29
 day of November, 07.

Myrtle Blume (L.S.)
 Notary Public

My Commission Expires: 8/10/2016

ORIGINAL

2007CP320437

FILED

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

2007 DEC -4 12: 21

I, Julius Powell, #322080, hereby apply for leave to COURT
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

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

Julius Powell
Applicant

SWORN or affirmed to and subscribed before me this
29 day of November 07.

Yvette Blome
Notary Public

My Commission Expires: 8/20/2016

10(a) Ineffective assistance of counsel.

10(b) Guilty pleas were not knowing, voluntary, and intelligent.

11(a) Ineffective assistance of counsel. Counsel was constitutionally ineffective and Applicant was prejudiced in the following particulars:

i) Through counsel's failure to file a Notice of Appeal on behalf of Applicant after Applicant requested an appeal.

ii) Through counsel's failure to investigate the case and prepare a trial defense on behalf of Applicant. Counsel advised Applicant that this case was the first he'd ever had with these charges, that he usually handles drug cases. Counsel advised Applicant that he honestly did not think he could win because of Lexington County's high conviction rate as well as Applicant being a Black man in Lexington County who supposedly robbed White individuals, and because Applicant looked so "hard" for lack of a better word, Applicant did not stand a chance.

Applicant fully intended, from the beginning, to go to trial. Counsel was adamant on not going to trial and would never consider it. Applicant requested that counsel prepare for a jury trial and counsel just replied that Applicant "don't understand how Lexington County does things."

Lowell E. Bernstein, Esquire, (plea counsel), was not the initial attorney appointed by the court to represent Applicant in defense of his criminal charges.

By order dated August 4, 2006, Stanley L. Myers, Esquire, was appointed to represent Applicant in his defense. Mr. Myers

motioned the court and was granted funds to hire a private investigator. Mr. Myers hired Ms. Lee T. Connelly private investigator to investigate the case and assist him in preparing for trial. Subsequent to this Mr. Myers learned that he would soon be deployed to Afghanistan. Mr. Myers was relieved as counsel by order dated December 27, 2006. Throughout Applicant had continuously asserted his desire to go to trial. Mr. Bernstein was appointed to the case approximately January 22, 2007.

Mr. Bernstein never investigated the case and never contacted Ms. Connelly regarding her investigations. As of October 2, 2006, Mr. Myers and Ms. Connelly were in the process of beginning to contact Applicant's alibi witnesses. After Mr. Myers was relieved of the case, Mr. Bernstein refused to investigate Applicant's alibi and witnesses although the witness contact information was known to him. Mr. Bernstein also failed to follow up with Ms. Connelly regarding any of her investigation or request additional funds for Ms. Connelly to remain on the case. Through Mr. Bernstein's ineffectiveness Applicant's trial defense completely deteriorated.

iii) Through counsel's failure to advise Applicant of the relevant law as it applied to the particular facts of Applicant's case.

Had counsel not been constitutionally ineffective Applicant would not have pled guilty and would have insisted on going to trial.

11(b) Guilty pleas were not knowing, voluntary, and intelligent.

Guilty pleas were not knowing, voluntary, and intelligent as required by law in that during the adversarial process counsel was ineffective and Applicant was prejudiced. Furthermore, guilty pleas were not, knowing, voluntary, and intelligently given in that they were precipitated through counsel's ineffectiveness and prejudice to Applicant.

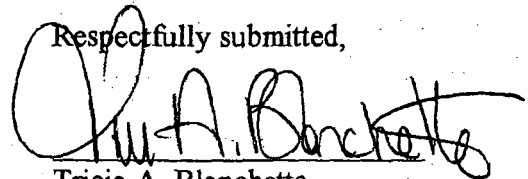
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Julius Powell, 322080,	)	2007-CP-32-4377
Applicant,	)	
v.	)	
	)	AMENDMENT TO APPLICATION
State of South Carolina,	)	FOR POST CONVICTION RELIEF
<u>Respondent.</u>	)	

The Applicant, by and through his appointed attorney Tricia A. Blanchette, would respectfully amend and supplement his Application for Post Conviction Relief filed December 4, 2007, by adding the following specific allegations to his original allegation of "ineffective assistance of counsel" and "guilty pleas were not knowing, voluntary and intelligent" and by specifically requesting a belated direct appeal:

1. Ineffective assistance of trial counsel and involuntary guilty plea, specifically but not limited to the following grounds:
 - a. Failure to properly prepare and investigate the case.
 - i. Counsel failed to thoroughly review the discovery with the Applicant prior to his plea.
 - ii. Counsel failed to meet with the Applicant and properly prepare for trial and/or plea.
 - iii. Counsel failed to conduct an independent investigation or speak with any witnesses.
 - iv. Counsel failed to utilize the investigative work conducted by Lee Connelly and obtain additional funding for her to complete her investigation.
 - v. Counsel failed to look into the Applicant's alibi defense or speak with his alibi witness.
 - vi. After informing the Applicant that his co-defendant's would testify against him, counsel failed to prepare for potential impeachment of the Applicant's co-defendants
 - b. Failure to provide effective assistance of counsel during the plea phase.

- i. Counsel advised the Applicant that he could plead no contest but the plea was a straight up guilty plea.
 - ii. Counsel did not properly prepare himself or the Applicant for mitigation.
2. The Applicant is also alleging that counsel failed to file a direct appeal as was requested by the Applicant. Therefore, the Applicant is requesting a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211
(803) 988-0008

January 20, 2010
Columbia, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Julius Powell, 322080,)
)
 Applicant,)
)
 v.)
 State of South Carolina,)
)
 Respondent,)
)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2007-CP-32-4377

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail on this 20th day of January 2010, a copy of an Amendment to Application for Post Conviction Relief, with postage prepaid and the return address clearly shown on said envelope to A. West Lee with the Office of the Attorney General at:

Office of the Attorney General
 ATT: A. West Lee, Esq.
 P.O. Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 Attorney for the Applicant
 PO Box 12725
 Columbia, SC 29211

January 20, 2010

IN THE COURT OF COMMON PLEAS

2007-CP-32-4377

Julius Powell, # 322080,

Applicant,

Y.

State of South Carolina,

Respondent.

RETURN

Respondent, making its Return to the application for post conviction relief (PCR) filed December 4, 2007, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2007 term of the Lexington County Grand Jury for burglary- 1st degree (07-GS-32-1126), kidnapping (07-GS-32-1127), and armed robbery (07-GS-32-1128). Lowell E. Bernstein, Esquire, represented him. On May 24, 2007, Applicant pled guilty burglary- 2nd degree, kidnapping, and armed robbery. He was sentenced by the Honorable Casey L. Manning, to confinement for fifteen (15) years, eighteen (18) years, and eighteen (18) years, respectively, concurrent. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South

Carolina Department of Corrections, and the plea transcript. Any of the above not so attached will be forwarded upon receipt.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Involuntary guilty plea.

III.

Respondent interprets each of Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In his second allegation, Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the

guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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Assistant Deputy Attorney General

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May 1, 2008.

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON)

Julius Powell,)
)
 PLAINTIFF,)
)
 -VS-) PCR HEARING
) 2007-CP-32-04377
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

BEFORE THE HONORABLE R. LAWTON MCINTOSH, JUDGE

FEBRUARY 5, 2010

LEXINGTON, SOUTH CAROLINA

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

Tricia Blanchette, Esq.
 For the Plaintiff

A. West Lee, Esq.
 For the Defendant

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

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1 THE COURT: Thank you for being here.

2 This is Powell?

3 MR. LEE: Yes, Your Honor. This is Julius
4 Powell versus the State of South Carolina. It's
5 2007-CP-32-4377. It comes to the Court by way of
6 application for post-conviction relief filed
7 December 4, 2007.

8 The applicant was indicted at the
9 April 2007 term of the Lexington County Grand Jury
10 for burglary in the first degree. That's
11 07-GS-32-1126.

12 THE COURT: Burglary what degree?

13 MR. LEE: First degree, Your Honor.

14 THE COURT: First.

15 MR. LEE: Then also kidnapping,
16 07-GS-32-1127, and armed robbery, which is
17 07-GS-32-1128. The applicant was represented by
18 Lowell Bernstein, and on May 24, 2007, the applicant
19 pled guilty to burglary in the second degree,
20 kidnapping, and armed robbery.

21 He was sentenced by the Honorable
22 Casey Manning to confinement for a period of 15
23 years, 18 years, and 18 years, respectively, on the
24 charges. Each of those sentences were to run
25 concurrent. The applicant did not appeal his

1 conviction or sentence.

2 In his current application -- at
3 least the original application which our office
4 received -- the applicant alleged that he is being
5 held in custody unlawfully for ineffective
6 assistance of counsel and involuntary guilty plea.
7 Subsequent to that, applicant's counsel, Ms. Tricia
8 Blanchette, sent us an amendment to that application
9 for post-conviction relief which included several
10 other charges. At this time, I will turn it over to
11 Ms. Blanchette to elaborate upon those claims.

12 MS. BLANCHETTE: Good morning, Your Honor.
13 My name is Tricia Blanchette, and I have been
14 appointed out of Lexington County to represent Mr.
15 Powell. It is my understanding you should have a
16 copy of the amendment in your packet, is that
17 correct?

18 THE COURT: Give me one second, please.

19 MS. BLANCHETTE: It's rather lengthy. I
20 can read it in the record. I didn't know if you'd
21 like to read it.

22 THE COURT: I see your return, but I don't
23 see the amendment. Any objections to the proposed
24 amendment?

25 MR. LEE: No, Your Honor. We received it

1 sometime ago.

2 THE COURT: Okay, thank you.

3 MS. BLANCHETTE: Your Honor, with that, if
4 you would like, I can proceed with my first witness.

5 THE COURT: Yes, ma'am.

6 MS. BLANCHETTE: Your Honor, I would call
7 Lee Connolly to the stand.

8 THE COURT: Is it Lee Connolly?

9 MS. BLANCHETTE: Yes, sir.

10 CLERK OF COURT: Please have a seat and
11 state your name for the record.

12 MS. CONNOLLY: My name is Lee Connolly.

13 (The witness was sworn.)

14 LEE CONNOLLY, having first
15 been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BLANCHETTE:

18 Q Ms. Connolly, what is your current
19 profession?

20 A Private investigator.

21 Q And how long have you been a private
22 investigator?

23 A About ten years.

24 Q Okay. And what type of cases are you
25 typically involved in?

1 A Criminal defense.

2 Q Okay. And are you usually appointed or
3 retained for those cases?

4 A Appointed.

5 Q Okay. And in this instance, how was it
6 that you became involved in the case of Mr. Julius
7 Powell?

8 A I was contacted by his former attorney,
9 Stanley Myers, in September of 2006, and that's when
10 I began working on his case.

11 Q And you were appointed then to work on his
12 case, is that correct?

13 A I was contacted by Mr. Myers, and Indigent
14 Defense pays the bill.

15 Q Okay. And do you know the amount of the
16 funds that Mr. Myers was able to--

17 A Somewhere around \$500. And once I reached
18 that, I contacted Mr. Myers and let him know that I
19 was going to need more money to complete more
20 investigation. And I didn't hear back from him.
21 And as it turns out, he had been sent over to Iraq.

22 And they had told me that they had
23 shuffled his file out, and another attorney had been
24 assigned to Mr. Powell. And I was not contacted by
25 the other attorney that I recall.

1 Q Okay. And once you were appointed to
2 assist or investigate in this case, what was the
3 first thing that you recall doing?

4 A I met with Mr. Powell.

5 Q Okay. And do you know where you met with
6 him at?

7 A I met with him at the Lexington County
8 Detention Center.

9 MS. BLANCHETTE: Your Honor, may I
10 approach the witness?

11 THE COURT: Yes, ma'am.

12 Q Ms. Connolly, could you identify this
13 document for the record?

14 A Uh-huh. This is the report that I
15 prepared after I met with Mr. Powell.

16 Q And this was your initial meeting with him
17 to obtain information on the case?

18 A Yes, ma'am.

19 Q Okay. And was there certain information
20 about -- that he gave you about where he was located
21 the day of the crime?

22 A Yes, uh-huh.

23 Q Okay. And what was that?

24 A He indicated that on July 4th of 2006, he
25 went to his sister's home to provide her some money

1 for rent. She was behind on her rent, I believe,
2 and he was going to give her \$600.

3 Q And did he inform you that his sister's
4 home was located in the same community or
5 neighborhood as the victim in this case?

6 A Yes. I believe that it was across the
7 street.

8 Q Okay. And did he also provide you with
9 the name of a potential alibi witness?

10 A He did. He indicated that he had a friend
11 by the name of Deborah Stevenson and that he had
12 visited with her later on July 4th.

13 MS. BLANCHETTE: Your Honor, at this time
14 I would move Ms. Connolly's report in as Applicant's
15 Number One.

16 THE COURT: Have you seen that report, Mr.
17 Lee?

18 MR. LEE: Yes, Your Honor. No objection.

19 THE COURT: No objection. It's admitted
20 without objection.

21 (Applicant's Exhibit Number One,
22 Report of Lee Connolly, was entered in evidence.)

23 MS. BLANCHETTE: Your Honor, would you
24 like a copy?

25 THE COURT: Yes, please. Thank you.

1 Q Now, you indicated that he gave you the
2 name of Deborah Stevenson as a potential alibi
3 witness?

4 A Yes, ma'am.

5 Q Did you have the opportunity, then, as
6 part of your investigation to speak with her?

7 A I did. I met with her on November 1st of
8 2006.

9 MS. BLANCHETTE: Your Honor, may I
10 approach the witness?

11 THE COURT: Yes, ma'am.

12 Q Ms. Connolly, could you identify this
13 document for the record?

14 A Uh-huh. This is the report that I
15 prepared after meeting with her.

16 Q And based upon this report and your
17 meeting with her, what information were you able to
18 obtain from Ms. Stevenson?

19 A She informed me that she had two jobs, and
20 that the evening that we were talking about just a
21 moment ago, she came home from work, arriving there
22 about midnight. When she arrived home, Mr. Powell
23 was already in her home - she had given him a key
24 and told him where the key was -- and that he was
25 watching television in her bedroom, that they went

11

1 to bed at some point after he had received a phone
2 call and left, and that -- pardon me, let me look --
3 she woke up at about 4:00 in the morning, went to
4 the restroom, and he was back in bed beside her.

5 Q Okay. And did this information confirm
6 the details that Mr. Powell --

7 A It did.

8 Q -- had given you?

9 A It did.

10 Q Okay.

11 MS. BLANCHETTE: Your Honor, at this time
12 I'd move this as Applicant's Number Two.

13 MR. LEE: No objection, Your Honor.

14 THE COURT: It's admitted without
15 objection.

16 (Applicant's Exhibit Number Two,
17 Interview with Deborah Stevenson, was entered in
18 evidence.)

19 Q Ms. Connolly, you had mentioned that Mr.
20 Powell informed you that he had gone to his sister's
21 house to give her a rent payment --

22 A Yes.

23 Q -- is that correct?

24 A Uh-huh.

25 Q And as part of your investigation, were

1 you able to do any work regarding that or look into
2 that matter?

3 A I did. I spoke with -- I cannot recall
4 the name of the man that was --

5 MS. BLANCHETTE: Your Honor, may I
6 approach the witness?

7 A But I obtained some documents from him,
8 from Beverly Acres, and it was -- apparently, his
9 sister had been evicted. And so this, I believe, is
10 the contract, and I don't remember if it's
11 notification that they were evicted. But I believe
12 that they were evicted.

13 Q And could you identify this document, what
14 it is that you're referring to?

15 A This is part of the document -- part or
16 all of the documentation that he gave me. It's an
17 application for ejectment.

18 Q And you obtained this as a part of your
19 investigation?

20 A Right, right.

21 Q Okay. And did it indicate specifically on
22 the second page that there was a \$600 monthly rent
23 payment?

24 A Yes, six hundred dollars.

25 Q And your reasoning for obtaining this was

13

1 because Mr. Powell had told you that he was bringing
2 his sister --

3 A Exactly.

4 Q -- six hundred dollars?

5 A Exactly.

6 MS. BLANCHETTE: Your Honor, at this time
7 I'd move this as Applicant's Number Three.

8 THE COURT: Any objection?

9 MR. LEE: No objection, Your Honor.

10 THE COURT: Admitted without objection.

11 (Applicant's Exhibit Number Three,
12 Application for Ejectment, was entered in evidence.)

13 Q In conjunction with the criminal case that
14 you're appointed on, were you able to do any other
15 work at that time?

16 A After Mr. Myers was taken off of the case
17 for being in Iraq, I didn't have any other doings on
18 the case until I was contacted by you. I believe
19 that was in September of this year.

20 And since that time, I have done several
21 other things. I've interviewed a man by the name of
22 John Vesey. I've gone to the pawnshop where a
23 weapon was supposedly sold.

24 And I've also gathered documents from the
25 Lexington County Sheriff's Department and confirmed

1 that Ms. Stevenson is now deceased.

2 Q I contacted you, and you were appointed to
3 assist with the PCR case?

4 A You did.

5 Q And since that time, you've done a number
6 of requests --

7 A Right, yes.

8 Q -- on my behalf for the PCR case?

9 A Exactly.

10 Q Okay. And one of those requests was that
11 I asked you to look into Ms. Stevenson and see if
12 you could locate her --

13 A Yes.

14 Q -- is that correct?

15 A Uh-huh.

16 MS. BLANCHETTE: Your Honor, may I
17 approach the witness?

18 THE COURT: Yes, ma'am.

19 Q Actually, Ms. Connolly, let me ask you
20 first, were you able to locate Ms. Stevenson?

21 A She -- apparently, she passed away in
22 October, I believe, of 2007.

23 Q And could you identify this document for
24 the record?

25 A This is the order closing her estate.

15

1 Q And did you obtain this as part of the
2 investigation you conducted at my request?

3 A Yes, ma'am.

4 Q Okay. And does this, in fact, verify that
5 Ms. Deborah Stevenson is now deceased?

6 A Yes.

7 Q Okay.

8 MS. BLANCHETTE: Your Honor, at this time
9 I'd move this as Applicant's Number Four.

10 MR. LEE: No objection, Your Honor.

11 THE COURT: Admitted without objection.

12 (Applicant's Exhibit Number Four,
13 Order Closing Estate of Deborah Stevenson, was
14 entered in evidence.)

15 THE COURT: Counsel, these are my copies,
16 is that correct?

17 MS. BLANCHETTE: That is correct, Your
18 Honor.

19 Q And just an obvious question. Since Ms.
20 Stevenson was deceased, you weren't able to do any
21 further work in establishing Mr. Powell's alibi?

22 A Right.

23 Q Now, as a part of your original
24 investigation, did you receive a copy of the
25 discovery in this case?

1 A I did.

2 MS. BLANCHETTE: Your Honor, may I
3 approach the witness?

4 THE COURT: Yes, ma'am.

5 Q Ms. Connolly, could you identify this for
6 the record?

7 A This is the investigate report that was in
8 the original discovery. And it's dated on the
9 bottom -- the reporting officer -- looks like July
10 5, 2006.

11 Q Okay. And turning to the second page of
12 this, if you wouldn't mind reading starting with
13 7/9/06 the information --

14 A Okay.

15 Q -- contained in this report.

16 A "7/9/06 at around 1930 hours, I received a
17 page from Kirkland, and he advised IO that he
18 received some information about this case. He said
19 a friend of his wife identified as Vickie Amick" --
20 and then they give the phone number -- "who keeps
21 her children at the residence of John Vesey, 652
22 Archwood" -- another phone number -- "was informed
23 that Vesey was approached by a black male who asked
24 him if he wanted to buy a 9-millimeter handgun.

25 "Kirkland further learned that this black

17

1 male is missing teeth, drives a bicycle, and lives
2 at the end of Sandy Oak Lane. The description of
3 this person is similar to what Freddie Powell later
4 identified as Freddie Henderson looks like.

5 "IO called Vesey, and he advised IO that
6 this black male approached him, asking if he wanted
7 to buy a 9-millimeter handgun, which Vesey said he
8 did not want to buy a gun. He said further advised
9 IO that this person then asked him to give him a
10 ride to Big John's Pawnshop so he could sell this
11 gun. He was told by the man that he got the gun
12 from his son and he needed to get rid of it because
13 he was afraid his son would shoot someone."

14 Q Now, you originally had this report --

15 A Uh-huh.

16 Q -- is that correct?

17 A Yes.

18 MS. BLANCHETTE: Your Honor, at this time
19 I'd move this as Applicant's Number Five.

20 THE COURT: Any objection?

21 MR. LEE: No objection, Your Honor.

22 THE COURT: Admitted without objection.

23 (Applicant's Exhibit Number Five,
24 Investigative Report, was entered in evidence.)

25 Q Now, based upon the information contained

1 in this report, did I ask you to look into
2 contacting the pawnshop?

3 A Yes -- yes, you did.

4 Q And did you have the opportunity to do
5 that?

6 A I did. I spoke with I believe his name is
7 John Elias, and I also spoke with -- I'm not
8 pronouncing her name right -- Charlene Tilley of the
9 pawnshop.

10 Q And what, if any, information were they
11 able to give you?

12 A They indicated that Freddie Henderson had
13 been a customer of the shop and that July 6, 2007, I
14 believe, was the only time that he had ever pawned a
15 gun there. They said that on July 10, 2006,
16 Lexington County confiscated the gun and that they
17 had not seen the gun again.

18 Q And as part of your original investigation
19 in 2006, did you have the opportunity to talk to the
20 pawnshop owners or the people that you spoke to this
21 time?

22 A No.

23 Q And I also requested that you attempt to
24 track down John Vesey that's referenced in the
25 police report?

1 A Yes, ma'am.

2 Q And did you have the opportunity to do
3 that?

4 A I did. I did speak with him.

5 Q And what was the result of speaking with
6 him?

7 A He indicated during our conversation that
8 he did recall that a black male had approached him,
9 asking him how much Mr. Vesey would give him for a
10 gun. Mr. Vesey -- when I spoke with him, it was in
11 October of 2009.

12 He said that it might have been a .38 or a
13 .45 automatic pistol. He said that he wasn't going
14 to buy it and suggested taking the gun to a
15 pawnshop. And then he also mentioned that the black
16 man mentioned something about his son having taken
17 the gun from a neighbor or something and that the
18 black man was concerned his son might shoot himself,
19 so he had to get rid of it.

20 Q And based upon the police report, it
21 appears that the victim found out about John Vesey
22 through an individual named Vickie Amick --

23 A Right.

24 Q -- is that correct?

25 A Yes, yes.

1 Q And Vickie Amick was the one who gave this
2 information to the victim's wife?

3 A Right.

4 Q And then that resulted in the police going
5 to the pawnshop and recovering the weapon that was
6 stolen from the victim's home?

7 A Yes, ma'am.

8 Q Did you attempt to locate Ms. Vickie
9 Amick?

10 A I did.

11 Q And what was the result of that?

12 A I could not locate her.

13 Q Okay. And, finally, did I request that
14 you look into a shoe impression that was taken by
15 the Sheriff's Department from the original crime
16 scene?

17 A Yes, ma'am, you did.

18 Q And on my behalf, did you contact the
19 Lexington County Sheriff's Department?

20 A I did. I contacted John Tate by telephone
21 and also in a letter of November 4, 2009, and he
22 responded to that in a letter November 18, 2009,
23 indicating that they had looked in the evidence and
24 that Mr. Powell pled guilty on May 24, 2007, to his
25 charges. And all evidence, including the shoe

1 impression, were destroyed.

2 Q And, Ms. Connolly, could you identify this
3 document for the record?

4 A This is a copy of the letter that I
5 received from Mr. Tate.

6 MS. BLANCHETTE: Your Honor, I'd move this
7 as Applicant's Number Six.

8 MR. LEE: No objection, Your Honor.

9 THE COURT: Admitted without objection.

10 (Applicant's Exhibit Number Six,
11 11/18/09 letter from John Tate, was entered in
12 evidence.)

13 Q Based upon this response, were you able to
14 do any further investigation with the Lexington
15 County Sheriff's Department?

16 A That was all.

17 Q And, Ms. Connolly, I've attempted to go
18 over everything that you have done in this case. Is
19 there anything that I left out or anything that
20 you'd like to bring to the Court's attention?

21 A I tried to locate the victims, and also,
22 initially when I was retained, I attempted to
23 contact the attorneys for the other co-defendants
24 but obviously was denied access to speak with them.

25 Q And just to follow up with you, you said

1 that Stanley Myers was the appointed attorney --

2 A Yes.

3 Q -- you were working with?

4 A Yes, he was.

5 Q And, subsequently, Lowell Bernstein was
6 appointed in this case?

7 A That's my understanding.

8 Q Did Mr. Bernstein ever contact you to
9 assist him further with this case?

10 A Not to my knowledge.

11 Q If he would have contacted you, would you
12 have been willing to --

13 A Yes.

14 Q -- work on the investigation further?

15 A Yes.

16 Q Okay. And do you feel that there were
17 matters at that time that needed to be further
18 investigated in this case?

19 A Yes.

20 MS. BLANCHETTE: Your Honor, I have no
21 further questions.

22 THE COURT: Mr. Lee?

23 MR. LEE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. LEE:

1 Q Ms. Connolly, you were originally
2 contacted by Stanley Myers, and I believe you
3 testified that you received a budget of \$500,
4 correct?

5 A I believe it was five hundred.

6 Q And then you reached that limit --

7 A Uh-huh.

8 Q -- isn't that correct? And then you wrote
9 Mr. Myers, stating that in order to proceed, you
10 would need more money?

11 A Right.

12 Q And then you never heard back from him?

13 A Right.

14 Q And then, subsequently, Mr. Bernstein was
15 appointed, and you never heard from him?

16 A I never heard from him.

17 Q Okay. Now, there's -- let me just see if
18 I'm following correctly. Mr. Powell was over at his
19 sister's house --

20 A Uh-huh.

21 Q -- because she needed \$600 or she was
22 going to be evicted?

23 A And he was visiting her.

24 Q And that was during the day?

25 A Right.

1 Q And that was in the same neighborhood as
2 where the robbery occurred?

3 A Correct.

4 Q So he's over to see his sister because she
5 needs money, in the same neighborhood where the
6 robbery occurs. At what time did the robbery occur?

7 A I have no idea.

8 Q Was it that night?

9 A I believe it was in the evening hours.

10 Q Okay.

11 A I believe.

12 Q So he went over to his sister's house
13 during the day the robbery occurred in the evening.

14 A Right.

15 Q But you're not sure exactly when?

16 A Right.

17 Q And then there is testimony from the
18 supposed alibi witness who came home at midnight,
19 correct --

20 A Uh-huh.

21 Q -- and he was already there?

22 A Right.

23 Q So there's some hours in the evening time
24 which may or may not be accounted for. She gets
25 home at midnight --

1 A Uh-huh.

2 Q -- and he receives a phone call at some
3 point and leaves?

4 A Yes.

5 Q And that's somewhere between twelve and
6 four?

7 A Right.

8 Q Because the next thing that happens is she
9 wakes up at four, and he's back in bed?

10 A Yes, sir.

11 Q So then there's some hours in there that
12 may not be accounted for either. And, again, we're
13 just not exactly sure when the incident happened, is
14 that --

15 A Well, I mean, the incident report says
16 2300 hours --

17 Q So --

18 A -- on July 4th.

19 Q -- that would be 11 p.m., before the alibi
20 witness got home?

21 A Yes, 11:30.

22 Q Okay. Now, beg your pardon just one
23 second. The discussion of the footprint that was
24 found at the scene --

25 A Uh-huh.

1 Q -- you said that when you tried to get in
2 contact with law enforcement regarding that, it had
3 been destroyed?

4 A Right.

5 Q So you're not exactly sure who that
6 footprint would belong to?

7 A I mean, off the top of my head, no. It's
8 listed in the discovery that there was a footprint
9 found on the back of the door --

10 Q Okay.

11 A -- at the victim's home. And there is
12 some mention somewhere in the discovery about shoes,
13 and I don't recall off the top of my head.

14 Q Now, this incident report here that Ms.
15 Blanchette was going over with you --

16 A Uh-huh.

17 Q -- primarily it talks a great deal about
18 Mr. Henderson and his various attempts to sell the
19 gun. He goes to this Mr. Vesey, based on what I
20 heard from you, and attempts to sell it to him. And
21 then he suggests the pawnshop, so he goes to the
22 pawnshop --

23 A Right.

24 Q -- and ultimately sells it there, is that
25 accurate?

1 A Right. That's my understanding.

2 Q Can we turn to page three? And this is
3 still -- I believe this is Mr. Henderson talking
4 here.

5 THE COURT: Which exhibit are you
6 referring to, counsel?

7 MR. LEE: I'm sorry.

8 MS. BLANCHETTE: It would be Exhibit
9 Number Five, Your Honor.

10 THE COURT: Thank you.

11 MR. LEE: My apology, Your Honor.

12 THE COURT: That's all right.

13 Q That would be page three, second
14 paragraph. And this is Mr. Henderson speaking, but
15 Mr. Henderson's recount of the events is a little
16 bit different. Can you start where he says "He said
17 he" -- "He said Powell was talking about going to
18 rob the neighbor" and just maybe go through the rest
19 of that paragraph?

20 A "He said on July 4th"?

21 Q No, no. It says -- yes, yes, start there.
22 That's fine.

23 A Okay. "He said on July 4th he was at home
24 with his wife, and his two children, and his wife's
25 brother, Cy Powell."

1 Q Could I stop you there? Cy Powell would
2 also be --

3 A Mr. Powell -- Julius Powell.

4 Q Okay, all right.

5 A "He said he" -- Powell -- "talking about
6 wanting to rob the neighbor. He said he saw Powell
7 change clothes and leave the residence on foot.
8 Henderson further advised IO that a little later he
9 saw Powell return to his house and say he robbed the
10 neighbor, and he stole the neighbor's wallet and
11 handgun."

12 Q Okay, that would be far enough -- or, no,
13 actually, go one sentence farther.

14 A "At this time, the neighbor had come out
15 of the incident location and began to shoot a
16 shotgun. Henderson said he later found out that
17 Powell threw the gun in the back yard."

18 Q And so it was Henderson's position that he
19 found that gun in his back yard and subsequently
20 attempted to sell it, correct?

21 A That's what that says.

22 Q Okay.

23 A But I never interviewed Mr. Henderson.

24 Q Okay.

25 MR. LEE: Beg the Court's indulgence one

1 second.

2 THE COURT: All right.

3 MR. LEE: That would be all my questions
4 for this witness. Thank you.

5 THE COURT: Any redirect, counsel?

6 MS. BLANCHETTE: Your Honor, I have no
7 further questions.

8 THE COURT: Ms. Connolly, you may step
9 down.

10 MS. CONNOLLY: Thank you.

11 MS. BLANCHETTE: And I'd ask that Ms.
12 Connolly be relieved, if the State has no objection.

13 THE COURT: Mr. Lee?

14 MR. LEE: No objection.

15 MS. BLANCHETTE: Your Honor, at this time
16 I'd call Julius Powell to the stand.

17 (The witness was sworn.)

18 CLERK OF COURT: Please have a seat and
19 state your name for the record.

20 MR. POWELL: My name is Julius Powell.

21 JULIUS POWELL, having first been duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q Mr. Powell, where are you currently

1 incarcerated?

2 A Broad River Correctional.

3 Q Okay. And did you file a current PCR
4 application?

5 A Yes.

6 THE COURT: You have to speak up.

7 A Yes.

8 Q And in that application, you originally
9 alleged ineffective assistance of counsel and
10 involuntary guilty plea, is that correct?

11 A Yes.

12 Q And since then, on your behalf as your
13 appointed counsel I filed an amendment with more
14 detailed allegations, is that correct?

15 A That's correct.

16 Q Okay. And you're prepared today to
17 testify regarding those allegations?

18 A Yes, I am.

19 Q Now, we discussed the fact and the State
20 put into the record that you pled guilty to a
21 burglary second, a kidnapping, and an armed robbery
22 charge, is that correct?

23 A That's correct.

24 Q And that burglary second was actually
25 dropped down from a burglary first?

1 A Correct.

2 Q And we have discussed the fact in detail
3 that all that you can request today is a new trial,
4 is that correct?

5 A Yes.

6 Q And is that, in fact, what you're
7 requesting from this Court?

8 A Yes, I am.

9 Q Do you understand that by requesting a new
10 trial, that means that you'd be put back in the
11 position you were after you were indicted?

12 A Yes.

13 Q And you would be facing the original
14 charges all over again?

15 A Yes.

16 Q And we have talked about the fact that you
17 currently received a 15 and an 18, so there's a risk
18 of receiving more time in the case?

19 A Yes.

20 Q And knowing that, do you want to go
21 forward today?

22 A Yes, I do.

23 Q Now, you entered a plea in this case on
24 May 24, 2007?

25 A Yes, I did.

1 Q And that was in front of the Honorable L.
2 Casey Manning, is that correct?

3 A That's correct.

4 Q All right. And the State was represented
5 by Solicitor David Riddle?

6 A Yes.

7 Q And who was your attorney?

8 A At the time of the sentence?

9 Q At the plea.

10 A Bernstein -- Lowell Bernstein.

11 Q Okay. Now, let's go back into the point
12 when you were arrested. You were arrested on July
13 11, 2006, is that correct?

14 A That's correct.

15 Q And you had a bond hearing. Did you
16 attend that bond hearing?

17 A No , huh-uh.

18 Q Okay. Were you given bond at that
19 hearing?

20 A No.

21 Q Thereafter, were you appointed an
22 attorney?

23 A Yes.

24 Q And who was originally appointed in your
25 case?

1 A Stanley Myers.

2 THE COURT: Can you speak up just a little
3 bit, please, sir?

4 A Sure. Stanley Myers.

5 Q And he was appointed about approximately
6 one month after you were arrested, is that correct?

7 A That's correct.

8 Q After he was appointed, did you have a
9 second bond hearing?

10 A Yes.

11 Q And what was the outcome of that bond
12 hearing?

13 A I received no bond.

14 Q Now, when you were working with Mr. Myers,
15 were you all preparing for trial or for a plea?

16 A For trial.

17 Q And as part of that preparation for trial,
18 did he see that a private investigator was
19 appointed?

20 A Yes, he did.

21 Q And who was appointed?

22 A Lee Connolly.

23 Q Okay. And Ms. Connolly has had the
24 opportunity to testify here today, is that correct?

25 A That's correct.

1 Q Now, when Mr. Myers represented you, were
2 there any plea offers that were given to you or that
3 you were informed of in your case?

4 A Not until he found out he was getting
5 deployed, and he went and spoke with the Solicitor
6 in reference to getting some kind of offer before he
7 was deployed. That was the only time.

8 MS. BLANCHETTE: Your Honor, may I
9 approach the witness?

10 THE COURT: Yes, ma'am.

11 Q Mr. Powell, could you identify this for
12 the record?

13 A Yes, that's a letter that Stanley Myers
14 sent to me in reference to his meeting with the
15 Solicitor and trying to get a recommendation for
16 some jail time.

17 Q And what was the amount of time he was
18 trying to seek for you?

19 A Anything lower than ten years.

20 Q And in this letter, does he indicate he
21 was capable of doing that?

22 A He said he wasn't.

23 Q Okay. And does he inform that he was
24 going to be deployed, so someone else would be
25 taking over your case?

1 A Yes, he did.

2 Q Okay. And does he also indicate in this
3 letter to the Solicitor that you wanted to exercise
4 your right for a speedy trial?

5 A Yes, he did.

6 MS. BLANCHETTE: Your Honor, at this time
7 I'd move this as Applicant's Number Seven.

8 MR. LEE: No objection.

9 THE COURT: Admitted without objection.

10 (Applicant's Exhibit Number Seven,
11 Letter from Stanley Myers, was entered in evidence.)

12 Q During the time that Mr. Myers represented
13 you, do you remember approximately how many times
14 you met with Lee Connolly?

15 A Two or three times.

16 Q Okay.

17 A Two or three times.

18 Q And one of those times was the interview
19 that she testified about, is that correct?

20 A Yes, that's correct.

21 Q And then you also went over the discovery
22 with her during a meeting?

23 A Yes, we did.

24 Q And just for the record, you had the
25 opportunity to speak with Mr. Myers here today, is

1 that correct?

2 A Yes, I did.

3 Q And you have decided that he is not a
4 necessary witness in this case?

5 A Correct.

6 Q Okay.

7 THE COURT: Say that again? Mr. Myers,
8 the original attorney, today is not a necessary
9 witness?

10 MS. BLANCHETTE: Yes. Mr. Myers was
11 present in the courtroom, spoke with Mr. Powell, and
12 Mr. Powell determined that he did not want me to
13 call him as a witness. So Mr. Myers left.

14 THE COURT: Thank you, ma'am.

15 Q Now, after Mr. Myers was deployed, who was
16 appointed to take over your case?

17 A Lowell Bernstein.

18 Q And did you have the opportunity to meet
19 with Mr. Bernstein?

20 A Yes, I did.

21 Q Do you remember approximately how many
22 times you all met?

23 A The first time we met -- we met twice.
24 The first time we met, he came to court. He was in
25 court with one of my co-defendants at a bond

1 hearing. And he said that just by coincidence he
2 was there, and he wanted to introduce himself to the
3 Solicitor.

4 And he said -- so when he came down, I
5 said, "So did you look into my case? Did you speak
6 to the Solicitor?" He said he didn't speak with the
7 Solicitor. He didn't look into my case.

8 Q Did he tell you at any time during his
9 representation about his experience handling cases
10 of your nature?

11 A Yes, he did. He said he didn't handle
12 cases of my nature. He's used to drug cases. He
13 was a Solicitor, I think he said, at one time, and
14 he only dealt with drug cases. So this was kind of
15 new to him.

16 Q Did you have the opportunity to go over
17 your discovery with Mr. Bernstein?

18 A No.

19 Q Did you ask him about further obtaining
20 the services of Ms. Lee Connolly?

21 A We did.

22 Q And did you explain to him that she had
23 already been working on your case?

24 A Yes.

25 Q What, if anything, resulted from your

1 request to him?

2 A Nothing.

3 Q Were you concerned about that?

4 A Yes, very.

5 Q Now, turning to the investigation that Ms.
6 Connolly did with Mr. Stanley Myers, Ms. Connolly
7 has already identified and I have introduced a
8 report she generated from the meeting with you, and
9 that's Applicant's Number One. Do you remember
10 meeting with her?

11 A Yes, I do.

12 MS. BLANCHETTE: Your Honor, may I
13 approach the witness?

14 THE COURT: Yes.

15 Q Now, Mr. Powell, you gave this report on
16 September 5, 2006, as far as you recall?

17 A Yes.

18 Q And on that day, you gave a very detailed
19 explanation to Ms. Connolly of what occurred at the
20 time of this crime?

21 A Yes.

22 Q And are you here today saying that this is
23 the truth of what happened at that time?

24 A Yes, I am.

25 Q Okay. And let's just go over this report.

1 Beginning with July 2, 2006, did you inform Ms.
2 Connolly and she reported here that you had returned
3 from South Carolina -- or you had returned to South
4 Carolina?

5 A Yes.

6 Q And who did you return with?

7 A My ex-wife and three children.

8 Q And where were you returning from?

9 A New Jersey.

10 Q Okay. And then did you further inform her
11 that on July 4th, you went over to your sister
12 Donna's house?

13 A Correct.

14 Q Okay. And where is your sister Donna's
15 house in relation to the victim?

16 A Right across the street.

17 Q Okay. And did you tell her your initial
18 purpose or reasoning for going to your sister's
19 house?

20 A Yes.

21 Q And what was that?

22 A To give my sister -- loan my sister --
23 some money for rent.

24 Q Okay. And Ms. Connolly had the
25 opportunity to look into that and get documentation

1 regarding the rent payment was due?

2 A Correct.

3 Q Now, you further informed her that about
4 10 p.m. you overheard Kareem Powell and Tommy
5 Browder discussing a robbery, is that correct?

6 A Yes -- well, Kareem was -- he was upset
7 about his girlfriend -- he had a 14-year-old
8 girlfriend that was pregnant at the time, so he was
9 upset about that. And Tommy suggested that they do
10 that robbery.

11 Q Now, Mr. Kareem Powell has the same last
12 name as you do. Could you explain just who he is
13 for the record?

14 A He's my nephew. He's my sister's son.

15 Q And your sister would be Donna, whose
16 residence you were at?

17 A Correct.

18 Q Okay. And is Tommy Browder any relation
19 to you, or how do you know him?

20 A He's a friend of Kareem's.

21 Q Okay. And you overheard them discussing a
22 potential robbery?

23 A Right.

24 Q Did you in any way assist them in planning
25 that robbery?

41

1 A No, I actually talked to them about what
2 they were -- they said they were playing; no, it
3 wasn't that serious. But, no, I didn't.

4 Q Okay. And then did you inform Ms.
5 Connolly that between 10:45 and 11 p.m. you left for
6 Deborah Stevenson's residence?

7 A Yes.

8 Q Okay. Then did you inform her that you
9 received a call at some point, and could you explain
10 that?

11 A Yes, I received a call from my daughter.
12 These are children I brought from New Jersey. She
13 was one of them. She was 14 at the time. And she
14 had called and had said that there was a lot of --
15 her exact words was, "There's a lot of drama around
16 here. Somebody was shooting off a shotgun."

17 And I had an 18-year-old son there that's
18 handicapped. He was 18 then. He had the mind of a
19 4-year-old. So when she told me that -- well,
20 that's when she called.

21 Q So she was concerned, and she wanted you
22 to come back to Donna's residence?

23 A Right.

24 Q Did you do that at that time?

25 A I left about 20 minutes, maybe half an

1 hour later, after the call.

2 Q Okay. And then you informed Ms. Connolly,
3 which is contained in this report, that you returned
4 to Donna's residence, is that correct?

5 A That's correct.

6 Q And when you got there, did you have the
7 opportunity to speak with the victim?

8 A Yes.

9 Q Okay. And just explain that. And it's in
10 minor detail in this report. But what is it that
11 you spoke to the victim about?

12 A Well, when I got there, the victim and
13 another person was out in his front yard. And he
14 still had the shotgun in his hand, and the other
15 person had a sidearm. So my nephew and I walked
16 over there, and I asked him what was going on.

17 And he told me he had just got robbed.
18 And I said, "Well, you're shooting a shotgun around
19 here. I have kids around here." And we got a
20 little thing, and then the guy that was with him
21 said, "Had I been here when this happened, I would
22 have blew the person's brains out."

23 And I seen he was kind of high, too. So I
24 said, "Okay," and I just dismissed myself.

25 Q So you informed Ms. Connolly that almost

1 immediately after this robbery had occurred or
2 shortly thereafter, you spoke with the victim and
3 his friend in his driveway?

4 A I spoke with them, yes.

5 Q And at that time, did the victim say to
6 you, "You're the man that robbed my house"?

7 A No.

8 Q And then you --

9 A The guy kept asking me -- he asked my
10 nephew and I -- not knowing that I had just go
11 there, he asked my nephew and I did we see somebody,
12 two guys that robbed his house, or something like
13 that. And he said something about a white car.

14 Q And then you informed Ms. Connolly -- and
15 it's in her report and also in the police report --
16 that the police came to Donna's residence?

17 A Yes.

18 Q And what was their reasoning for coming to
19 her residence?

20 A Because the white car was in the driveway.

21 Q Okay. And this white car was related how
22 to the crime?

23 A Well, to my knowledge, Mr. Vesey said the
24 people that robbed him ran toward the white car, and
25 the white car started up and got ready to drove off.

1 And when he shot the shotgun, it made a U-turn and
2 turned into the driveway or something like that.

3 Q And you may have misspoke. You meant the
4 victim, Mr. Kirkland. You said Mr. Vesey.

5 A I mean Mr. Kirkland, yes.

6 Q Okay. And you also told Lee that several
7 days later, your sister informed you that the police
8 were looking for you?

9 A Yes.

10 Q And as a result of that information, what,
11 if anything, did you do?

12 A I called and asked why were they looking
13 for me. And they said my nephew and my
14 brother-in-law gave a statement. And I said, "Okay,
15 well" -- I told them where I was and that I'd be
16 turning myself in the next day.

17 Q And as a result of your meeting with Lee
18 -- and it's contained in her report -- you asked her
19 to speak with Ms. Deborah Stevenson, your alibi
20 witness?

21 A Yes.

22 Q And she had the opportunity to do that?

23 A Yes.

24 Q And we've already introduced that report
25 in your hearing here today?

1 A Yes.

2 Q All right. And you also asked her to
3 obtain the lease agreement to show that your sister
4 did owe \$600 in rent, is that correct?

5 A That's correct.

6 Q And she did that?

7 A Yes.

8 Q As far as you know, is there any further
9 investigation done by Ms. Connolly in your case?

10 A No, not that I recall.

11 Q Okay. Now, while Ms. Connolly was on the
12 stand, we also went over Applicant's Number Five,
13 which is a police report.

14 MS. BLANCHETTE: Your Honor, may I
15 approach the witness?

16 THE COURT: You may.

17 Q And, Mr. Powell, did you receive this as
18 part of the discovery in your case?

19 A Yes, I did.

20 Q And you went over that discovery with Ms.
21 Connolly, is that correct?

22 A Yes, I did.

23 Q Did you specifically ever go over this
24 police report with Mr. Bernstein after he was
25 appointed?

1 A No.

2 Q Okay. In this police investigative report
3 dated July 5, 2006, does it indicate that the police
4 obtained a 9/10 Fila print on the back door of Mr.
5 Kirkland's residence?

6 A Yes.

7 THE COURT: A what, now, please?

8 A Size nine.

9 Q A size 9/10 Fila shoe print on the back
10 door. Did it also indicate that the victim had seen
11 a white station wagon parked on the road after the
12 robbery and at your sister Donna's home?

13 A Yes.

14 Q And does it indicate that they spoke to
15 anybody about that white station wagon? Do you
16 recall a girl named Christina?

17 A Yes, yes.

18 Q Okay. And who was Christina?

19 A The owner of the car, also my nephew's --
20 Deshaun, one of my co-defendants, I guess one of the
21 guys accused in this crime, that's this crime, and
22 it's his girlfriend's car.

23 Q Okay. And then we already went over the
24 information with Ms. Connolly. But on the second
25 page, does it indicate information of how they got

1 to the pawnshop and located the weapon that was
2 stolen?

3 A I don't understand the question.

4 Q On page two of this report, I went over
5 with Ms. Connolly and she read it in the record.

6 A Uh-huh.

7 Q Do you need help flipping the pages?

8 A I've got it.

9 THE COURT: That's Exhibit Number Five?

10 MS. BLANCHETTE: That is, Your Honor.

11 A And what was the question?

12 Q Does this report indicate how the police
13 were able to locate --

14 A Yes.

15 Q -- the weapon at the pawnshop?

16 A Yes.

17 Q And what is your understanding of how that
18 occurred?

19 A They were told by Vickie Amick, who told
20 Kirkland, I believe it was, or told his wife that
21 she was approached or someone was approached by
22 Freddie with a gun. And he took it to a pawnshop,
23 and she gave information to victims, and they called
24 the police, or something like that.

25 Q And it's your understanding they were able

1 to obtain the gun that was stolen from the victim's
2 home at the pawnshop?

3 A Right.

4 Q And the person that pawned that gun was
5 Mr. Freddie Henderson?

6 A Right.

7 Q Could you explain to the Court how it is
8 you know Mr. Freddie Henderson or how he became
9 involved in this case?

10 A Well, I know Freddie Henderson because
11 he's my sister's I guess live-in boyfriend. They've
12 been together for 30 years, so I know him from
13 there. He lives in the same house that my sister
14 and Deshaun and them lives in, which is across the
15 street from the victim's house.

16 Q And does he have a son that was somehow
17 involved in this case?

18 A Yes, Kareem Deshaun -- they call him Shaun
19 -- the one that the guy named in his report, he was
20 the son of Freddie Henderson.

21 Q Now, regarding this shoe print that's
22 referenced in the police report, did you obtain
23 additional discovery in your case beyond that
24 report?

25 A Yes.

1 MS. BLANCHETTE: Your Honor, may I
2 approach the witness?

3 THE COURT: Yes, ma'am.

4 Q Mr. Powell, if you could just identify
5 that for the Court.

6 A Yes, I received this in discovery. It's
7 an Evidence Property Record report.

8 Q Okay. And what does the Evidence Property
9 Record -- Lexington County Sheriff's Department
10 Evidence Property Record report indicate they took?

11 A A pair of Fila sneakers, size nine, black
12 in color, with a red and green stripe.

13 MS. BLANCHETTE: Your Honor, at this time
14 I'd move this as Applicant's Number Eight.

15 THE COURT: Any objection?

16 MR. LEE: No objection.

17 THE COURT: Admitted without objection.

18 (Applicant's Exhibit Number Eight,
19 Evidence Property Record Report, was entered in
20 evidence.)

21 Q Mr. Powell, do you have any information as
22 to how the police obtained these sneakers or who
23 they obtained them from?

24 A They obtained them from Freddie Henderson.
25 I believe he had -- I think he had them on.

1 Q And, Mr. Powell, if you could further
2 identify this document for the record.

3 A This is a crime scene report that I
4 received.

5 Q Okay. And does it indicate on this report
6 that a shoe impression was taken from the rear door
7 of the victim's residence?

8 A Yes, it indicates that the shoe impression
9 was on the rear door. Also, the impression was
10 photographed and lifted. And the dead bolt was not
11 in place on the rear door. Several photographs of
12 the scene and of the suspect's shoes were taken.

13 MS. BLANCHETTE: Your Honor, at this time
14 I'd move this as Applicant's Number Nine.

15 THE COURT: Mr. Lee?

16 MR. LEE: No objection, Your Honor.

17 THE COURT: Admitted without objection.
18 It's the crime scene report.

19 (Applicant's Exhibit Number Nine,
20 Crime Scene Report, was entered in evidence.)

21 Q Mr. Powell, did you have the opportunity
22 to go over this crime scene report and evidence
23 report with Mr. Bernstein prior to your plea?

24 A No, I didn't. But I did mention to him
25 about the sneakers. I told him the sneakers were

1 size ten. I wear size twelve, and I kind of told
2 him to look into that. But, no, we never went into
3 that particular document, no.

4 Q Is that something that you wanted him to
5 further --

6 A Yes.

7 Q -- investigate?

8 A Yes, it was.

9 Q And is that something you, in fact, asked
10 me to further investigate?

11 A Yes.

12 Q And through Ms. Lee Connolly I asked the
13 Lexington County Sheriff's Department. And what's
14 your understanding of what happened to the evidence
15 in the case?

16 A All the evidence was destroyed.

17 Q So we were not able to further investigate
18 that issue on your behalf, is that correct?

19 A Correct.

20 MS. BLANCHETTE: Your Honor, may I
21 approach the witness?

22 THE COURT: Yes, ma'am.

23 Q Mr. Powell, if you could just identify
24 this last exhibit for the Court.

25 A I believe this was the victim's statement.

1 Q And did you receive this as part of the
2 discovery in your case?

3 A Yes, I did.

4 MS. BLANCHETTE: Your Honor, at this time
5 I'd move this as Applicant's Number Ten.

6 THE COURT: That's the victim's statement?

7 MS. BLANCHETTE: Yes.

8 THE COURT: Any objection, Mr. Lee?

9 MR. LEE: No objection, Your Honor.

10 THE COURT: Admitted without objection.

11 (Applicant's Exhibit Number Ten,
12 Victim's Statement, was entered in evidence.)

13 Q Now, in reviewing this victim's statement,
14 it indicates that one robber told Shaun or Deshaun,
15 "Let's go." Is that your understanding?

16 A Yes, it is.

17 Q And why is that of interest in this case?

18 A Because he named the name.

19 Q And he named the name of who would that
20 be, to your understanding?

21 A Shaun.

22 Q And Shaun is who?

23 A Shaun is Freddie Henderson's son and also
24 one of the persons that's incarcerated now because
25 of this crime.

1 Q And the victim also indicates that he saw
2 a car that he thought was involved in the robbery
3 fly up into his neighbor's yard?

4 A Yes.

5 Q Okay.

6 A And that was the white car that -- and
7 that's Shaun's girlfriend's car.

8 Q Okay. And did you have a chance to go
9 over this report with Mr. Bernstein prior to the
10 entry of your plea?

11 A We didn't go over anything. We just -- we
12 just talked. We didn't pull no paperwork up. We
13 talked.

14 Q And just those two issues that I pointed
15 out in the entire statement, did you want counsel to
16 go over that with you --

17 A Yes.

18 Q -- and further investigate it?

19 A Yes.

20 Q Was that ever done on your behalf?

21 A No. We only met twice.

22 Q And you, in fact, asked me to try to
23 locate the victim, is that correct?

24 A That's correct.

25 Q And Ms. Lee Connolly was unable to do

1 that?

2 A Right -- that's correct.

3 Q Okay. Now, just to recap your preparation
4 with Mr. Bernstein, he did not obtain any further
5 funding for Ms. Connolly, even though you requested
6 it?

7 A Yes.

8 Q You informed him about your alibi witness,
9 and did he do any follow-up on that?

10 A No.

11 Q Did you all discuss trial and who
12 potentially could testify against you?

13 A Yes -- well, he told me that he was sure
14 that my co-defendants would testify against me. And
15 he said they had wrote statements against me, and
16 that, you know, that wouldn't look good.

17 And I asked, I told him I still wanted to
18 go to trial. I said, "Well, let's still go through
19 the trial." He said, "I don't know how Lexington
20 County does things."

21 He said it doesn't like good. I'm a black
22 man, and the victims were white. And one of my
23 co-defendants is white. And he used that argument,
24 and then he said also that "It wouldn't be wise
25 because I don't know how Lexington County do things,

1 and we're going up against David Riddle. And he's
2 fairly new to it, so he don't think that that would
3 be a good idea.

4 Q You indicated that he informed you that
5 your co-defendants would testify against you.

6 A Yes.

7 Q Did he look into the issues of their
8 credibility, competency, or potential impeachment
9 material?

10 A No.

11 Q Is that something that you wanted him to
12 do or that you were concerned about?

13 A Yes, very much.

14 Q And could you explain that to the Court?

15 A I asked him -- first of all, I asked him
16 could he speak with anyone, would he be able to
17 speak with the attorney to see where it was going.
18 He said no, he wouldn't be able to do that.

19 I said, "Well, could you get their
20 statements and kind of look over their statements so
21 we could go over the discrepancies. And could you
22 check their record to see if they have ever been
23 incarcerated."

24 And he pretty much didn't want to go over
25 any of that. All he was saying was -- he said at

1 that time, which was the second time I met, he said
2 that he has a court date set up. We'll go to court,
3 and let's see how the Judge acts.

4 And if I want to take a plea then, then
5 we'll go with it. But he never wanted to discuss
6 anything about trial.

7 Q Now, on page 21 of your plea transcript,
8 the State indicates that this crime was solved by
9 the pawning of the 9-millimeter. Do you recall the
10 State saying that?

11 A Yes.

12 Q And that was specifically on page 21. Do
13 you know if Mr. Bernstein ever looked into the
14 pawning of that 9-millimeter, did he ever go to the
15 pawnshop, anything like that?

16 A I asked him to, but he didn't.

17 Q Okay. And that was a very important
18 factor in your case, is that correct?

19 A Yes -- very much, yes.

20 Q Were you concerned when he did not look
21 into that matter on your behalf?

22 A Yes.

23 Q Now, he did advise you to prepare a
24 written statement for the Judge. When did that
25 occur?

1 A In the courtroom the day that I took the
2 plea, he told me to sit in court -- he came to see
3 me the day before I went to court and said, "You're
4 going to court tomorrow." And I said, "Okay. Well,
5 are we ready for trial?"

6 He said, "No. Let's go to court, sit in
7 there, and let's see how the Judge acts, see how you
8 feel, and we'll take it from there." So after
9 sitting in court a little while and -- well, before
10 that, he told me -- when I asked him about the
11 trial, he kept telling me that "Look, if you lose"
12 -- he said, "We're coming into Lexington County. If
13 you lose, you're going to get a life sentence."

14 So with that in mind, we sat in the
15 courtroom, and he talked to my wife at the time and
16 my daughter. He talked to them, and they came with,
17 "You know, I think we should listen to what he's
18 saying. You should plead because you've got a bad
19 case, and you're going to lose." So I sat there,
20 and I listened. And I said, "Lowell, can I plead no
21 contest?"

22 Q I'm going to stop you there. Why did you
23 want to plead no contest? Why didn't you want a
24 straight-up guilty plea?

25 A To my knowledge, right after talking with

1 some jailhouse lawyers, they told me that a no
2 contest plea would be -- I'm not really admitting my
3 guilt, but I know that the evidence that they have
4 against me is pretty much enough to convict me. So
5 I'm kind of bowing out.

6 Q Now, did Mr. Bernstein ever look into that
7 evidence against you?

8 A No.

9 Q And was it your understanding there was
10 only one offer made? Is that correct?

11 A Yes.

12 Q And you wanted to do a no contest or a
13 nolo contender plea, is that correct?

14 A That's correct.

15 Q And did they present that to the Judge
16 that you wanted to do a nolo or a no contest plea?

17 A Well, first, he went to the Solicitor.
18 And he came back, and he said, "Okay, you can do no
19 contest. We'll get up to the Judge in a minute."

20 About two minutes later, Mr. Bernstein,
21 the Solicitor, and the Judge went in the back
22 chambers. And when they came back out, he said, "We
23 can't do a no contest plea. The Judge will not
24 accept it because he feels that you won't be
25 admitting your guilt by doing a no contest plea."

1 So I said, "Well, man, let's go to trial."
2 He said, "Listen, you see how he was doing sentences
3 today. This is a good Judge. I think that we
4 should take the plea. We should go for the plea."

5 And he said, "I'm going to give you some
6 time to think about it." He gave me about 20 more
7 minutes to think about it. I said, "Okay, let's
8 just get it over with."

9 He said, "You have to write" -- he said,
10 "Write a statement apologizing to the victims." And
11 I also asked him, "Well, how much time does
12 everything carry?" to kind of jot it down how much
13 time everything carries. And that was it.

14 Q And was the extent of your discussion?

15 A Yes.

16 Q Okay. Now, on page 30 of your transcript,
17 do you remember Judge Manning actually indicating
18 that you had requested and he had considered an
19 offer for a nolo plea?

20 A Yes.

21 Q But that was not an option for you?

22 A Right.

23 Q Okay. Now, turning to the plea itself, on
24 page six, it indicates that you had been in alcohol
25 treatment for six months. Could you explain that to

1 the Court?

2 A Yes, I was in -- I had just started a
3 magazine company, and I was drinking. I had what I
4 considered a drinking problem, so I admitted myself
5 into an alcohol program. And I had completed the
6 alcohol program, but I relapsed maybe in June.

7 Q And that was the month before this crime
8 occurred?

9 A Right.

10 Q Okay. You also on page seven respond that
11 you were satisfied with your attorney and on page 16
12 said you had enough time and there was no coercion
13 in getting this plea. Were those correct statements
14 that you gave to the Court?

15 A No. Mr. Bernstein told me that they would
16 be asking me questions. He said, "Now, they're
17 going to ask you are satisfied, were you coerced or
18 not."

19 He said if I said anything other than --
20 anything in the negative, then the Judge won't take
21 my plea. So I pretty much said "yes" to everything.

22 Q And you're here today under oath, and you
23 understand the seriousness of that?

24 A Yes.

25 Q And everything you're conveying to the

1 Judge today is the truth?

2 A Yes.

3 Q But you're saying on that date when you
4 said you were satisfied with your attorney and you
5 had enough time, that was not a correct statement?

6 A No.

7 Q And do you regret making that statement?

8 A Yes, I do.

9 Q On page 32, you apologized, which would
10 usually indicate that you were somehow involved in
11 this crime. What was the reasoning for your
12 apology?

13 A Lowell Bernstein told me that I
14 apologized, it would make it look like I felt bad
15 about what happened, and maybe that the Judge would
16 take that into consideration and give me a good
17 sentence.

18 Q Now, also on page 18, Judge Manning
19 properly advised you of your right to appeal on PCR.
20 Is that what you recall?

21 A Yes.

22 Q And as a result of him informing you of
23 that, did you request an appeal?

24 A Yes. My wife and I did.

25 Q And what was the result of that request?

1 A Mr. Bernstein said he don't see any
2 grounds for a direct appeal, so he wouldn't file
3 one.

4 Q And if you could -- can you turn to page
5 19 of the transcript, or do you need me to provide
6 it to you?

7 A Could you provide it?

8 MS. BLANCHETTE: Your Honor, may I
9 approach the witness with the transcript?

10 THE COURT: Yes, ma'am.

11 Q The State had previously asked Ms.
12 Connolly some questions about the timing of this
13 crime. Is that what you recall from today?

14 A Yes.

15 Q And just looking at line -- starting on
16 line six to seven, the State is giving the facts.
17 And what time do they say this crime allegedly
18 occurred?

19 A On July 4, 2006, it happened initially at
20 about 11:30 at night.

21 Q Okay. And is it your testimony today that
22 you weren't present at Donna Powell's residence at
23 that time?

24 A Eleven thirty, no.

25 Q Okay. And where were you at that time?

1 A I was at Deborah's home.

2 Q Now, we've gone through a number of
3 allegations, and they're also contained in your
4 amendment. But is it your primary allegation today
5 that Mr. Bernstein did not properly prepare and
6 investigate your case?

7 A Yes.

8 Q And are you also alleging today that as a
9 result of his deficient performance, your plea was
10 involuntary?

11 A Yes.

12 Q Now, Mr. Powell, I must ask you, but for
13 that deficient performance, would you have accepted
14 that plea, or would you have gone to trial?

15 A I would have gone to trial. Initially,
16 the only thing on my mind was going to trial.
17 Stanley Myers suggested -- he just suggested -- that
18 "Okay, I'm getting ready to be deployed. Let me
19 just get in touch with the Solicitor and see what
20 kind of offer he'll give you." But the whole time,
21 we never -- Stanley or anyone -- we never discussed
22 any pleas, just a trial.

23 Q Mr. Powell, I was appointed to your case,
24 and we've met approximately six times. We've had
25 over 20 phone calls at this point.

1 We just met again this week. Is there
2 anything that I've left out, because this is your
3 one opportunity to present your claims to the Court
4 on your PCR?

5 A No.

6 MS. BLANCHETTE: I have no further
7 questions, Your Honor.

8 THE COURT: Mr. Lee?

9 MR. LEE: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LEE:

12 Q Mr. Powell, I just have a few questions.
13 I believe your attorney covered most of it. Do you
14 recall at the plea hearing the State saying that as
15 a result of your plea, they were dropping the
16 burglary first charge to burglary second and also
17 taking life off the table?

18 A Yes.

19 Q Okay. Do you recall the Judge asking you
20 if you were pleading guilty because you are guilty
21 on a couple of occasions and your saying that you
22 were doing that?

23 A Yes.

24 Q Do you recall the Judge asking if anybody
25 had promised anything or forced you in any way to

1 get you to plead guilty and your saying "No
2 promises, no force"?

3 A I didn't say no promises, no force. I
4 just said yes.

5 Q Okay, fair enough. And, of course, your
6 attorney asked you if you recall saying that you
7 were satisfied with the services of your attorney.
8 Do you recall when the Solicitor stated the facts in
9 the case, your agreeing with those facts?

10 A I don't understand the question.

11 Q At some point, the Solicitor read the
12 facts of the case to the Judge, right? And then the
13 Judge asked you, "Are those the facts of the case?"
14 And you said yes. Do you recall that?

15 A Yes.

16 Q Okay. And, again, of course, your
17 attorney asked you, but you did give an apology,
18 correct?

19 A Yes.

20 Q And -- well, you're aware that you're
21 under oath now, correct?

22 A Correct.

23 Q So you have to tell the truth, right?

24 A Correct.

25 Q And you were under oath at the plea

1 hearing then, as well, right?

2 A Yes.

3 Q So were you telling the truth at that
4 time?

5 A As far as?

6 Q Just in general, in your answers to your
7 questions.

8 A Was I happy with his performance? No.

9 Q Okay.

10 MR. LEE: Beg the Court's indulgence just
11 one second, Your Honor.

12 Q You said that you spoke with the victim
13 sort of briefly after the crime happened, right?

14 A Yes.

15 Q And you had your nephew with you at that
16 time?

17 A Yes.

18 Q Is this the same nephew that you overheard
19 talking about planning this robbery?

20 A No.

21 Q It's a different nephew?

22 A It's his brother. And that's in the
23 report. His name is Antoine.

24 Q Oh, I was just confused. So it's both
25 nephews --

1 A Right.

2 Q -- but different ones?

3 A Yes.

4 Q Okay. And you said that you met with
5 Detective Connolly two or three times and that when
6 you met with her, you did go over your discovery,
7 correct?

8 A Yes, we went over it.

9 Q Okay. And then you said that -- I guess
10 you just now testified that the record reflects that
11 the incident happened at about 11:30, and you've
12 testified that you were under oath --

13 THE COURT: Is that 11:30 a.m. or p.m.,
14 please?

15 MR. LEE: P.M.

16 A Yes, p.m.

17 Q And you testified that at that point, you
18 were at Deborah's house, is that right?

19 A Yes, sir, that's right.

20 Q And she would have been the alibi witness?

21 A Yes.

22 Q But it was her -- when she talked with
23 Detective Connolly, she said that she didn't get
24 home till about twelve, is that right?

25 A Right, about twelve.

1 Q Okay.

2 MR. LEE: All right, no further questions
3 for this witness, Your Honor. Thank you.

4 THE COURT: Anything on redirect?

5 MS. BLANCHETTE: Just one other thing,
6 Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. BLANCHETTE:

9 Q Mr. Powell, we've established today that
10 Ms. Stevenson is deceased, is that correct?

11 A Yes.

12 Q And so we cannot get her testimony here
13 today?

14 A That's correct.

15 Q And the only thing we have to rely on is
16 one meeting Ms. Connolly had with her and no further
17 investigation, is that correct?

18 A That's correct.

19 Q So it would be your position today that
20 your alibi defense was never perfected or completed?

21 A Yes.

22 Q All right. So we're just relying on one
23 initial report?

24 A Okay.

25 MS. BLANCHETTE: I have no further

1 questions.

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

4 Ms. Blanchette, any more witnesses?

5 THE COURT: Is everybody okay?

6 MS. BLANCHETTE: Yes, sir. I'd call Mr.
7 Lowell Bernstein to the stand.

8 (The witness was sworn.)

9 CLERK OF COURT: Please have a seat and
10 state your name for the record.

11 MR. BERNSTEIN: Good morning, Judge.

12 THE COURT: Good morning. How are you
13 doing?

14 MR. BERNSTEIN: My name's Lowell
15 Bernstein.

16 LOWELL BERNSTEIN, having first been
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q Mr. Bernstein, are you presently engaged
21 in the practice of law?

22 A Yes, I am.

23 Q Okay. And how long have you been a
24 practicing attorney?

25 A Sixteen years.

1 Q All right. And during those 16 years,
2 what experience or what type of cases have you
3 handled?

4 A Well, my first year out of law school, I
5 was a clerk for the U.S. Court of Appeals. So I had
6 a lot of criminal and civil cases for that year,
7 plus I spent three years in the Lexington County
8 Solicitor's Office doing solely criminal
9 prosecution.

10 And in my 12 years of private practice, I
11 have a practice of primarily civil litigation with
12 also criminal defense. Probably a third of my
13 practice has been criminal defense.

14 Q Okay. And do you recall being appointed
15 to assist Mr. Julius Powell?

16 A Yes, I do.

17 Q Okay. And do you have a file here with
18 you today from that case?

19 A Yes, I left it on the bench.

20 Q Okay. Do you need the file?

21 A The file was closed and pulled, you know.
22 So I have a file, but I don't know that it's the
23 complete file. I do know back in August of 2007, I
24 see a notation that Mr. Powell asked me for a copy
25 of the file, and I provided that to him. I don't

1 need a copy. I don't need the file with me.

2 Q Okay.

3 A If I need to refresh my memory, I'll ask
4 y'all's indulgence, and I can do that it, if it may
5 be necessary.

6 Q All right. And you were appointed in this
7 case, is that correct?

8 A That's correct.

9 Q And did you know who had been previously
10 appointed in this case, or did you have any
11 knowledge of what occurred in this case prior to
12 your appointment?

13 A Yes, I know Stanley Myers had been. And I
14 know that when the case wasn't going to be worked
15 out prior to him being sent to Afghanistan, they
16 needed to appoint another counsel. So I was
17 appointed to the case.

18 I had a conversation with Mr. Myers, and
19 he also -- you know, he sent me his entire file, and
20 I was able to review that. I also requested
21 discovery through the Solicitor's Office, I believe.

22 The practice of my office is to file a
23 copy of discovery request with the Clerk's Office,
24 and then I sent it to Mr. Riddle. I had worked with
25 Mr. Riddle for three years, so actually I did know

1 him very well.

2 I didn't just meet him in court. I had
3 known him, so I didn't just introduce myself to Mr.
4 Riddle. I actually worked with him prior to that.
5 So I knew all the people involved.

6 Q Do you know approximately how long you
7 represented Mr. Powell before the plea was entered?

8 A Four months, I believe.

9 Q All right. And during those four months,
10 do you know approximately how many times you met
11 with him?

12 A I went to the Lexington County Detention
13 Center at least six times in my notes, and I know
14 there's a record on those, because you have to sign
15 in to the jail, to the detention center. So I know
16 there's at least six occasions in the detention
17 center, and I had numerous phone calls with him.

18 His wife would call me, Laurie -- or
19 Lourie. I can't remember how to pronounce it. I
20 think it's Laurie Powell. She called me quite a
21 bit. Some of the times, he'd be on with a three-way
22 telephone conversation.

23 Q And did you bring any records today from
24 when you went to the Lexington County Jail? You
25 indicated they would have records.

1 A Well, they would have records because I
2 have to sign in.

3 Q Correct. Do you have any of those with
4 you here today?

5 A I have my notations, yes. I do have that.
6 And I will tell you I did review it before I stepped
7 up here. I wouldn't have remembered how many times
8 exactly I went. But, if you want me to, I can pull
9 my file, and I can tell you the days I went.

10 Q Yes, that's perfectly fine.

11 A Okay.

12 Q I just wanted to clarify that for the
13 record.

14 A And also I did go -- he is correct. I did
15 go the day before his plea. I also went a week
16 before his plea. And, obviously, like I said, there
17 were other times I had gone, too.

18 Q And you said you received the discovery in
19 his case. Did you have the opportunity to review
20 that during one of your meetings?

21 A Yes. And, like I said, I received the
22 discovery through Mr. Myers, and then I also got it
23 from the Solicitor's Office to make sure there was
24 nothing that wasn't in the file, or in his file.

25 Q And since you received Mr. Myers' file,

1 did you see the work that Ms. Lee Connolly had
2 done --

3 A Yes.

4 Q -- at his request?

5 A Yes, I did.

6 Q Okay. And did you discuss her
7 investigation with Mr. Powell?

8 A Best of my recollection, we discussed
9 everything that was in the file.

10 Q And today he testified that he requested
11 that you obtain further funding for Ms. Connolly to
12 finish her investigation. What, if anything, do you
13 recall about that request?

14 A I can't -- I probably agree that he may
15 have. I don't remember specifically. I think after
16 my review of the evidence and after my review of the
17 time he could possibly face with the evidence that
18 the record -- that I believed they would be able to
19 establish, he is correct that I felt in that
20 situation a plea would have been the best thing,
21 that the plea was going to be something that was
22 going to help him.

23 If they weren't just going to say plead
24 straight up, then I certainly wouldn't have
25 recommended that. He is correct. I did recommend

1 under the terms that were given to us. I did
2 everything I could to try to get a better deal in
3 accordance with his wishes, and that was absolutely
4 the best we could do. They allowed us to not have,
5 obviously, a mandatory -- well, I believe there was
6 a mandatory ten, and then it was open from there.

7 So it could have been as low as a ten-year
8 sentence, and the burglary first, I believe it would
9 have been a fifteen to life. So that was no longer
10 going to be in the picture with the plea they had
11 offered us.

12 Q Now, would you agree that, based on
13 well-established case law, a guilty plea must be
14 knowingly and voluntarily, is that correct?

15 A Of course.

16 Q Okay. So let me go back to my question.
17 Why is it that you didn't further obtain the
18 services of Ms. Lee Connolly?

19 A I think if I had -- if we were going to go
20 to trial, I assume -- that's my recollection we may
21 have done that -- with the plea we were going to do,
22 I found in the evidence that there was some -- some
23 of it was circumstantial, and I explained that to
24 Mr. Powell, that the circumstantial evidence can be
25 used, etc.

1 In total, the circumstances, the evidence
2 that we reviewed, the people who were going to be
3 witnesses in the case, based on everything that was
4 in the file and based on everything that I believed
5 we could reasonably bring forward, I didn't see any
6 advantage to having any more services.

7 I felt like at that point he and I had
8 gone over it, and I felt like we were in a better
9 position to enter a plea.

10 Q So if you didn't use her services, what,
11 if any, type of independent investigation did you do
12 yourself?

13 A Other than reviewed all the evidence in
14 the files, all the discovery, and used -- relied on
15 the investigative services that had been carried
16 forward to date by Mr. Myers.

17 I believed he had stated that, to my
18 recollection, he had used all of the \$500 that was
19 at that point, up to that point, actually allowed
20 for that particular case. I didn't see any other
21 areas that needed to be delved into or investigated.

22 Q And are you familiar with obtaining
23 investigative funds through Indigent Defense?

24 A Of course.

25 Q Okay. And is it your understanding that

1 you can apply for additional funds?

2 A Yes.

3 Q Okay.

4 A But I also felt like only if I felt like
5 there was a reasonable need to do so. I didn't find
6 that to be a reasonable need.

7 Q Now, did you -- were you informed of Ms.
8 Connolly's one meeting with the potential alibi
9 witness and Mr. Powell's desire that that be
10 followed up on? Were you aware of that?

11 A Mr. Powell and I discussed a lot of
12 things. You know, I don't recall. Based on my
13 legal experience, and based on my view of that file,
14 and based on my discussions with him, and his wife,
15 and the prosecutor, and my work on the case, I
16 didn't see any alibi.

17 Q Okay. Now, turning to the pawnshop and
18 the Solicitor saying the way the case was solved was
19 the pawning of the gun, did you look into that or
20 speak with anyone at the pawnshop?

21 A I'm familiar with the fact that the -- I
22 think it was Henderson or whomever, one of the
23 co-defendants pled guilty to a charge, and I know
24 that the investigation focused in and narrowed in
25 because of that pawning. And then the -- you know,

1 the co-defendants started making statements, and
2 they put the case together that way, the
3 investigation. Again, I think that was the
4 strongest piece of evidence at that time in the
5 investigation, and that's when they pursued the case
6 from that point.

7 I didn't -- I don't know of anything I
8 could have done with an investigator that would have
9 helped in this case regarding the pawnshop.

10 Q I wasn't asking about investigators. Did
11 you, yourself, look into that?

12 A I reviewed the evidence extensively. I
13 didn't personally go down and interview any
14 witnesses.

15 Q Okay. And we've introduced exhibits today
16 referring to a Fila shoe print that was obtained
17 from the victim's back door and then Fila shoes that
18 were taken from one of the suspects. Did you have
19 the opportunity to look into that?

20 A Yes. Frankly, from the best of my
21 recollection, there was a -- there was some sort of
22 shoe print analysis that was inconclusive, if I
23 remember incorrectly.

24 Q Did you have a report to that nature?

25 A No, I don't.

1 Q Now, this matter regarding Mr. Powell's
2 reasoning for going over to his sister's house to
3 help her pay her rent, did you look into that or
4 obtain any information regarding that?

5 A I don't remember if I spoke to her. It's
6 possible. Like I say, I spoke to his wife a lot of
7 times. I spoke to him on numerous occasions. I
8 don't remember if I did or I did not.

9 Q And just going back to the alibi witness
10 real quickly, did you ever speak with Ms. Stevenson,
11 as far as you recall?

12 A That's right. I just don't remember if I
13 did or not. I know that I reviewed the evidence and
14 I reviewed the possibility of the alibi.

15 Q Do you feel that there's anything else
16 that you should have looked into in this case?

17 A Based on all the information I had at that
18 time and based on what I found to be overwhelming
19 evidence, I don't believe that there was anything
20 that I should have reasonably looked into.

21 Q And I may have missed it, but what
22 specifically are you citing as the overwhelming
23 evidence in this case?

24 A Like I said, I haven't reviewed the file
25 in -- it's been close to three years. I've only

1 briefly reviewed it for this hearing. But I do know
2 that there were a number of witnesses who placed him
3 there and who said he was the leader of the crime.
4 I can't remember all the other particulars.

5 I remember he and I discussed whether, you
6 know, he'd be able to testify, and I think we had
7 agreed he wouldn't testify if we did go to trial
8 because of an extensive criminal history of similar
9 crimes, etc., that I believe would have been
10 admissible for his credibility to impeach him. I
11 can't remember all the other evidence.

12 Q I don't want to be redundant, so I'm just
13 going to ask you kind of a summary question.
14 Instead of going through each witness and potential
15 people that could be spoken with, do you recall
16 speaking to anybody besides Mr. Powell about this
17 case?

18 A I believe all those people were being
19 represented, and they had either pending cases or I
20 don't believe that -- there may have been one who I
21 spoke with. I remember Mr. Powell said that there
22 were several who were going to write letters or
23 write statements saying that they were forced to say
24 that it was -- he was the leader and that wasn't
25 true, and they were going -- he was going to get us

1 evidence to that effect.

2 And, you know, I did follow up on that,
3 but we never were able to obtain anything, any
4 evidence or any letters or anything that was going
5 to benefit our case.

6 Q Do you know if Christina, who was the
7 driver of the white vehicle identified in the police
8 report, if she was ever arrested in this case?

9 A I don't know.

10 Q Do you know if you spoke with her?

11 A I don't remember.

12 Q Did you ever have the opportunity to speak
13 with the victim about this purported conversation he
14 had with Mr. Powell?

15 A I believe I did have a conversation with
16 the victim, but I don't remember the details of it.

17 MS. BLANCHETTE: Your Honor, if I could
18 just have one moment?

19 THE COURT: Yes, ma'am. While you're
20 doing that, let's take a brief five-minute break,
21 please.

22 MS. BLANCHETTE: All right. Yes, Your
23 Honor.

24 (Court in recess.)

25 THE COURT: Thank you. Are you ready to

1 proceed?

2 MS. BLANCHETTE: I am, Your Honor.

3 EXAMINATION CONTINUED

4 BY MS. BLANCHETTE:

5 Q Mr. Bernstein, just a couple of questions
6 for you regarding the plea. Mr. Powell indicated
7 and you have already indicated there was only one
8 offer in this case?

9 A I believe that is correct. I was just
10 trying to think if there were any small changes.
11 But the basics, they would reduce burglary first to
12 a burglary second and then also plead the armed
13 robbery and kidnapping. I believe that was the
14 original offer, and that was going to be the only
15 offer.

16 Q Mr. Powell testified about his desire to
17 enter a nolo or no contest plea. It appears from
18 the record that was brought to Judge Manning's
19 attention. What, if anything, do you recall
20 regarding that matter?

21 A He is correct. That was one of the
22 possibilities we had discussed. And I think it was
23 -- I think we had talked more about a nolo rather
24 than an Alford -- but we may have -- I'm sure we
25 discussed both.

1 I think under the circumstances -- he is
2 correct on that, also -- I think it was my advice,
3 although it was his ultimate decision, that it would
4 be preferable to plead guilty rather than the nolo
5 or the Alford. If we could do it that way, because
6 if he was going to -- well, he is correct with some
7 of what he says.

8 Some of the stuff I don't agree with.
9 Some of the stuff is just tactical decisions that I
10 would advise him about. And I'm sure that I
11 explained to him that there was very little
12 difference in the sentencing possibilities, whether
13 he pled no contest or whether he actually pled
14 guilty.

15 I believe I felt that it was probably just
16 a recommendation on my part that if he was going to
17 plead, then it would be just as good of a position
18 to get up there and plead and be looking to be
19 sentenced but not acknowledge any wrongdoing.

20 I feel like if he gets up there and just
21 says, "Yes," you know, "I'm pleading no contest,"
22 and he takes responsibility, but he doesn't
23 necessarily accept responsibility, I think I may
24 have given him that recommendation that I would
25 prefer the not guilty -- excuse me, the guilty, if

1 we were going to go that route, if we were going to
2 plead.

3 I wasn't adverse to going to trial. If
4 that is what he ultimately wanted to do, I would
5 have certainly been prepared on the date of trial,
6 and I have had a lot of trial experience. I felt
7 with the evidence, it would have been better to work
8 out a plea.

9 And then if we were going to plead, I felt
10 like it would have been better to do a guilty plea
11 rather than a nolo or an Alford.

12 Q Since there's a reference on page 30 by
13 Judge Manning, it's just my assumption that it was
14 brought to his attention at some point that he
15 wanted that type of plea. You testified today that
16 there was overwhelming evidence in this case. So
17 what is your argument --

18 A Maybe I shouldn't say "overwhelming," but
19 I felt -- you know, I guess there's various degrees
20 of what's overwhelming or whether I felt there was
21 sufficient evidence that there was more than a high
22 probability that he would be convicted, based on all
23 the evidence and based on the circumstances
24 surrounding the case. Overwhelming, I guess that
25 was an adjective I used that probably wasn't proper.

1 Q And I'm sorry, I'm not sure if you
2 answered this question. But what was your argument
3 and your basis for asking Judge Manning for a nolo,
4 if there was substantial evidence in the case?

5 A I don't remember the specific
6 conversation. Mr. Powell is correct, though. I
7 believe Mr. Riddle and I did meet with Judge Manning
8 in his chambers.

9 I don't remember the exact conversation,
10 but it may have -- we may have discussed whether
11 that was even a type of plea that he would accept.
12 And I believe he probably -- I believe he would
13 accept that. I believe he does and he would accept
14 a nolo or an Alford plea, and I believe he informed
15 us of that.

16 Q And as far as mitigation, do you recall
17 advising the applicant to prepare a letter for the
18 Judge to review?

19 A No. What I would -- what I do remember is
20 I told him that it would be helpful, if we were
21 going to do a plea, for him to make a statement to
22 the Court. I didn't tell him what to say.

23 He's an educated guy, and he's a smart
24 gentleman. I know he has some college background.
25 I don't believe he graduated, but he is an

1 intelligent guy.

2 And he has an opportunity -- and I let him
3 know that he had an opportunity -- to speak to the
4 Court. And there were some -- there were quite a
5 few things we didn't agree with.

6 Overall, there was enough of the evidence
7 that they had, there was enough of a factual basis,
8 for a plea, but we didn't agree with every statement
9 that they made against him or about him or the way
10 that it exactly occurred.

11 MS. BLANCHETTE: Your Honor, if I could
12 just have one moment. Your Honor, may I approach
13 the witness?

14 THE COURT: Yes, ma'am.

15 Q Mr. Bernstein, in the documents that I
16 received from the State, this was attached to the
17 back of my transcript. I'm sure if it's attached to
18 the back of everyone else's transcript. Do you
19 recognize that document?

20 A Not particularly, but it looks like his
21 handwriting, because I recognize -- well, he had
22 written me some letters, so it may be something that
23 he wrote.

24 Q Does it appear to be the statement that he
25 gave to the Court?

1 A Honestly, I would have -- I have no
2 recollection of that.

3 Q Okay. Do you recognize the handwriting at
4 the bottom of the page or on the second page?

5 A That looks like my handwriting.

6 Q All right. And if you don't mind, what is
7 it that you wrote on the bottom of the page and the
8 second page?

9 A It says, "I apologize to the victims in
10 this case, this community, and the State of South
11 Carolina." And then I put on the back "kidnapping,
12 zero to thirty; armed robbery, ten to thirty, and
13 burglary second, zero to fifteen."

14 Q So does it appear from that document that
15 you were assisting him with his statement to the
16 Court?

17 A Yes.

18 Q Okay. And do you recall --

19 A Or at least -- I don't know if I was
20 assisting him or I think this was just -- I don't
21 know if this was in Court, or if it was the day
22 before, or when it may have been.

23 But I know that we did -- when we decided
24 that we were going to plead, we did prepare for a
25 plea. And we just said letter.

1 I didn't know if he actually meant he was
2 going to hand a letter to the Judge. But, yes, I
3 did want to help him prepare to speak to the Court.

4 MS. BLANCHETTE: Your Honor, I can recall
5 Mr. Powell to introduce this if it's not part of the
6 record.

7 THE COURT: Do you have any objection to
8 the introduction of that?

9 MR. LEE: No, Your Honor.

10 MS. BLANCHETTE: It's my only copy, but I
11 can introduce it and maybe we can make --

12 THE COURT: That's Exhibit Number Eleven?

13 MS. BLANCHETTE: It is.

14 THE COURT: I'd like to look at that,
15 please.

16 (Applicant's Exhibit Number Eleven,
17 Mr. Powell's Letter to the Court, was entered in
18 evidence.)

19 Q Beyond that letter that we've just
20 introduced, do you remember anything else you did
21 with Mr. Powell to prepare for mitigation at his
22 plea and sentencing?

23 A I believe we had his family here, his wife
24 and I don't remember who else. And I don't remember
25 if they spoke to the Court or not. Oftentimes, in a

1 case like this, though, they will.

2 I believe I looked at the transcript prior
3 to this, and I thought that somebody in his family
4 spoke, or at least family members were here, and I
5 believe they stood up with us.

6 Q And you would just kind of rely on what
7 the transcript reflects, is that correct?

8 A Yes.

9 Q Okay. And, finally, Mr. Powell testified
10 that he requested an appeal. Do you remember that
11 request he made of you?

12 A I'm trying to think. I don't
13 specifically, but I can't say that he didn't. It's
14 very possible that he may have.

15 I have a recollection that I may have been
16 contacted by his wife and by him, but I'm not sure
17 if it was past the deadline or how the circumstances
18 went on that.

19 MS. BLANCHETTE: Your Honor, I have no
20 further questions.

21 THE COURT: Any questions, Mr. Lee?

22 MR. LEE: Yes, Your Honor, thank you.

23 CROSS EXAMINATION

24 BY MR. LEE:

25 Q Mr. Bernstein, you've covered most

1 everything with Ms. Powell [sic], so I'll try not to
2 be too repetitive. I just want to walk you through
3 some questions. So you came to be appointed in this
4 case after Mr. Myers was taken off the case to do
5 his service in Afghanistan?

6 A Yes.

7 Q At that point, you held -- you began what
8 was several meetings with Mr. Powell, ultimately, at
9 least six, I believe, from your recollection, while
10 he was in the detention center?

11 A I believe six in person at the detention
12 center.

13 Q Okay.

14 A He testified that we talked in court. I
15 believe I remember that. And then we also had
16 telephone conversations.

17 Q During these conversations, would you have
18 discussed things like the charges that the applicant
19 was facing --

20 A Certainly.

21 Q -- the potential sentences for those
22 charges --

23 A Yes.

24 Q -- his constitutional rights, such as the
25 right to a jury trial, etc.?

1 A Yes. I'm sure I didn't state it exactly
2 like the Court would, but, yes.

3 Q And, again, I believe it was also your
4 testimony that you were provided the prior
5 attorney's file in the case but that you also made a
6 Rule 5 Brady motion to receive discovery?

7 A Yes, and I discussed it with Mr. Myers.
8 And I got his opinions on the case and where we
9 should go, because certainly, you know, when I got
10 in, in January, and then there was a plea in May, I
11 would assume normally I would have been involved in
12 the case a lot longer. So I got his professional
13 opinions and ideas on the case up to that point.

14 Q And, now, after reviewing -- after getting
15 this discovery and reviewing it yourself, I believe
16 it was also your testimony that you discussed that
17 discovery with the applicant?

18 A Yes.

19 Q And then after reviewing the discovery in
20 the case and having those conversations with the
21 applicant, I believe it was your testimony that you
22 came to the opinion that the State had a very good
23 likelihood of proving the applicant's guilt beyond a
24 reasonable doubt?

25 A Yes. Also, I'm pretty certain that I

1 actually gave him a copy of all the discovery,
2 although I think he already had it, but just to make
3 sure there's no doubts.

4 Q But my question, ultimately, you did come
5 to the opinion that the State would probably be able
6 to prove his guilt?

7 A Yes.

8 Q And you would have communicated that to
9 the applicant?

10 A Yes.

11 Q And so after having this conversation and
12 communicating that to the applicant, did the
13 applicant ultimately come to the decision that he
14 wanted to plead guilty in the case?

15 A Yes.

16 Q And, certainly, you would have told him
17 that you believed it was in his best interests,
18 correct?

19 A Yes. And we went back and forth, and I
20 certainly did go back, and I did everything I could
21 to get, you know, a cap or to get, you know, a
22 guaranteed lesser sentence or a negotiated plea to a
23 lesser amount. And we were not able to. I think
24 maybe, if I remember correctly -- I can't say for
25 sure -- I thought I even met with him and the

1 prosecutor, but I don't remember for sure.

2 Q Ultimately, then, basically what you're
3 testifying to is that the only deal that you were
4 able to get was the one presented to the Court?

5 A Yes, which I believe would have left him a
6 floor of ten. And we certainly would have, you
7 know, preferred to have a ten-year sentence. It
8 turned out the Judge gave us an eighteen-year
9 sentence, and that was more than we had hoped for.

10 Q But the State did, in fact, agree to come
11 off of a burglary first, and, related to that, they
12 came off of a potential life sentence as a result of
13 the plea?

14 A Yes.

15 Q So --

16 A Which I did have some concerns, because I
17 do know that I was informed and the Solicitor on the
18 case, based on clients' criminal history and based
19 on what he felt was an extremely aggravated crime,
20 and witnesses -- excuse me, and victims that were
21 really pressing for as much time as possible -- I do
22 know he was going to ask for as much time as
23 possible.

24 That was made clear to me in no uncertain
25 terms, that if they could get life, they would, and

1 that they would ask for as much as they could
2 towards that. I certainly didn't want to put my
3 client in a position to be facing that type of
4 sentence.

5 Q Certainly. Now, did you force, pressure,
6 or coerce the applicant in any way into pleading
7 guilty?

8 A No. I did give my opinions.

9 Q But, ultimately, it's your testimony that
10 it was his decision to plead guilty?

11 A If he didn't want to or wasn't going to, I
12 would have gladly gone forward with a trial. I
13 certainly did express my opinions in a strong way,
14 I'm sure. But, ultimately, I have no ability to
15 force him to do anything.

16 Q Okay. Now, during these conversations
17 that ultimately led up to the plea, did the
18 applicant let you know of any witnesses,
19 specifically, the alibi witness, that he wanted you
20 to talk to?

21 A During my course of my --

22 Q Discussions with the applicant.

23 A -- discussions, not at the end. During
24 any discussions, when I first came to represent him,
25 we had, you know, a lot of different discussions

1 about, you know, ways to pursue this case and the
2 way -- you know, which roads to follow or which
3 paths to follow, just thinking what our defense was
4 going to be, and so forth.

5 Q Specifically, let me ask you about the
6 alibi witness that was referenced in the testimony
7 today. You would have gotten all of the
8 investigator, Ms. Connolly's information because of
9 her involvement in the case prior. You would have
10 gotten all of that stuff from her?

11 A Correct.

12 Q So you would have gotten the letter that
13 she had written regarding her conversation with,
14 first, the applicant and then --

15 A Yes. I'm sorry, maybe I misunderstood
16 you. Yes, I certainly went over all of that.

17 Q Okay. And in reviewing that letter --
18 well, first, I guess the incident report reflected
19 that the incident happened at 11:30, right?

20 A Yes, it did.

21 Q And then the letter that was presented
22 into evidence today in which the investigator talked
23 about speaking with the alibi witness, didn't the
24 alibi witness say that she didn't get home until
25 twelve?

1 A From what was testified today?

2 Q Uh-huh. Also from --

3 A That sounds correct.

4 Q -- just your memory of reading it?

5 A Yes.

6 Q Okay. So what that would mean

7 essentially, then, is that the alibi witness could
8 not provide an alibi for where he was for the exact
9 time of the incident, correct?

10 A I remember it was my opinion that the
11 alibi witness, it was a weak alibi witness.

12 Q Okay. Now, were there any other
13 investigative leads or witnesses or potential
14 defenses that you were -- that were suggested that
15 you investigate?

16 A I was told that one of the people who had
17 stated that he was the ringleader and he was the
18 person who did this, one of the co-defendants, had
19 taken that back and would testify to that effect.
20 But that wasn't the case as far as my investigations
21 went, as far as my understanding went.

22 Q Okay. Now, let's talk specifically about
23 a couple of those things, the issue with the
24 co-defendants, the evidence that was found, etc.

25 A And I think some of these people were

1 family members, too.

2 Q Okay. But with regard to the
3 co-defendants that were brought into the case, I
4 believe there was an allegation that you should have
5 looked into their credibility. Had this case gone
6 to trial, would you have further explored their
7 credibility?

8 A Of course. And I would have certainly
9 impeached them for -- you know, with their criminal
10 records, and with their role in this, and whether
11 they were getting any benefit of -- bargain or
12 benefit from testifying against him. That would
13 have obviously been --

14 Q But you didn't do that because it was the
15 applicant's desire to plead guilty?

16 A Yes. Once we made the decision we were
17 going to plead guilty, there was no need to do that.

18 Q I believe you also said that there were
19 written statements that the co-defendants had made
20 that were in the State's evidence, is that right?

21 A Yes.

22 Q Okay. Now --

23 A And I did point out to the Judge at the
24 plea that we didn't agree with all of the factual
25 recitations that the Solicitor had given, and we

1 didn't agree with all of the statements in every
2 detail. But substantially we believed that they had
3 enough facts and enough evidence to convict him.

4 Q Okay. Now, I guess in the course of your
5 discussions, did you ever advise the applicant that
6 because of the burglary first charge, that he was
7 potentially facing a life sentence?

8 A Yes.

9 Q Did you ever tell him that if he did not
10 plead, he would definitely get life?

11 A No. He was aware, though, that the State
12 was going to ask for a substantial sentence.

13 Q And I believe it was already in your
14 testimony -- I'll just ask you again briefly -- you
15 testified that, had you elected to go to trial, you
16 would have had further investigation done?

17 A Certainly. Of course, we would have, you
18 know, put together, you know, as strong of a defense
19 as possible. But I didn't believe that that was the
20 correct route to go based on the evidence they had
21 and based on the potential for a life sentence.

22 Q Now, one last specific question, and I'll
23 wrap it up. With regard to the footprint, it was
24 never the State's position that the applicant
25 committed this crime by himself, correct?

1 A Correct.

2 Q So it is one hundred percent possible that
3 that footprint could have belonged to someone else
4 who was also involved in the crime?

5 A Correct. I believe there has always been
6 a position that there were quite a few participants.

7 Q And it was the State's position that the
8 applicant was more or less sort of the ringleader --

9 A Yes.

10 Q -- in the whole deal? Ultimately, I
11 believe you testified that, sure, you weren't happy
12 with the final results. You would have liked to get
13 closer to ten years. But do you feel like you
14 provided effective assistance of counsel in this
15 case?

16 A Yes, I do. You know, it was a difficult
17 case, and I believe we had gone to trial, he would
18 have been convicted and he would have been sentenced
19 to, you know, thirty or more years. But I can't say
20 that for sure.

21 But he would have had at least a mandatory
22 minimum of fifteen under -- it was pretty egregious,
23 at least the Judge felt. That's why he sentenced
24 him to eighteen years. I was hoping for somewhere,
25 like you said, closer to ten -- you know, even ten

1 to fifteen. But the eighteen, that's where we ended
2 up.

3 Q All right.

4 MR. LEE: That would be all my questions
5 for this witness, Your Honor. Thank you.

6 THE COURT: Ms. Blanchette?

7 MS. BLANCHETTE: Just a couple of
8 questions.

9 REDIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q Did you look into how far it was between
12 the incident location and the alibi witness?
13 residence?

14 A I believe I did at the time, but I don't
15 remember specifics. I don't know how far it is. I
16 couldn't tell you at this point.

17 Q And you testified that -- the State asked
18 you if you were a hundred percent sure that the
19 footprint could belong to any other co-defendant.
20 But did you look into that footprint at all?

21 A I did look into the footprint. I can't
22 remember specifically, but there was -- if I
23 remember correctly, there was some scientific test
24 done that it was inconclusive whose footprint it
25 was.

101

1 I don't remember particularly, but I
2 believe you had stated that he has a size 12 shoe,
3 and it might have been a smaller shoe. But I didn't
4 think that was a material fact of the case
5 regardless.

6 MS. BLANCHETTE: Your Honor, I have no
7 further questions.

8 THE COURT: Anything further?

9 MR. LEE: No further witnesses for the --
10 well, I didn't call him.

11 MS. BLANCHETTE: Your Honor, I just have
12 -- I'd like to him a couple of questions about the
13 statement I ended up introducing.

14 THE COURT: All right, Mr. Bernstein.

15 MR. BERNSTEIN: Yes, sir, thank you.

16 MS. BLANCHETTE: I would recall Julius
17 Powell to the stand. And, Your Honor, I have no
18 objection to Mr. Bernstein being released.

19 THE COURT: Thank you.

20 You're still under oath, Mr. Powell.

21 DIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q Mr. Powell, I just asked Mr. Bernstein if
24 he looked into the distance between the alibi
25 witness? home and the incident location. Do you

1 know that distance?

2 A It's about 15 or 20 minutes.

3 Q And about how long would it take you to
4 drive from your sister's house to Deborah
5 Stevenson's home?

6 A About a half an hour --

7 Q Okay.

8 A -- because of the lights and the traffic.
9 And at that time of night, it would be about a half
10 an hour.

11 Q Okay. And do you recall discussing that
12 with him

13 A Yes.

14 Q Okay. And just, lastly, I introduced a
15 letter as Applicant's Number Eleven. Do you recall
16 preparing that?

17 A Yes, I do. Actually, the page -- the
18 paper -- was blank when he wrote that on the bottom,
19 "I apologize to the victims, and the community."
20 And I wrote -- that's when I wrote everything else
21 out.

22 Q Okay. And how did you use that paper in
23 the course of your plea?

24 A I read from it and talked to the people
25 and the Judge. I read directly from it, word for

1 word.

2 Q Okay. And that was all you did in
3 preparation for mitigation with Mr. Bernstein?

4 A Yes, and we did that in court that day,
5 ten minutes before I was to come in there.

6 MS. BLANCHETTE: Your Honor, I have no
7 further questions.

8 THE COURT: Anything further?

9 MR. LEE: No questions, Your Honor.

10 THE COURT: Thank you, Mr. Powell.

11 MR. POWELL: Thank you.

12 MS. BLANCHETTE: Your Honor, for the
13 Court's review, I'd just like to hand up a copy of
14 Lounds versus State and Stalk versus State, if you'd
15 like those.

16 THE COURT: Are you going to review those
17 with me, as well?

18 MS. BLANCHETTE: I can give you a copy.
19 Your Honor, the reason for handing up Lounds versus
20 State is in this case, our Supreme Court found that
21 for there to be reasonable trial strategy or
22 reasonable preparation, for an attorney not to be
23 ineffective, they must conduct some type of
24 independent investigation and properly review and
25 prepare the evidence in the case.

1 It's our position today that there
2 wasn't even a reasonable investigation in this case.
3 Mr. Bernstein did no investigation. And to add
4 insult to injury, there was an investigator that had
5 been working on the case, was willing and prepared
6 to continue working on the case, had spoken to an
7 alibi witness and looked into other leads that Mr.
8 Powell gave her. And for some reason, Mr. Bernstein
9 chose not to work with her.

10 I will refer to her testimony today
11 where she indicated that she was willing to continue
12 to work on his case. To me, the real shame in this
13 case is once I was appointed, I contacted Ms.
14 Connolly, and she was more than willing to jump back
15 on board. But the problem is all she ran into was a
16 dead-end, because so much time had elapsed.

17 These are things that Mr. Bernstein
18 should have done when he was appointed. She went to
19 Lexington County. The evidence with Lexington was
20 destroyed, which it's my understanding it shouldn't
21 be destroyed until all litigation has ended. She
22 tried to locate the alibi witness, and I will agree
23 it's not the most solid alibi defense at this point,
24 but it's based upon one interview.

25 That's all that was done. And now

1 this alibi witness is deceased. So I cannot evolve
2 or present that beyond the one interview that I
3 have. Also, she started looking into the reasons
4 why Mr. Powell was there that day, to set up his
5 timeline to establish the story that he was telling
6 her and that he has told you today.

7 And I just -- I cannot find an excuse
8 as to why he would not use her services, and she
9 could have finished those things that I tried to
10 have her do now. And she can't do them, because too
11 much time has elapsed. She can't find the victims.
12 She can't find -- Mr. Vesey has no recollection.
13 She couldn't find Vickie Amick.

14 And as I've already stated, I think
15 it's a real shame that those things weren't done
16 originally, because we have here a man who's pled
17 out to a very serious crime. His attorney had an
18 investigator who was willing to work on his case,
19 had already done work on the case. And I can't
20 point to a solid reason why he didn't have her
21 continue to work.

22 And to me, as an attorney, that's
23 deficient, that's ineffective. If I did something
24 like that, I would hope that I would be held
25 accountable for it. He did give reasons such as

1 strategy and they were pursuing a plea. But I think
2 we still have a responsibility to look over all the
3 evidence in the case and conduct an independent
4 investigation before we advise someone to plead out
5 and receive a sentence of eighteen years.

6 And I handed the Lounds case up
7 because our Supreme Court agrees that we have to
8 conduct an investigation as an attorney, especially
9 a defense attorney. The other case I handed up was
10 Stalk versus State.

11 It's a recent decision also in that
12 the Supreme Court has explained that we can no
13 longer just say that counsel was ineffective, and as
14 a result, he deserves a new trial.

15 We have to prove that there was
16 something more that should have been done, that he
17 was prejudiced as a result. I handed that up,
18 because I think we've proved that something more to
19 that.

20 There were a number of things that
21 needed to be looked into, whether it was through an
22 independent investigation by Mr. Bernstein or using
23 Ms. Connolly.

24 But those things needed to be done.
25 And I believe that's the something more that has

1 prejudiced Mr. Powell and the reason why he deserves
2 a new trial.

3 THE COURT: Well, let me ask you this,
4 counsel.

5 MS. BLANCHETTE: Uh-huh.

6 THE COURT: Don't you, in fact, have to go
7 a step further to show what reasonably you
8 anticipated would have been found to change the
9 result either the decision to plead guilty or the
10 results of the conviction?

11 MS. BLANCHETTE: Yes, Your Honor. I do
12 have to prove that but for the deficient performance
13 and that something more, he would not have pled
14 guilty and he would have gone to trial.

15 THE COURT: Right.

16 MS. BLANCHETTE: The problem that I'm
17 running into is I thought the alibi witness could
18 establish that. I found out she was deceased. I've
19 had this investigator go out and try to pursue all
20 these things that are now dead ends. So I know the
21 burden of proof falls on me.

22 THE COURT: Right.

23 MS. BLANCHETTE: But that's why I brought
24 her in, is because I've tried to utilize her
25 services. I tried to prove all those things. But

1 due to the lapse of time and the failure of counsel
2 to do it previously, those aren't available to me.

3 THE COURT: Well, in this particular case,
4 if I recall the testimony -- and I'm looking for it
5 in the record -- the alleged incident occurred
6 around 11 p.m.?

7 MS. BLANCHETTE: The State says in the
8 transcript 11:30.

9 THE COURT: Eleven thirty?

10 MS. BLANCHETTE: Uh-huh.

11 THE COURT: Okay. And then this Deborah
12 Stevenson, the alleged alibi witness -- I think it's
13 Exhibit Number Two, Ms. Connolly --

14 MS. BLANCHETTE: That's correct, Your
15 Honor.

16 THE COURT: -- on November the 1st spoke
17 with her, and she said that she didn't get in till
18 around twelve or after?

19 MS. BLANCHETTE: I believe it said she
20 arrived around midnight.

21 THE COURT: Right -- yes, around twelve.

22 MS. BLANCHETTE: Uh-huh.

23 THE COURT: And so I'm not sure that that
24 would constitute an alibi witness, would it?

25 MS. BLANCHETTE: Your Honor, and that's --

1 I readily concede or admit this. When I read this,
2 I said it's not the most solid alibi.

3 THE COURT: Right.

4 MS. BLANCHETTE: We need to find Ms.
5 Deborah Stevenson, and iron this out, and figure out
6 if this is a legitimate alibi. And this is the only
7 case I've run into where she's deceased.

8 THE COURT: Right.

9 MS. BLANCHETTE: So I can't ask her any
10 further questions. I have to stop with this one
11 report.

12 THE COURT: Right, okay. So other than
13 alibi, I know you're saying that Mr. Bernstein
14 failed to conduct independent investigation.
15 Assuming that he did, what evidence would you
16 suspect he would have been able to uncover which
17 would have changed the result? Is that not the
18 burden here in this case?

19 MS. BLANCHETTE: It is, Your Honor. You
20 know, and that also ties into the burden when you're
21 doing a trial PCR.

22 THE COURT: Right.

23 MS. BLANCHETTE: I had hoped when we
24 contacted Lexington County Sheriff's Department we
25 would get evidence there that we could test. I've

1 seen nothing that there was a report done on this
2 shoe print.

3 That's an avenue that I say he should
4 have pursued, because he could either use that in
5 negotiations with the State or mitigation, you know,
6 at trial or defense at trial. And, again, a dead
7 end -- Lexington County Sheriff's Department says
8 everything has been destroyed.

9 There's also this issue of all these
10 other individuals that are involved, including the
11 victim, that Mr. Powell is saying that he spoke to.
12 And Ms. Lee Connolly had then gone into great detail
13 that she has spent probably the last two months
14 trying to locate them. That became our primary
15 focus as we were getting ready for today, and he
16 can't be located.

17 So I think speaking to the victim, if
18 he did, in fact, have that conversation with Mr.
19 Powell and he remembers that, I think that goes a
20 great deal to exculpatory evidence, because
21 supposing Mr. Powell was just in his house
22 previously, you know, committing this armed robbery,
23 I think you would recognize the person shortly
24 thereafter.

25 Also, the issue of John Vesey and

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1 Vickie Amick, Vickie Amick was supposedly staying in
2 the home of John Vesey, or he was watching her
3 children. And she's the one who tells Mr. Kirkland,
4 "I know this John Vesey. This man approached him,
5 trying to sell this 9-millimeter. He brought him to
6 a pawnshop, and that's how they recovered the
7 weapon."

8 I don't believe that Mr. Bernstein
9 ever talked to John Vesey. We talked to him now,
10 and he can't really remember anything and doesn't
11 ever really remember knowing a Vickie Amick. Ms.
12 Connolly spoke to Vickie Amick's husband, and he did
13 not have an address for her.

14 But Ms. Connolly found one in
15 Louisiana, and we tried to track her down, to no
16 avail. Your Honor, I know I'm kind of railing here,
17 but I think there are a number of issues that
18 counsel could have looked into.

19 And, unfortunately, I don't have a
20 straight answer for you because of the age of the
21 case and all these dead ends. It's an unknown. And
22 I understand the burden of proof is on me. But I
23 think the testimony of Ms. Connolly is persuasive
24 that we tried to meet that burden.

25 And I don't think he should be

1 prejudiced by the fact that the Sheriff's Department
2 has destroyed the evidence, that these people have
3 disappeared. You know, I don't feel that that
4 should be held against us in meeting our burden.

5 THE COURT: Well, let me ask you this.
6 Assuming that you did obtain the shoe, the Fila 9/10
7 shoe, beyond the fact that he wears a size 12, what
8 else would you want to glean from that evidence as
9 far as why we're here today?

10 MS. BLANCHETTE: It's my understanding
11 that Freddie Henderson, the father and the one that
12 ended up pawning the weapon, was the one they took
13 those shoes from. He's the one that matches the
14 shoe print.

15 He's saying Mr. Powell was the
16 ringleader and he took these young kids in there.
17 It would be our position -- and correct me if I'm
18 wrong -- it was Mr. Freddie Henderson that was the
19 ringleader and took those children in there.

20 So I think that would go a long way
21 as far as proof in this case because it would tie
22 Freddie Henderson to the crime, the only person
23 that's not tied to it in the recitation of the facts
24 that the State gives. He ends up giving a statement
25 implicating Mr. Powell as the ringleader. And our

1 position is that he is, in fact, that person.

2 THE COURT: Anything further, Ms.

3 Blanchette?

4 MS. BLANCHETTE: I don't have anything
5 further, Your Honor.

6 THE COURT: All right. You've been very
7 well prepared, and I appreciate it. Thank you.

8 MS. BLANCHETTE: Thank you, Your Honor. I
9 appreciate it.

10 MR. LEE: Your Honor, just briefly. The
11 State understands because of the Lounds that an
12 attorney is required to do reasonable investigation
13 so as not to be held ineffective.

14 But Lounds doesn't stand for the
15 proposition that every attorney has to put on their,
16 you know, Sherlock Holmes hat, and go out and dig in
17 the mud, and find their own evidence.

18 Basically, what happened here is the
19 reasonable investigation that is required to take
20 place. Mr. Bernstein came, by no fault of his own,
21 into this case at a very late stage.

22 At that time, Your Honor, he had --
23 if he didn't have all the State's evidence via Mr.
24 Myers at that point, he filed a Rule 5 Brady motion
25 and got the rest of the State's evidence.

1 He also had all of the work that the
2 investigator had done up until that point, which
3 included her conversation with this supposed alibi
4 witness, as well as her conversations with the
5 applicant, as well as her other investigation.

6 So he was not only reviewing all this
7 evidence investigating all the pieces of the case
8 that the State had. He was also using the
9 investigation that had been done prior to his entry.
10 Granted it was done for Mr. Myers, but it was still
11 done on this case.

12 So I think it's hard to argue that
13 there was no investigation done when there clearly
14 was. There was a great deal of discovery that was
15 covered, and it was Mr. Bernstein's testimony that
16 he discussed that with the applicant.

17 You know, whether or not there should
18 have been more investigation done, well, it was Mr.
19 Bernstein's testimony that he would have done more
20 investigation had the applicant elected to go to
21 trial. However, it was Mr. Bernstein's testimony
22 that the applicant wanted to plead guilty, and the
23 record reflects that the guilty plea was knowing and
24 voluntary.

25 At a certain point in a trial, if

1 it's decided that you're going to go forward with a
2 guilty plea, at that point -- and the State will
3 also note that the \$500, the original budget, had
4 been used, and more would have needed to have been
5 requested.

6 At that point, if you know that your
7 client wants to proceed with a guilty plea, you are
8 just needlessly wasting the State's money when you
9 request more for investigation that you're not going
10 to use.

11 So it was the applicant's position
12 that he wanted to plead guilty. The record reflects
13 that his plea was voluntary. With regard to a
14 guilty plea -- with regard to an appeal, a guilty
15 plea waives all non-jurisdictional defenses. So
16 there really would have been no grounds to appeal
17 anyway.

18 It was Mr. Bernstein's testimony that
19 he doesn't remember a request being made, but he
20 couldn't definitively say that one wasn't made.
21 With regard to the shoe, you know, the State submits
22 that it was the State's -- it was never the State's
23 position that the applicant committed this crime by
24 himself.

25 He was always one of a number of

1 co-defendants. So, honestly, it just doesn't matter
2 if the shoe doesn't belong to him. With regard to
3 the gun being pawned off, again, number of
4 co-defendants.

5 There could be any number of reasons
6 that this Mr. Henderson is the one who ended up with
7 the gun, whether or not he was the one that used it
8 to begin with.

9 To wrap up, the State would submit
10 that the applicant has not shown the necessary
11 prejudice as a result of whatever alleged
12 ineffective assistance of counsel has taken place
13 here, hasn't shown what additionally would have been
14 yielded.

15 All he has shown is there was a weak
16 alibi witness and some evidence that really had no
17 connection to him in the case but didn't necessarily
18 exclude him from the case. At this point, all that
19 evidence is gone. The alibi witness is gone.

20 Even if he gets it granted, I don't
21 know what it's going to change, because he doesn't
22 have a witness that's going to testify on his
23 behalf. The alibi witness is, unfortunately,
24 deceased. But there's also all the State's -- all
25 the State's evidence is also gone in the case.

1 So you're looking at a potential
2 situation where I don't know for sure this happens,
3 but he could get a potential windfall just because
4 everything's gone. And, you know, I don't feel
5 that's within the bounds of justice.

6 Basically, the State would wrap up by
7 submitting that the applicant has not carried his
8 burden of proof by showing ineffective assistance of
9 counsel or resulting prejudice because he hasn't
10 shown what additional investigation would have
11 yielded that would have changed the outcome in the
12 case. Thank you.

13 THE COURT: Ms. Blanchette, anything
14 further?

15 MS. BLANCHETTE: No, Your Honor, there's
16 just one point. And, actually, I probably shouldn't
17 have said no. There's one point that interests me
18 in the case, is I've been trying to find a uniform
19 procedure for the preservation of evidence. I went
20 to the Bar Commission about a week, and I know that
21 in the criminal procedure that they proposed, there
22 is a uniform procedure for that.

23 But it's my understanding what the
24 uniform procedure is, until he's exhausted all
25 stated remedies, that evidence is to be preserved.

1 So I'm just asking that the Court wouldn't hold that
2 against him in meeting our burden if that evidence
3 has been destroyed.

4 THE COURT: I surely wouldn't. He has
5 nothing to do with storing the evidence. However,
6 in this case, as heroic and I think as diligent as
7 Ms. Blanchette's efforts have been -- I think you
8 made a remarkable investigation, have worked hard,
9 probably have done as good a job as any PCR I've
10 seen this week -- I find that the applicant has not
11 met his burden of proving that the outcome of his
12 decision to plead would have been in any way changed
13 by further investigation by his counsel.

14 The record in this case, the
15 evidence, appears to indicate that the alibi witness
16 that he seems to hang his hat on as much as anything
17 else would not actually be an alibi witness
18 whatsoever, because it did not remove his
19 possibility of committing the crime in this case.

20 However, I am going to find that
21 there has been no representation by trial counsel
22 that Mr. Powell asked for a direct appeal. And I'm
23 going to grant him a belated appeal right.

24 I'm going to deny his petition for
25 the PCR on ineffective assistance of counsel and

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1 involuntary guilty plea, but I am going to allow him
2 to do a belated appeal.

3 Ms. Blanchette, do you want to
4 prepare that order? Am I pronouncing your name
5 right?

6 MS. BLANCHETTE: You are, Your Honor. I
7 don't know if this is proper to address now, but I
8 just received a notice from the Supreme Court on
9 another case I was appointed to. And they informed
10 me that we needed to put on the record that there
11 would be merit for that appeal.

12 I didn't know if that was something
13 that you would want to address now, or I can do that
14 into a separate --

15 THE COURT: No, you go ahead and make your
16 record the way you want it to be. So go ahead. And
17 I'm not familiar with that. So just to be on --

18 MS. BLANCHETTE: I just received that
19 letter this week from the Supreme Court.

20 THE COURT: Just to be on the cautious
21 side, go ahead.

22 MS. BLANCHETTE: Okay. Could I have one
23 moment just to confer with my client and make sure
24 that's exactly what he wants me to do?

25 THE COURT: Absolutely.

1 MS. BLANCHETTE: Your Honor, may we confer
2 a little longer?

3 THE COURT: Yes, ma'am, you all take your
4 time.

5 MS. BLANCHETTE: Your Honor, may we
6 approach the bench?

7 THE COURT: Yes. Let's just put this on
8 the record. What I'm going to do is allow Ms.
9 Blanchette 30 days to supplement the record by way
10 of whether she deems advisable to her client to
11 substantiate the granting of a belated direct
12 appeal.

13 Depending on what evidence that is
14 submitted, then I reserve the right to change my
15 ruling. If I don't find that the grounds for the
16 evidence submitted by Ms. Blanchette is sufficient,
17 then I am going to reserve the right to reverse my
18 decision and not grant a belated appeal.

19 Mr. Lee, do you need time to respond
20 to the evidence being submitted, and would you stand
21 on the grounds presented?

22 MR. LEE: I mean, if she wants to just
23 forward it to me via e-mail or something like that
24 and then give me an additional ten days, you know,
25 that would be acceptable.

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1 THE COURT: Okay, you'll have ten days to
2 supplement or refute what she submits.

3 MR. LEE: That would be good.

4 THE COURT: And then, depending on what I
5 find, then I'll direct one of you two to draft the
6 order from that point.

7 MS. BLANCHETTE: I appreciate that, Your
8 Honor.

9 MR. LEE: Thank you, Your Honor.

10 MS. BLANCHETTE: Thank you.

11 THE COURT: Okay, sure. Nice to see both
12 of you. Thank you for both being very fair today
13 and a lot of hard work. Thank you.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT
REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
INTRODUCED IN THE ABOVE-CAPTIONED CASE ON FEBRUARY
5, 2010, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE TWENTY-
FIFTH DAY OF MAY, 2010.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/23/2013

+ 1

INFO, INC. Investigations

*Post Office Box 5415
Columbia, SC 29250
phone (803) 331-1968
fax (803) 781-8597*

Sire Powell a/k/a Julius Powell Report

September 5, 2006

Sire Powell a/k/a Julius Powell, Inmate
Lexington Co. Detention Center
521 Gibson Road
Lexington, South Carolina 29072

This morning, I met with Julius at the Detention Center. He informed me that his real name is Sire Powell and when he was initially questioned by police, he provided that name.

According to Julius, he returned to South Carolina from New Jersey on July 2, 2006, with his ex-wife and his three minor children. Julius' ex-wife and children had arranged to move in with Julius' sister, Donna Powell.

On July 4, 2006, Julius went over to Donna's residence (located at [REDACTED] from the incident location) to give her \$600.00 to put towards her rent—it was a loan to her. Arriving around 11:00 A.M., Julius proceeded to hang out during the day, visiting, eating and drinking (all day he had about 8 beers) with Donna, her daughter (Nicole Powell—18 years old), her son (Freddie, Jr.—20 years old), her son (Kareem Powell a/k/a Shawn—17 years old), Freddie Henderson (father of Donna's children), Virginia Ramos (Julius' ex-wife), and Julius' 3 children (1 of which is handicapped).

Around 10:00 P.M. or so, Julius overheard Kareem complaining to Tommy Browder who was then at the house, about how stressed out he (Kareem) was because his 14 year old girlfriend was pregnant. While smoking weed, Tommy began to talk about the guy across the street, saying that he (Tommy) knew the guy, that he (Tommy) had been in the guy's house a couple of times, etc... Tommy went on to describe the general lay-out of the guy's house. About that time, Julius' wife called him (Julius) or he called her on his cell phone ([REDACTED] SunCom)—Julius cannot recalled who called who.

It was about 10:45 P.M. or 11:00 P.M. when Julius left Donna's residence. Rather than heading home, he headed over to Deborah Stephenson's residence (lives on [REDACTED] and may be reached at [REDACTED]) where he had been staying the previous couple of nights. Along the way, he spoke with Lilliana Santiago (his cousin) from New Jersey and his son, Mazaratie Powell, from his cell phone. When he arrived, Deborah was not home so he used his key to get in. Julius went straight upstairs and fell asleep. At some point, Julius' 12 year old daughter (Jasmine Powell) called from Donna's residence crying, telling her father to come back to the house. After getting off the phone, Julius dozed back off

for a short while and was awakened by Deborah when she came in around 11:30 P.M. or so. Julius told Deborah that he would be right back and left the residence.

Julius went straight back over to Donna's residence. When he arrived, Donna, Freddie, Freddie, Jr., and 2 other girls (1 was Freddie, Jr.'s girlfriend) were in the front yard. After briefly saying hello, Julius headed inside. Jasmine told Julius that the guy across the street had been shooting a shotgun and she was scared (she is very protective of her handicapped brother, Julius, Jr.).

Julius went back outside. Then Julius and Freddie, Jr., started walking across the street towards the guy's house that had been shooting the gun. About that time, the guy from across the street, placed his shotgun on his (the guy's) porch and began walking with a friend (who had a sidearm piece in a pouch). The men met up in the middle of the street. The guy asked if Julius and Freddie, Jr. (whom the guy did not know by name) had seen any guys running from his (the guy's) house and jumping into a car. Pretty much ignoring the guy, Julius asked why the guy had been shooting a shotgun. That was when the guy indicated he had just been robbed and the robbers had run off, jumping into a white car, taking off. Julius said he was sorry the guy had been robbed, but there were children around and the guy should watch what he (the guy) was doing with the shotgun. That was when the guy's friend said if he (friend) had been there, he (friend) would have blown the robbers' brains out. At that point, Julius shook hands with the guy, saying that he (Julius) would talk to them later, but out of curiosity he (Julius) asked how many robbers there were. The guy indicated that there had been 2 robbers--1 had big bling bling in his ear and the other 1 kept calling the 1 with the bling bling, Shawn. (Freddie, Jr., was making conversation, too.)

After ending their conversation, Freddie, Jr., and Julius headed back to Donna's residence. Julius proceeded to yell at everyone in the house for putting the children in the situation. Kareem and Tommy, who had not been there when Julius arrived at Donna's after receiving Jasmine's phone call, were there after Julius and Freddie, Jr., talked to the guy who had been robbed.

About that time, the police arrived and came to Donna's residence because the guy that had been robbed indicated that the white car the robbers had taken off in had been over at Donna's house all day (the white car is owned by Freddie, Jr.'s girlfriend)(Julius does not know her name). The police talked with Donna and Freddie, Sr., outside. After speaking with the police, Julius returned to Deborah's residence.

The following day, Julius came over to Donna's residence around 10:00 A.M. Kareem told Julius that he (Kareem), Tommy and Freddie, Sr., had broken into the guy's house and all they had gotten was a gun and \$20.00. When asked what kind of gun they used, Kareem replied that it was the broken front part of a bb gun--not even a real gun. When Julius asked where the bb gun was, Kareem indicated that they had stashed it. As they were discussing what had happened, the police came back. The police indicated that they thought that Donna's family was involved in the robbery and asked if there was a "Shawn" there to which Donna replied "No." As this was going on, Julius was in the other room as the police began pulling people outside 1 by 1 to question them. When the police asked Julius where he (Julius) had been during the robbery and he (Julius) said he was not there, that was it. The police then looked at Freddie, Sr., and asked what size shoes he (Freddie, Sr.) wore. Freddie, Sr., was taken outside where they (cops) took his (Freddie, Sr.'s) shoes. At that point, Donna went outside to find out what was going on. Freddie, Sr., said "I think I'm going to jail."

(During all this, Tommy had come over and immediately, without being questioned, left out the back door).

The police then came back inside and asked if anyone in the house wore Fila's. The cop went on to say that whoever had kicked in the guy's door was wearing Fila's because a footprint was left behind on the door. While all this was going on, there was a crime scene investigation van that was running tests outside on the shoes that Freddie, Sr., had been wearing. The results were that Freddie, Sr.'s, shoe did not match the print because the "F" was different. At that point, the police asked again whether anyone else wore Fila's and Donna said "No." The police did not search the residence.

It was then that Freddie, Jr.'s girlfriend pulled up in the white car with Freddie, Jr. The guy that had been robbed id'd the car, but when the police questioned her, they let her go. Likewise, because Freddie, Jr., had said that he was at a party when the incident occurred, he was let go, too. The police then left.

Several days later, Julius went over to Donna's residence to drop off some food. Donna told Julius that the police had just come over looking for Freddie, Sr., and that they also had Julius' photo—they claimed that he (Julius) had lied about his name. When asked Julius' address, Donna provided it to the authorities.

Julius left and about 30 minutes later received a telephone call from Freddie, Jr., saying that the police had locked up Freddie, Sr. Julius asked "Why?" Freddie, Jr., indicated that Freddie, Sr., had pawned a gun. At that point, Julius hung up and decided to get drunk. Because he (Julius) was with Laurie, he (Julius) got her (Laurie) to drop him (Julius) off at a motel near Heartbreakers. About 3 hours later, Laurie called hysterical saying that the police were at the house, searching. Laurie gave Julius the number for the investigator. Julius called the investigator who informed him (Julius) that his (Julius') nephew had turned him (Julius) in and that there were warrants outstanding. Julius agreed to turn himself in, but said that he would do so the next morning because he was going to get drunk that night. The following morning, Julius called the investigator and had the police pick him (Julius) up from the motel.

****Special Notes****

1. Julius owns a magazine company called Junior Golf Academy.
2. Julius' current wife, with whom he is separated from (and was at the time of the incident), is Laurie Powell. She resides on Nursery Road and may be reached at 803-238-7672.
3. Laurie is aware that Julius was messing around with Deborah.
4. Deborah normally works from 3:00 P.M. to 11:00 P.M. She is a nurse at a nursing home (Julius does not know the name) and at LCDC.
5. Julius knows that Kareem has a .38.
6. Donna's DOB is 12/11/65.
7. Kareem wears Fila's. He is a size 11 ½ or 12 shoe. Julius normally wears Rebok or Nike (arrested in) and wears a size 11.
8. Freddie, Sr., has a record for Burglary and Theft. Julius has a record for Assault, Robbery, Receiving Stolen Goods, Kidnaping, etc...

9. Julius believes that Freddie, Sr., was told that he (Freddie, Sr.) would go down for everything himself unless he admitted someone else's involvement and that was why Freddie, Sr., said that Julius and Kareem were involved.
10. Julius suggested searching the pawn shop receipts where Freddie, Sr., pawned the gun (does not know the name of the shop) to see if other stolen items have been pawned by Freddie, Sr., there.
11. The manager of the neighborhood (trailers) that Donna lives in has indicated that he (manager) has received numerous complaints about Donna's family and he (manager) was going to evict them. Besides, the manager heard that Donna's family had been involved with the robbery.
12. Julius believes that one reason his family might have suggested his (Julius') involvement was because he (Julius) would make a good fall-guy because of his lengthy record. He

INFO, INC.

Investigations

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Sire Powell a/k/a Julius Powell Report

November 1, 2006

Deborah Stephenson

[REDACTED]
Columbia, South Carolina
[REDACTED]
[REDACTED]

This afternoon, I met with Deborah Stephenson at the Olive Garden on Harbison Boulevard. She informed me that she initially met Sire in December of 2005 when she went to the Verizon Wireless store on O'Neil Court to purchase a phone. Inside, there was a booth for Bell South and that is where Sire worked. They struck up a conversation and a friendship—he was very nice and quite a gentleman. Sire informed Deborah that he was married and that although he and his wife resided together (possibly at [REDACTED]) they were separated. They dated for awhile and then she told Sire that he needed to make a decision about what he was going to do with his relationship with his wife.

So, for the next couple months (about 6, according to Deborah), they had no contact. Then, on July 4, 2006, Deborah came home from work—believes she arrived around midnight—and Sire was watching television in her bedroom. Because Deborah had just worked a double shift and had to work one the following day, they spoke for a little while, she explained that she would not be able “to do anything” that night, and then they both went to sleep.

At some point (Deborah is not sure what time), Sire's phone rang. He told Deborah that he had to leave to take care of some business. Deborah went back to sleep. A couple of hours later, about 4:00 A.M., Deborah woke up to use the restroom and Sire was asleep beside her. Deborah went back to bed after using the restroom and they both woke up at 5:00 A.M. They left at the same time—Deborah was on her way to work. The next time Deborah saw or talked with Sire was when she saw him at LCDC.

****Special Notes****

1. Deborah has been married 3 times. She has a 21 year old son.

Sire also has lots of children.

2. Deborah works at the Lowman Home in White Rock, Monday through Friday, 3:00 A.M. to 11:15 P.M. She also works at LCDC from 7:00 A.M. to 2:00 A.M. some days. She began there in April of 2006.

Deborah used to work at RCDC-for about 6 months. It was either from June to December of 2004 or 2005-she can't recall which.

She is obtaining the July schedule from her work at LCDC and at the Lowman Home as well.

3. Because Deborah trusted Sire, she had told him (prior to their about 6 month separation) where she hid her spare key to the townhouse.
4. At the beginning part of their dating, Sire took Deborah over to Donna's house one time for Donna's birthday. Deborah took a bottle of liquor. Because she has a strict policy of no drinking and driving, Deborah and Sire ended up spending the night. Deborah observed Donna and Sire to have a fine relationship. It was at this time that Deborah also met Antwon, Donna's son.
5. From the last time that Deborah saw Sire until she saw him in LCDC, she had received several telephone calls from his nephew, Antwon, but Deborah simply told him that she had a new boyfriend. She now thinks that Antwon was trying to let her know that Sire was in trouble.
6. Sire has told Deborah that his sister had been robbed by some neighbors and that somehow the neighbors are trying to retaliate by claiming that Sire, Tommy, and Donna's other son robbed them back.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

06-1009
CIVIL CASE #

H580016
30.00

A + E Funding LLC)
Beverly Acres)
)
)
GASTON SC 29053)
Phone: 800-444-1111 Landlord

APPLICATION FOR EJECTMENT
And
RULE TO VACATE OR SHOW CAUSE
(Eviction)

Vs

Xonna Powell + ALL OTHERS)
)
)
GASTON SC 29053)
Phone: _____ Tenant(s)

PLACE AN "X" HERE IF MOBILE HOME
IS OWNED BY TENANT

LANDLORD'S AFFIDAVIT AND APPLICATION FOR EJECTMENT:

I, DAVID SMITH, plaintiff in this action, state that I am the landlord-lessor of premises within the jurisdiction of Magistrate William G. Shookley, 500 Charlie Rast Rd., Swansea, SC, 29160, the premises being described as:

Street & Apt. # 196 Sandy Oak Ln.

City: GASTON SC 29053

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the above defendant. I, the landlord-lessor, seek a writ of ejectment on the above defendant-tenant based on the following reasons:

Violation of lease agreement

Sworn this 24th day of July, 2006.

Served 7-26-06 last day 8-7-06

Francis J. Mangan
Notary Public/Magistrate

David Smith
Landlord/lessor/agent

TENANT/DEFENDANT'S RULE TO VACATE OR SHOW CAUSE (EVICTION):

Upon the plaintiff's application above, you, Danna Powell + all others, the defendant (tenant) of the above premises located at 196 Sandy Oak Lane, Gaston, SC are ordered to vacate the premises immediately or to contact the Magistrate in person at 500 Charlie Rast Rd., Swansea, SC, 29160, for the purpose of showing why you should not be ejected from these premises.

If you fail to vacate the premises or to respond to the Magistrate within 10 days of this Rule, the Magistrate may issue a writ of ejectment. If you desire a hearing in this case, you will have to submit a written request to the Magistrate's Office within 10 days of service.

Date to vacate: _____

W. D. Shookley
Magistrate, Lexington County District #4

Affidavit of Service:

Served to: _____
Served by posting: _____
Served on (date): _____
Served by: _____

Service attempted:
1. (Date) _____ (Time) _____
2. (Date) _____ (Time) _____
3. (Date) _____ (Time) _____

111-18

READ BEFORE SIGNING!!! THIS IS A LEGALLY BINDING DOCUMENT!!!
MONTHLY RENTAL AGREEMENT

A & E FUNDING

930 CHESNEB HIGHWAY, SPARTANBURG, SC 29303
864-583-7868

916 Sandy C. McKelvey 600.00 6/2/05
ADDRESS OF PROPERTY LOT # MONTHLY RENT AMOUNT DATE

WE, THE UNDERSIGNED, AGREE TO ABIDE BY ALL OF THE FOLLOWING
RULES AND REGULATIONS:

1. RENT: A. DUE ON THE FIRST DAY OF EACH AND EVERY MONTH. NO EXCEPTIONS. FIVE DOLLARS LATE CHARGE DUE ON THE FIRST DAY ++ THREE DOLLARS FOR EACH ADDITIONAL DAY. LATE CHARGES ARE PAID FIRST, RENT LAST.
B. RENT MUST BE PAID IN ADVANCE.
C. ABSOLUTELY NO PERSONAL CHECKS
D. RENT WILL BE DUE AGAIN ON July 1
2. ABSOLUTELY NO PETS (INSIDE OR OUTSIDE) UNLESS A ONE HUNDRED DOLLARS NON REFUNDABLE FEE IS PAID IN ADVANCE FOR EACH PET. BEFORE THE PET IS BROUGHT ON THE PREMISES.
3. NO WOOD HEATERS OF ANY KIND. THIS BUILDING HAS A SAFE, APPROVED HEATING SYSTEM FOR YOUR COMFORT. KEROSENE HEATERS ARE USED AT YOUR OWN RISK.
4. ANY AND ALL REPAIRS OF LESS THAN \$25.00 (TWENTY - FIVE DOLLARS) ARE THE OCCUPANTS RESPONSIBILITY INCLUDING ALL APPLIANCES. WE DO NOT SERVICE WASHERS AND DRYERS. THE FIRST \$25.00 OF ANY REPAIR IS YOUR RESPONSIBILITY. ALL SERVICE PROBLEMS MUST BE PHONED IN TO THE ABOVE NUMBER BETWEEN 9:00AM AND 4:00PM MONDAY THROUGH FRIDAY. I (WE) FURTHER AGREE THAT IF I (WE) CALL TO REPORT ANY PROBLEM OTHER THAN A LIFE OR DEATH EMERGENCY AT ANY OTHER TIME I (WE) WILL PAY A \$25.00 AFTER HOURS SERVICE CHARGE.
5. NO LOUD UNNECESSARY NOISES AT ANY TIME.
6. I UNDERSTAND AND AGREE THAT IT IS MY SOLE RESPONSIBILITY TO INSURE ALL MY PERSONAL PROPERTY AGAINST CASUALTY, LOSS, AND FIRE.
7. PARK CARS IN PARKING AREAS ONLY. CARS PARKED IN THE YARD WILL BE TOWED AT THE OWNER'S EXPENSE. NO JUNK CARS OR UNLICENSED CARS MAYBE KEPT.
8. AGENTS OF THE COMPANY HAVE THE RIGHT TO ENTER, INSPECT, OR REPAIR THE UNIT AT ANY REASONABLE TIME OR ANY TIME AN EMERGENCY IS SUSPECTED.
9. ANY DAMAGES DONE TO THE PROPERTY MUST BE PAID FOR BY THE PERSON(S) SIGNING THIS AGREEMENT.

10. LOTS ARE TO BE KEPT CLEAN AND NEAT BY THE OCCUPANT. GRASS IS TO BE KEPT CUT AND YARDS CLEAN BY TENANT. GARBAGE IS TO BE REMOVED PROPERLY. IF THIS IS NOT DONE BY US, YOU HAVE MY PERMISSION TO GET THIS DONE AND CHARGE THIS TO MY RENT.
- Daf INITIAL PLEASE
11. WE FURNISH ONLY THE FOLLOWING UTILITIES:
A. Water B. X
C. Electric D. X
12. WE RESERVE THE RIGHT TO ASK ANY OCCUPANT TO MOVE IF WE CONSIDER IT IS NECESSARY
13. NO ONE MAY RESIDE IN RENTAL UNIT OTHER THAN THOSE PEOPLE ORIGINALLY LISTED IN THE AGREEMENT. THE FOLLOWING PEOPLE ARE THE ONLY DESIGNATED RESIDENTS OF THE PREMISES Dena
Roanne (1) Roanne (1b) Freddie (1)
14. THE TOTAL NUMBER OF OCCUPANTS WILL BE:
3 (4) 2-9-06
15. WHEN THE TEMPERATURE DROPS BELOW 30 DEGREES, LEAVE THE HOT AND COLD WATER RUNNING AT EACH AND EVERY FAUCET. ANY FROZEN WATER PIPES OR DAMAGE CAUSED BY FROZEN WATER PIPES MUST BE PAID FOR BY THE PERSON(S) SIGNING THIS AGREEMENT.
16. WE DO NOT SPRAY FOR BUGS OR TREAT FOR PESTS OF ANY KIND.
17. LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978: SEE LEAD-BASED PAINT DISCLOSURE ADDENDUM.
18. THIS CONTRACT CANNOT BE ASSIGNED OR SUBLET.
19. SECURITY DEPOSITS MADE BY OCCUPANT WILL BE REFUNDED SUBJECT TO ALL OF THE FOLLOWING:
- RENT HAS BEEN PAID IN FULL FOR A MINIMUM OF SIX MONTHS.
 - FORMAL WRITTEN NOTICE OF INTENT TO VACATE HAS BEEN RECEIVED BY THE COMPANY AT LEAST THIRTY (30) DAYS BEFORE VACATING
 - THERE IS NO DAMAGE TO THE PROPERTY.
 - THE ENTIRE YARD AND THE DWELLING INCLUDING THE RANGE AND REFRIGERATOR HAS BEEN CLEANED TO THE SATISFACTION OF THE COMPANY.
 - NO UNPAID LATE CHARGES, PET FEES, OR DELINQUENT RENTS ARE DUE.
 - ALL KEYS ARE RETURNED.
 - ALL DEBRIS, RUBBISH, AND GARBAGE IS REMOVED FROM PREMISES.
 - FORWARDING ADDRESS HAS BEEN LEFT WITH THE COMPANY.
 - THE PROPERTY IS LEFT IN "RENT READY" CONDITION.

ONCE ALL OF THESE CONDITIONS HAVE BEEN MET TO THE SATISFACTION OF THE COMPANY AND ANY COSTS OF LABOR AND MATERIALS FOR CLEANING AND REPAIR HAVE BEEN DEDUCTED ALONG WITH LATE CHARGES DUE FOR LATE RENT RECEIVED AFTER DUE DATES AND OTHER CHARGES SHOWN ABOVE THE REMAINING AMOUNT OF THE BALANCE OF

THE DEPOSIT WILL BE MAILED BY CHECK WITHIN SEVEN BUSINESS DAYS ADDRESSED JOINTLY TO ALL PERSONS WHO SIGN THIS AGREEMENT. THE UNDERSIGNED HEREBY PAYS THE SUM OF 1000.00 FOR SECURITY DEPOSIT TO BE USED IN THE EVENT OF DAMAGE TO THE PROPERTY. IF FOR ANY REASON YOU CHANGE YOUR MIND AND DECIDE NOT TO FULFILL ALL OF THE TERMS OF THIS AGREEMENT YOU WILL NOT RECEIVE A REFUND OF ANY MONEY PAID.

THIS DWELLING AND ALL OF THE FURNISHINGS AND APPLIANCES THEREIN ARE ACCEPTED AS IN GOOD CONDITION AND GOOD WORKING ORDER. A WRITTEN STATEMENT OF ANY PROBLEMS MUST BE DELIVERED TO THE COMPANY WITHIN 5 DAYS AFTER SIGNING THIS AGREEMENT. I ACKNOWLEDGE THAT A WORKING SMOKE DETECTOR IS IN THIS UNIT. IF NOT, I WILL NOTIFY YOU IN WRITING WITHIN 48 HOURS FROM NOW. RENT WILL BE DUE IN THE AMOUNT OF 1000.00 BEGINNING 7/1/05. WE, THE UNDERSIGNED HEREBY AGREE THAT IN THE EVENT WE FAIL TO PAY RENT WHEN DUE OR VIOLATE ANY OF THE ABOVE PROVISIONS THAT WE WILL REMOVE OURSELVES FROM THE PREMISES WITHOUT ANY OTHER NOTICE BEING GIVEN TO US BY THE OWNER. IF RENT IS NOT PAID WITHIN FIVE DAYS OF THE DATE RENT IS DUE, THE LANDLORD RESERVES THE RIGHT TO SEEK JUDICIAL ACTION TO EVICT THE TENANT WITHOUT GIVING THE TENANT PRIOR NOTICE OF ITS INTENT TO EVICT. THE TENANT FURTHER AGREES TO PAY THE COMPANY FOR ANY LEGAL OR COURT COSTS+\$30.00 BECAUSE OF FAILURE TO PAY RENT ON TIME.

Donna Powell
APPLICANT'S SIGNATURE

Donna Powell
PRINT YOUR FULL NAME

[REDACTED]
SOCIAL SECURITY NUMBER

[REDACTED]
FULL MAILING ADDRESS

[REDACTED]
PLACE OF EMPLOYMENT

[REDACTED]
HOME PHONE NUMBER

[REDACTED]
WORK PHONE NUMBER

[REDACTED]
CONTACT IN CASE OF EMERGENCY

Jim L. Lawson
FOR THE COMPANY

CO-APPLICANT'S SIGNATURE

PRINT YOUR FULL NAME

SOCIAL SECURITY NUMBER

FULL MAILING ADDRESS

PLACE OF EMPLOYMENT

HOME PHONE NUMBER

WORK PHONE NUMBER

CONTACT NUMBER

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

PROBATE COURT

IN THE MATTER OF Deborah Stephenson

CASE NUMBER 2007 ES40 01402

2009 APR 28 AM 10:28
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER CLOSING ESTATE

Upon the consideration of the Petition for Settlement, it appears to the Court that the allegations and statements in the Petition are true and correct; that all required notices have been given; that this estate has been administered according to the laws of South Carolina and the Orders of this Court; that the Estate should be closed in accordance with the Court's Order and

That the decedent's will dated December 1, 1990, which was previously admitted to probate, constitute the valid unrevoked Last Will and Testament of the decedent.

IT IS HEREBY ORDERED

- ☐ 1. That the final accounting and/or proposal for distribution is approved.
- ☐ 2. That the Personal Representative(s) is/are authorized and directed to deliver and distribute title and possession of the assets of this estate to the distributees in the amount and manner set forth in the Proposal for Distribution.
- ☐ 3. That, upon compliance with this Court's Order as set forth in #2 above and upon presentation of proper proof of such compliance, the appointment of the Personal Representative(s) shall be terminated and the estate closed.
- ☐ 4. That the Personal Representative(s) is/are released and discharged as the Personal Representative(s).
- ☒ 5. That the appointment of the Personal Representative is hereby terminated and this estate is closed.

Executed this 28th day of April, 2009.

Amy W. McCulloch

Amy W. McCulloch
Probate Court Judge



STATE OF SOUTH CAROLINA

COUNTY OF

IN THE MATTER OF:

IN THE PROBATE COURT

CASE NUMBER:

APPLICATION FOR

INFORMAL

☒ PROBATE OF WILL
☐ APPOINTMENT

(check any that apply)

PETITION FOR

FORMAL

☐ TESTACY
☐ APPOINTMENT
Applicant/Petitioner: Lynne StenderAddress: [REDACTED]Telephone: [REDACTED]

I ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

- 1 Give your relationship to the decedent, if any, and your interest in this proceeding.

Sister

- 2 Decedent Information

Name: Deborah StephensonSocial Security Number: [REDACTED]Date of Birth: 4-27-1963Date of Death: 10-6-2007Age at date of death: 44Domicile at date of death: Richland

(county)

S.C.

(state)

- 3 Venue for this proceeding is proper in this county because:



Decedent was domiciled in this county at date of death.



Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.



Decedent has a right to take legal action in this county because:

- 4.a Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

(No minors)

Name	Date of Birth	Address	Relationship to Decedent
<u>Brendon A. Johnson</u>	<u>4/9/1985</u>	<u>[REDACTED]</u>	<u>Son</u>
<u>Lewis L Barber Jr</u>	<u>10/6/1962</u>	<u>[REDACTED]</u>	<u>divorced-spouse</u>

(use additional sheet if necessary)

- 4 b Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.
(No minors)

Name	Date of Birth	Address	Relationship to Decedent
Michael W. Stephenson	1/9/1955	[REDACTED]	Spouse - Separated

(use additional sheet if necessary)

- 5 Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
- ☐ NO ☒ YES If yes, please explain, on page 3.
- 6 To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain, on page 3.
- 7 Has a guardian or conservator ever been appointed for this person?
- ☒ NO ☐ YES If yes, please explain on page 3.
- 8 Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.
- 9 Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.
- 10 Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
- 11 The decedent died with a personal estate of about the value of 130,000 and real estate of about the value of 84,000. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
- 12 After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
- ☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☒ The original is attached
☐ The original is in the Court's possession
☐ An authenticated copy of a will probated in another jurisdiction is attached
☐ An authenticated copy of a will not probated in another jurisdiction is attached
☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- ☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: 12/1/1990
 codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

- ☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- ☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- ☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
 (If more space is required, use additional sheet.)

#5 - Divorced Lewis L Barber 2/15/1995

- Married Michael W Stephenson 1/3/1997
 filed for divorce 9/21/2007

III IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

- 1 The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Lynne Stender
17 Mains Lane
Blair Station, NJ 07825

- 2 Priority for this appointment is:

- ☒ named as Primary Personal Representative in will
☐ named as Alternate Personal Representative in will
☐ nominee of above Primary Personal Representative in will
☐ nominee of above Alternate Personal Representative in will
☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
☐ other devisee of decedent, (describe): _____ or nominee of said devisee
☐ surviving spouse of decedent or nominee of said spouse
☐ other heir of decedent (describe): _____
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____

- 3 List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 30th day of October, 2007
[Signature]
 Notary Public for South Carolina
 My Commission Expires: 8-21-17

Signature: [Signature]
 Name: _____
 Address: _____
 E-mail: _____
 Telephone (O): _____
 (H): _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☒ GRANTED ☐ DENIED informally this 30 day of Oct, 2007.

Amy W. McCulloch

[Signature]

Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE _____

TIME _____

PLACE _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____

_____, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated _____, be admitted formally to probate.

Executed this _____ day of _____, 20____

_____, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 30 day of Oct, 2007.

 Amy W. McCulloch

_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: X Lynne Stender

Name: _____

Address: _____

E-mail: _____

Telephone (O): _____

(H): _____

Signature: _____

Name: _____

Address: _____

E-mail: _____

Telephone (O): _____

(H): _____

Attorney: _____

Address: _____

E-mail: _____

Telephone (O): _____

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AGENCY I.D.
SCO320000LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORTCASE NUMBER
06055473☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 of _____ PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME: Kirkland, Randy

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE: Burglary

ORIGINAL SUSPECT:

NAME: unknown

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$ _____

CANCEL NCIC ENTRY: YES _____ NO _____

7-05-06 at 1400 hrs i/o came into the office and received this case for further investigation. It was reported by the victim that two unidentified black males broke into his residence and robbed him at gunpoint as his wife and children was present.

On this date at 1410 hrs i/o called the victim at his home number 794-6041 and i/o spoke to Hope Kirkland, who is the wife of the listed victim, and who was present at the time of the robbery. I/o asked her if she knew who the suspects were or if her husband knew them and she said did not know the suspects. She advised i/o that there was an imprint of a shoe on the back door where one of the suspects kicked in the back door but no pictures were taken of it. She further advised i/o that her husband bagged up several items that were touched by the suspects. I/o advised her that i/o would be heading to her location to take a picture of the footprint. I/o and Intern, Melissa, drove over the residence. I/o made arrangements with Det Mefford to meet him over the location as well so he could assist with the investigation. I/o had Melissa call Mrs. Kirkland to get the numbers and carrier of the two stolen cell phones so i/o could have a trace done through Det. Luke Fossum in Intel. I/o learned that two cell phones were 348-4356 and 73-5998 - both Cingular. I/o then called Fossum and relayed this information to him. He advised i/o that he will contact i/o with any information that he gets.

Soon after i/o, Melissa, Ashley (Intern), and Det Mefford arrived on the scene. I/o was met by the victim who showed i/o the foot print on the back door. I/o observed what appeared to be a size 9 or size 10 "Fila" tennis print on the back door (the point of entry). I/o was contacted by Lt. Frier and he made arrangements to have an Id Tech respond, Det Hickman later arrived at the scene to process the scene and use a gel lift on the foot print. The victim advised i/o he does not know who the suspects are and he does not believe he could identify them by face due the fact that they did not keep any lights on during the robbery. He also advised i/o he came out of his residence with a shotgun and shot several times into the ground and into the air in an attempt to scare them as they fled from his residence. He said when he came out of the residence he observed a white station wagon parked just down the road and after he shot the car drove over to his neighbor's house at [REDACTED]. He said he has had some trouble with them but nothing recently.

i/o went inside to get the victim, his wife, and an employee, started on written statements as Det Mefford canvassed the neighborhood for any potential witnesses. I/o was later advised by Mefford that no one had seen anything except the victim coming out with his shotgun and shooting. I/o got with Det Hickman and he advised i/o that he was able to get a lift of the footprint and he took a knife case to fumigate it. The victim advised i/o that one of the suspects was white with a goatee and was wearing large diamond earrings one in each ear. He further said this suspect was called Shaw or Deshawn during the robbery.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
☒ YES	☐ NO	☐ YES	☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST						
REPORTING OFFICER Die Prestigiacomo	DATE 07-05-06	UNIT NUMBER 324	APPROVING OFFICER		DATE	UNIT NUMBER
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER

AGENCY I.D.
SCO320000LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORTCASE NUMBER
06055473☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
STOLEN PROPERTY☐ STATUS
CHANGE☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of _____ PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME: Kirkland, Randy

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE: Burglary

ORIGINAL SUSPECT:

NAME: unknown

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$ _____

CANCEL NCIC ENTRY: YES _____ NO _____

he victim advised i/o the taller suspect who was the one in control of the whole situation left through the front door and yelled out Shawn or Deshawn lets go.

o went over to the residence where the station wagon pulled into at [REDACTED] I/o was invited in by a black male later identified as Freddie Powell, 42 yoa, dob 02-28-64, home number [REDACTED]. He advised i/o that he did not see anything last night but he did go out when he heard his neighbor shooting his shotgun. I/o then spoke to the following persons who was also present in this residence:

Christina Louise Richard, b/f, 19 yoa, dob 01-05-87, SS# [REDACTED], home number [REDACTED]

Sire Powell, 37 yoa, dob 12-28-68, lives in New Jersey is visiting at this residence

Shawn Powell, 17 yoa,

Jessica Marie Richard, 20 yoa, dob 11-21-85

o spoke to Christina and she advised i/o that she was with her sister in her white station wagon just down the road because they were talking about her boyfriend last night at around 2300 hrs. She said she did not see anything when she heard several gunshots which prompted her to drive back over to 196 Sandy Oak Lane. I/o and Det effort then spoke to Sire, Deshawn, and with Jessica and all advised that they did not know what happened at their neighbors house.

09-06 at around 1930 hrs i/o received a page from Kirkland and he advised i/o that he received some information about his case. He said a friend of his wife, identified as Vickie Amick [REDACTED], who keeps her children at the residence of John Vesey, [REDACTED] was informed that Vesey was approached by a black male who asked him if he wanted to buy a 9 mm handgun. Kirkland further learned that this black male is missing teeth, drives cycle, and lives at the end of [REDACTED] (the description of this person is similar to what Freddie Powell later identified as Freddie Henderson looks like). I/o called Vesey and he advised i/o that this black male approached him asking him if he wanted to buy a 9MM handgun which Vesey said he did not want to buy a gun. He said further i/o that this person then asked him to give him a ride to "Big John's Pawn Shop" so he could sell this gun. o was told by the man that he got the gun from his son and he needed to get rid of it because he was afraid his son would shoot someone.

-10-06 at around 1115 hrs i/o went by Big John's Pawn Shop at 614 12th Street. I/o asked the owner, John Elias, if he had bought any handguns this passed week. After looking at his records he realized that on 07-06-06 he bought a Smith and Wesson handgun.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ UNFOUNDED ☐ ADMINIST. CLOSED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
3 ☐ NO ☒		YES ☐ NO ☒							
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST									
REPORTING OFFICER die Prestigiacomo (4)		DATE 07-26-06		UNIT NUMBER 324		APPROVING OFFICER		DATE	
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	

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AGENCY I.D.
SCO320000LEXINGTON COUNTY SHERIFF'S OFFICE
INVESTIGATIVE REPORTCASE NUMBER
06055473☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
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STOLEN PROPERTY☐ STATUS
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OFFENDERS☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of _____ PAGES.

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒

NAME: Kirkland, Randy

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

INCIDENT TYPE: Burglary

ORIGINAL SUSPECT:

NAME: unknown

DATE OF BIRTH:

STREET ADDRESS:

RACE:

SEX:

CITY - STATE - ZIP:

AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$ _____

CANCEL NCIC ENTRY: YES _____ NO _____

On 07-07-06 at around 5:47 PM Henderson came into his shop and sold 9 MM hand gun serial number PBR6137. I/o confirmed that this is the handgun that was stolen from the residence during the robbery. I/o subsequently seized the handgun and obtained a copy of the pawn ticket.

On 07-07-06 at 1330 hrs I/o and Det Mefford went over to "Tony's Paint and Body Shop" at 4908 HWY 321 in Gaston to locate Henderson, who had supposedly worked here, and who had previously given I/o a different last name of Powell. I/o questioned Henderson about the gun that he sold to the pawn shop and he said to I/o that he would tell I/o the truth now. Henderson was subsequently placed under arrest by I/o for the possession of a stolen gun. Then at 350 hrs, as Henderson was sitting in I/o's truck, I/o advised Henderson of his rights, Miranda, to which he advised I/o that he understood his rights and he was willing to tell I/o everything. I/o, in the mean time, called for a road unit to meet I/o and Mefford at this location to transport Henderson to the Lexington Jail. He said on July 4th he was at home with his wife his two children and his wife's brother Sire Powell. He said he saw Powell talking about wanting to rob a neighbor. He said he saw Powell change clothes and leave the residence on foot. Henderson further advised I/o that a little later he saw Powell return to his house and say he robbed the neighbor and he stole the neighbor's wallet and handgun. At this time the neighbor had come out of the incident location and began to shoot a shotgun. Henderson said he later found out that Powell threw the gun in the backyard. Henderson said he got the handgun the next day and then took it to the pawn shop to sell it. Henderson was transported to the Lexington Jail with out incident.

On 07-07-06 at 1430 hrs I/o and Det Mefford went over to [REDACTED] to talk to Henderson's wife about these test developments. I/o met with Donna Powell, b/f, DOB 12-11-65, and I/o advised that her husband was arrested for having possession of the handgun that was stolen from the home invasion on July 4th. Donna said on the that night she remembers that after he neighbor got robbed she heard Henderson saying that he needed to get rid of a gun. She said that night Sire was wearing diamond stud earrings in both ears. (as described by the victim).

On 07-10-06 at 1720 hrs I/o brought Henderson over to the Sheriff's Office from the jail so I/o could interview him. I/o first verbally advised Henderson of his rights and he advised I/o he understood and he still wanted to tell I/o everything and he would write I/o a statement. I/o then showed him the Miranda rights on the statement form and read him initial each right after he read each right. Henderson advised I/o that in 07-04-06 after his neighbor got robbed he observed S. Powell and his son Deshawn come running into the house. He said they appeared scared and looked as if they had been running. He said he was told by Powell that he and Deshawn robbed the neighbor with a 9 mm gun. He said he was also told by Powell that they got money and was going to get the victim's truck but decided

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
☒ YES	☐ NO	☒ YES	☐ NO	☐ UNFOUNDED	☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
				☐ ADMINIST. CLOSED		
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST						
REPORTING OFFICER die Prestigiacomo	DATE 07-31-06	UNIT NUMBER 324	APPROVING OFFICER		DATE	UNIT NUMBER
REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER

ORIGINAL COMPLAINANT ☐ OR VICTIM ☒	
NAME: Kirkland, Randy	DATE OF BIRTH:
STREET ADDRESS:	RACE: SEX:
CITY - STATE - ZIP:	AGE:
INCIDENT TYPE: Armed Robbery	
ORIGINAL SUSPECT:	
NAME: unknown	DATE OF BIRTH:
STREET ADDRESS:	RACE: SEX:
CITY - STATE - ZIP:	AGE:

RECOVERED PROPERTY DOLLAR AMOUNT: \$

CANCEL NCIC ENTRY: YES NO

ot to take it. He said Powell went into the details on how the robbery went down to include that a white guy named ommy was the lookout as he and Deshawn went in to rob them. I/o obtained a written statement from Henderson. o then escorted Henderson back to the jail without incident.

his date at 2015 hrs i/o and Det Mefford went back over to [REDACTED] to talk to Dashawn, later identified as Kareem Dashawn Powell, 17 yoa, b/m, who came out of house to talk to both i/os. I/o first advised him that his father was arrested for being in possession of the handgun from the robbery of his neighbor and then i/o verbally advised him of his rights, Miranda. He advised i/o that he understood his rights and was willing to talk to i/o about his involvement in this case. He asked i/o if he was going to get arrested and i/o advised him that he was going to get arrested. I/o then showed him the statement form and i/o had him initial each right. I/o asked him what he did and he advised i/o that it was all his Uncle Julius Powell's idea (previously referred to as Sir Powell). He said Powell said to him lets go rob those people as he pointed to this neighbor's house (incident location). He said on that night he heard his friend Tommy (white guy) tell Powell that those people have money. He said he got dressed in all black and soon after he, Powell, and Tommy left his residence to go rob the neighbor. He said Powell was in charge of the whole operation. Powell made Tommy stand look out near the back door as Powell kicked it open and went inside as he followed Powell in. He said he heard Powell yell, as they entered the residence, "ATF get down" (this detail was not divulged to anyone in the investigation to include Deshawn). He said Powell did everything and asked all the persons inside where the money was. He said he was so scared he could barely move. He said Powell got money and then they all went back to the house. He said Powell took all of his clothes and his sneakers in order to apparently get rid of the evidence. He said Powell and Tommy talked about robbing another house and he told them that he was not getting involved in any more robberies. I/o obtained a written statement from Kareem. After writing the statement Kareem was placed under arrest and soon after transported to the Lexington County Jail without incident.

On after i/o made contact with Judge Rawl and he agreed to meet i/o at his office to get warrants on Julius Powell and get him NCIC due to his potential to be a flight risk. I/o met with Judge Rawl and after apprising him about this case and investigation he issued warrant numbers J-055994 Burglary first degree, J-055995 Kidnapping, and J-055996 Armed Robbery with a deadly weapon. I/o later had Powell put onto NCIC.

11-11-06 at around 1100 hrs Det Mefford received a call from Powell who informed i/o and Mefford that he wanted to turn himself in to get arrested. Road units were able to find him and he was arrested. Powell was transported to the Lexington County Jail. I/o and Det Mefford met with Powell in the interview room at the Sheriff's office. I/o first advised him of his rights, Miranda. He advised i/o that he understood his rights.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ UNFOUNDED ☐ ADMINIST. CLOSED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
YES ☒ NO ☐		YES ☒ NO ☐							
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM/WITNESS DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE, NO ARREST									
REPORTING OFFICER Edie Prestigiacomo		DATE 08-02-06		UNIT NUMBER 324		APPROVING OFFICER		DATE	
REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	

James R. Motts, Ed. D.

LEXINGTON COUNTY SHERIFF'S DEPARTMENT

November 18, 2009

Lee T. Connelly
Info, Inc.
Post Office Box 5415
Columbia, South Carolina 29250

Re: Julius Powell, #322080 v. State

Dear Lee:

After our telephone conversation and your missive, I have spoken with the evidence custodian regarding Julius Powell and Lexington County Sheriff's Department case number 06055473. It is my understanding that after Mr. Powell pled guilty on May 24, 2007 to his charges that all evidence, including a shoe impression, was destroyed. If you have any further questions or concerns, please do not hesitate to contact me.

Best regards,

John W. Tate
John W. Tate
General Counsel

/kal

✓
S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
HEATH P. TAYLOR
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY
WILLIAM H. EDWARDS
STANLEY L. MYERS
BARRY L. THOMPSON, II

OF COUNSEL
BILLY C. COLEMAN



1700 SUNSET BOULEVARD (HWY. 378)
POST OFFICE BOX 5709
WEST COLUMBIA, SOUTH CAROLINA 29171
TELEPHONE (803) 796-9160
FAX (803) 791-8410
November 22, 2006

799
GREENVILLE OFFICE:
23 WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609
TELEPHONE (864) 271-6371
FAX (864) 271-1707

SALUDA OFFICE:
110 S. MAIN STREET
SALUDA, SOUTH CAROLINA 29138
TELEPHONE (864) 445-4544 or
1-866-604-4544
FAX (864) 445-7441

REPLY TO WEST COLUMBIA OFFICE

C. Dayton Riddle, III, Esquire
11th Circuit Solicitor's Office
205 E. Main Street
Lexington, South Carolina 29072

FILE COPY

Re: The State of South Carolina v. Julius Powell
Warrant Nos. J-055994; J-055995; J-055996

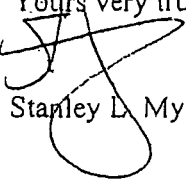
Dear Dayton:

Thank you for speaking with me on Wednesday, November 15, 2006. This will confirm our conversation wherein you told me that you do not believe you can make any recommendations for jail time less than ten (10) years. You believe Mr. Powell will have to plead guilty to an armed robbery which has mandatory jail time of ten (10) years and burglary. From speaking with Mr. Powell, he does not wish to plead guilty for that amount of time.

Based thereon, I enclose a Motion to be Relieved as Mr. Powell's counsel. As we discussed, I recently learned that I will be deployed to Afghanistan for possibly up to fourteen (14) months. Mr. Powell has indicated his willingness to exercise his right to a speedy trial. I certainly cannot file such a motion while I am on deployment. I would appreciate you contacting my legal assistant, Karen, and notifying her of a date as to when we can argue this Motion. I would prefer we argue it before Judge McMahon whom I understand is on vacation until some time after Thanksgiving.

Please call me with any questions you might have.

Yours very truly,


Stanley L. Myers

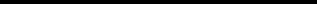
SLM/kbk
Enclosure

cc: Mr. Julius Powell - with enclosure

#8



Primary Incident Type: Home Invasion/ Kidnapping



SUSPECT(S): Henderson, Freddie

Date & Time turned into Evidence Room

07-10-06 // 1430 hrs

Disposition Code Definitions:
D-Destroyed R-Released
A-Agency AU-Auction

Evidence Room Use Only

BAR CODE

☒☐☐☐

"E" Number

E70660

DATE & TIME

CRIME SCENE REPORT
LEXINGTON COUNTY SHERIFFS DEPARTMENT
IDENTIFICATION DIVISION

Prestigiacomo

CASE #: 06-055473

OFFENSE: Burglary

REGION:

VICTIM: Randy Kirkland

LOCATION: [REDACTED]

Summary of Incident: Suspects came to the front door and tried to pry the door open but failed. The suspects then went to the rear door and kicked to door open.

- There was a shoe impression on the rear door.
- The impression was photographed and lifted.
- The dead bolt was not in place on the rear door.
- Several photographs of the scene and of suspect's shoes were taken.

Rec: 1515
Arrived: 1551
Dep: 1700

06-05-06 15:15

CONFERRED WITH DETECTIVE/ REQUESTING OFFICER: Prestigiacomo / Mefford TIME: 1650

REPORTING OFFICER: J. L. Hickman

DATE: 7/5/06

ORIGINALSTATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Julius Powell, 322080,)

DOCKET NO: 2007-CP-32-4377

Applicant,)

v.)

ORDER DENYING POST CONVICTION
RELIEF APPLICATION AND
GRANTING WHITE V. STATE APPEAL

State of South Carolina,)

Respondent,)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post Conviction Relief filed on December 4, 2007. The State submitted a Return on or about May 1, 2008. The Applicant, through appointed counsel, submitted an Amendment to Application for Post Conviction Relief on January 20, 2010, which added the following specific allegations to his original allegation of "ineffective assistance of counsel" and "guilty pleas were not knowing, voluntary and intelligent" and specifically requested a belated direct appeal:

1. Ineffective assistance of trial counsel and involuntary guilty plea, specifically but not limited to the following grounds:
 - a. Failure to properly prepare and investigate the case.
 - i. Counsel failed to thoroughly review the discovery with the Applicant prior to his plea.
 - ii. Counsel failed to meet with the Applicant and properly prepare for trial and/or plea.
 - iii. Counsel failed to conduct an independent investigation or speak with any witnesses.
 - iv. Counsel failed to utilize the investigative work conducted by Lee Connelly and obtain additional funding for her to complete her investigation.

FILED

2010 MAR -5 A 11:17

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

- v. Counsel failed to look into the Applicant's alibi defense or speak with his alibi witness.
 - vi. After informing the Applicant that his co-defendant's would testify against him, counsel failed to prepare for potential impeachment of the Applicant's co-defendants
- b. Failure to provide effective assistance of counsel during the plea phase.
- i. Counsel advised the Applicant that he could plead no contest but the plea was a straight up guilty plea.
 - ii. Counsel did not properly prepare himself or the Applicant for mitigation.
2. The Applicant is also alleging that counsel failed to file a direct appeal as was requested by the Applicant. Therefore, the Applicant is requesting a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

An evidentiary hearing into the matter was held on February 5, 2010 at the Lexington County Courthouse in front of the Honorable R. Lawton McIntosh. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by A. West Lee, Assistant Attorney General.

At the beginning of the hearing, Applicant's counsel called Lee T. Connelly, Private Investigator, to the stand. The Applicant testified on his own behalf and PCR counsel admitted eleven exhibits. Plea counsel, Lowell Bernstein, Esquire, also testified during the evidentiary hearing. This Court also had before it a copy of the Application, the Respondent's Return, the Applicant's Amendment, the records of the Lexington County Clerk of Court concerning the subject conviction, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted for Burglary, First Degree (2007-GS-32-1126), Kidnapping

(2007-GS-32-1127) and Armed Robbery (2007-GS-32-1128) during the April 2007 term of the Lexington County Grand Jury.

On May 24, 2007, the Applicant entered a guilty plea to Burglary, Second Degree, Kidnapping and Armed Robbery in front of the Honorable L. Casey Manning. The Applicant was represented by Lowell Bernstein, Esquire. The Honorable L. Casey Manning sentenced the Applicant to concurrent terms of fifteen (15) years for Burglary, Second Degree, eighteen (18) years for Kidnapping and eighteen (18) years for Armed Robbery. The Applicant did not appeal his plea or sentence.

APPLICABLE LAW

In a PCR Action, the “burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

A. Ineffective Assistance of Counsel and/or Involuntary Guilty Plea

It is well established that a guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). In South Carolina, the courts have consistently held that that a defendant must have a full understanding of the consequences of his plea and the charges against him. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997), Simpson v. State, (317 S.C. 506, 455 S.E.2d 175 (1995).

In PCR, an Applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an Applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel’s representation fell

below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the Applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000).

More recently, in Stalk v. Sate, 383 S.C. 559, 681 S.E.2d 592 (2009), the South Carolina Supreme Court clarified the prejudice requirement set forth in Hill. The Court reasoned that an Applicant must show that something would have affected counsel's advice for the Applicant to accept the plea bargain offered or that would have caused the Applicant to decline to accept the plea in order to meet the prejudice requirement.

B: Belated Direct Appeal

Pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), the Applicant has requested a belated direct appeal. In Jones v. State, 382 S.C. 589, 677 S.E.2d 20 (2009), the South Carolina Supreme Court cited to Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) and held:

[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.

The Supreme Court also noted that absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. See Jones, 382 S.C. at 596, 677 S.E.2d at 20 (citing Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea

would arise when the defendant inquires about an appeal.” See Id. (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED
AT POST CONVICTION RELIEF HEARING

A. Testimony of Julius Powell

When he was called to the stand, the Applicant testified that he filed the present Application and Amendment alleging involuntary guilty, ineffective assistance of counsel and requesting a belated direct appeal. The Applicant also acknowledged that he was indicted for Burglary, First Degree, Kidnapping and Armed Robbery in Lexington County and that he entered a plea to Burglary, Second Degree, Kidnapping and Armed Robbery on May 24, 2007 in front of the Honorable L. Casey Manning at the Richland County Courthouse. The Applicant testified that he received a total sentence of eighteen (18) years.

The Applicant recalled that he was arrested on July 11, 2006 and that he appeared at a bond hearing where bond was denied. He further recalled that Stanley Myers, Esquire, was appointed to his case approximately one month after his arrest. The Applicant remembered that Mr. Myers was actively preparing his case for trial, and he obtained indigent funds for Lee T. Connelly, Private Investigator, to work on the Applicant’s case. The Applicant recalled meeting with Ms. Connelly two times and going over the discovery and case documents with her. He further recalled providing her with a timeline of his activities at or around the time of the alleged crime. Applicant’s Exhibit #1. He also recalled providing her with the name and contact information for his alibi witness, Deborah Stephenson. Applicant’s Exhibit #2.

While on the stand, the Applicant identified a letter dated November 22, 2006 between the Solicitor's Office and Mr. Myers. Applicant's Exhibit #7. The Applicant explained that Mr. Myers found out he was going to be deployed, so he tried to obtain a favorable plea for the Applicant prior to his deployment. As indicated in the letter, the State refused to go below ten years, so Mr. Myers filed a Motion to be Relieved, which was granted. Thereafter, Lowell Bernstein, Esquire, was appointed to the Applicant's case.

The Applicant testified that Mr. Bernstein worked on his case for approximately two months. During that time, the Applicant remembered meeting with him two times. The Applicant was adamant that he asked Mr. Bernstein about Ms. Connelly's investigation and requested that he work with her on his case, but counsel failed to do so. He also recalled informing counsel about his alibi witness and Ms. Connelly's meeting with her, but counsel failed to follow up with his alibi witness or Ms. Connelly regarding the matter.

The Applicant also testified that counsel failed to review the discovery with him. Specifically, the Applicant testified about the Lexington County Sheriff's Office Investigative Report dated July 5, 2006. Applicant's Exhibit #5. The Applicant pointed out that the report contained the following information, which he asked counsel to further investigate:

1. A size 9-10 Fila shoe print was obtained from the back door of the victim's residence;
2. The victim saw a white station wagon parked down the road after the robbery and at the neighbor's house (residence of Freddie Henderson and Donna Powell);
3. The taller suspect yelled "Shawn or Deshawn let's go;"
4. Officers spoke to Christina at the neighbor's home about her white station wagon;

5. Officers received information from the victim that Vicki Amick, friend of victim's wife, kept her children at John Vesey's home. Ms. Amick was informed that Mr. Vesey was approached by a black male about purchasing a hand gun and he referred him to "Big John's Pawn Shop" to sell the gun;
6. Officers went to the pawn shop and obtained records that established that Freddie Henderson had pawned the weapon stolen from the victim's residence;
7. Henderson was arrested and gave a statement that implicated the Applicant.

The Applicant testified that counsel failed to look into any of the information contained in the investigative report. The Applicant also indicated that he asked counsel to look into the information contained in the victim's statement, but he did not. Applicant's Exhibit #10. Finally, the Applicant testified that he asked counsel to determine if results were obtained for the shoe print lifted from the victim's residence and the shoe's taken from Henderson's residence, but counsel failed to investigate this matter. Applicant's Exhibit #9.

The Applicant remembered that counsel informed him that his co-defendant's would testify against him at trial. The Applicant testified that counsel did not investigate his co-defendants or prepare for potential impeachment of their testimony.

The Applicant recalled receiving only one plea offer, and counsel informed him that the State would allow him to plead no contest. The Applicant testified that it was his understanding that the Judge would only accept a straight up guilty plea. Plea Transcript p. 30. The Applicant recalled informing the Judge that he had undergone alcohol treatment for six months, but he had relapsed. He also recalled apologizing, and he explained that counsel had told him to prepare a written apology statement on the day of his plea. Applicant's Exhibit #11. He further recalled the Court advising him about his

right to appeal, and the Applicant testified that he requested that counsel file an appeal for him.

B. Testimony of Lee T. Connelly

When called to the stand, Lee T. Connelly explained that she worked as a private investigator and that she had the opportunity to work with Stanley Myers, Esquire, on the Applicant's case. She recalled meeting with the Applicant at Lexington County Detention Center and preparing a report, which contained a timeline of his activities at the time of the alleged crime. Applicant's Exhibit #1. She further recalled that the Applicant informed her that he was at his sister Donna Powell's home, in the same neighborhood as the victim, on July 4th to bring her a rent payment since she was facing eviction. Therefore, Ms. Connelly obtained eviction documents from Lexington County to verify the information she obtained from the Applicant. Applicant's Exhibit #3.

Ms. Connelly also remembered that the Applicant informed her that he was at the home of Deborah Stephenson during the time of the alleged crime. She testified that she had the opportunity to meet with Ms. Stephenson one time at Olive Garden and she prepared a report dated November 1, 2006. Applicant's #2. Ms. Connelly testified that she did not conduct any further investigation because she contacted Mr. Myers office and found out he had been deployed. She also testified that she never heard from Mr. Bernstein regarding the Applicant's case.

Ms. Connelly testified that PCR counsel contacted her about the PCR Application and obtained indigent funds for her to follow up on her original investigation of the case. Ms. Connelly explained that she tried to locate Ms. Stephenson to further investigate the Applicant's alibi defense, but she discovered that Ms. Stephenson was deceased. Ms.

Connelly identified probate documents she obtained from Richland County, which reflected Ms. Stephenson's date of death as October 6, 2007. Applicant's Exhibit #4.

Due to the information contained in the police reports and at PCR counsel's request, Ms. Connelly also explained that she went to Big John's Pawn Shop and obtained records pertaining to Freddie Henderson. She testified that the records reflected that Freddie Henderson came to the pawn shop three times and only pawned one gun, the gun at issue in the case. She also found out that Lexington County Sheriff's Department took the gun on July 10, 2006, but it was unknown if they took a copy of the video surveillance.

Also at counsel's request, she testified that she met with John Vesey. Ms. Connelly explained that Mr. Vesey remembered taking a black male to the junk yard and the black male told him that his son had gotten a gun from his neighbor and he was afraid his son would hurt himself with the gun. She further explained that Mr. Vesey did not remember anyone named Vicki Amick. Ms. Connelly noted that her attempts to locate Ms. Amick were unsuccessful.

Finally, Ms. Connelly explained that she contacted the Lexington County Sheriff's Department to look into the matter involving the shoe print and confiscated shoes. Ms. Connelly identified and counsel admitted the response Ms. Connelly received indicating that the evidence was destroyed. Applicant's Exhibit #6.

C. Testimony of Lowell Bernstein

After PCR counsel called him to the stand, Mr. Bernstein testified that he had spent three years of his career as an attorney at the Lexington County Solicitor's Office and he had spent twelve years in the area of civil litigation. He recalled that he was

appointed to the Applicant's case since Mr. Myers was being deployed. He further recalled speaking with Mr. Myers about the case and receiving a complete copy of his file. He remembered representing the Applicant for approximately four months and meeting with him six times. He also remembered exchanging numerous phone calls with the Applicant and his wife.

When asked if he was aware of Ms. Connelly's investigation, he indicated that he would have seen and reviewed her reports in Mr. Myers file. He explained that he determined that it was not necessary to further use her services since it was a "plea case." He further explained that he talked with the Applicant about everything in the case and advised him that a plea was best due to the overwhelming evidence. When asked by PCR counsel about the overwhelming evidence, counsel replied that he was also concerned about the mandatory sentences and potential of life without parole handing over the Applicant's head.

Mr. Bernstein further recalled reviewing the discovery and the evidence in the Applicant's case. He testified that he thought there was a report regarding the footprint lifted from the scene, but he could not locate the report. He also testified that he would have developed possible defenses and investigated the co-defendants if the case was headed to trial, but he did not since it was on a plea track. He also testified that he did not speak with Ms. Stephenson, but he found the Applicant's alibi to be weak.

Regarding the plea, Mr. Bernstein testified that there were many negotiations but only one offer. He could not specifically remember the plea or advising the Applicant to prepare a written apology. He did recall that he did not force or coerce the Applicant to

take the plea. He also could not recall the Applicant requesting a direct appeal, but he did recall that he did not file an appeal on the Applicant's behalf.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearings. This Court has also had the opportunity to observe each witness and pass upon his/her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of the Applicant to be credible regarding his request for a belated appeal. This Court also finds the testimony of Lee T. Connelly and Lowell Bernstein, Esquire, to be credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Based upon the testimony and arguments presented at the evidentiary hearing, this Court finds and concludes that plea counsel provided effective assistance to the Applicant in regards to preparation and investigation prior to the entry of the Applicant's plea. Plea counsel testified that he obtained the Applicant's file, fully reviewed it and met with the Applicant a number of times. He also testified that he determined that further investigation and the use of an investigator were not needed since he was not preparing the case for a trial. Even though Ms. Connelly conducted further investigation for PCR counsel, this Court is not persuaded that Mr. Bernstein's decision to not further utilize her services was in error since he explained that he was not preparing the case for trial.

The Court further finds that the Applicant has failed to establish that he was prejudiced as a result of counsel failure to properly prepare and investigate his case prior

to his plea. Despite PCR counsel's argument that the alibi defense could not be fully explored since the alibi witness is deceased, this Court finds that the Applicant's alibi defense was not solid, and he was not prejudiced by plea counsel's failure to contact Ms. Stephenson prior to her death. This Court also finds that the Applicant has failed to show prejudice resulting from the destruction of the evidence and the possible failure to test the footprint obtained from the crime scene. In all, this Court finds that the Applicant has not made a showing of actual prejudice resulting from the counsel's preparation and investigation of his case prior to the entry of his plea.

As to the plea, this Court has reviewed the plea transcript and heard the testimony of the witnesses. As a result, this Court finds that plea counsel did not provide ineffective assistance of counsel during the plea phase of the Applicant's case. This Court finds that the Applicant has not made a showing of actual prejudice resulting from the counsel's representation during the entry of his plea.

This Court finds and concludes that the Applicant has established that he requested that counsel file his direct appeal, which amounts to an extraordinary circumstance warranting a belated direct appeal. See Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). This Court further finds that plea counsel was unable to recall the plea or the Applicant's request for a direct appeal, so the Applicant's testimony was not refuted.

Therefore, based upon the foregoing, this Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. This Court concludes that the Applicant is entitled to a belated review of his conviction. The

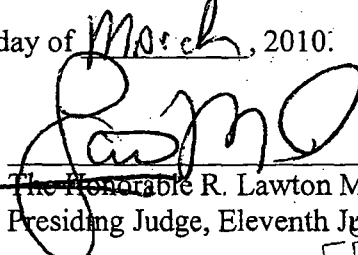
Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

This Court further finds that no other allegations beyond those addressed herein were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. The post-conviction relief application is denied and dismissed with prejudice, but the Applicant is entitled to a belated direct appeal of his conviction pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' conviction. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 243(i) for the appropriate procedure for securing belated appellate review.
3. The Applicant is remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of March, 2010.


The Honorable R. Lawton McIntosh,
Presiding Judge, Eleventh Judicial Circuit

Anderson, South Carolina

FILED
MAR - 5 A 11:17
JETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

WITNESSES

CSD
restigiacomo

DOCKET NO. 2007-GS-32-1126

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

Julius Powell

AKA Julius Linbergh Powell

A-2006-32-01863

3/16/2007 9:58 AM

ARREST WARRANT NUMBER

055994

ACTION OF GRAND JURY

TRUE BILL

CRK

Foreman

oreperson of Grand Jury

ate: 4-2-07

VERDICT

CDR# 0079

Indictment for

Burglary in the First Degree

§16-11-311

DONALD V. MYERS, SOLICITOR

oreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Burglary in the First Degree

§16-11-311

At a Court of General Sessions, convened on APRIL, 2007, the Grand Jurors of Lexington County present upon their oath:

That Julius Powell did in Lexington County on or about July 04, 2006, knowingly and willfully enter a dwelling, to wit: residence located at 195 Sandy Oak Lane, Gaston, SC, being the dwelling of Randy Kirkland, without consent and with the intent to commit a crime therein and was armed with a deadly weapon and/or the entering or remaining occurs in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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


ASSISTANT SOLICITOR

WITNESSES

CSD
restigiacomo

DOCKET NO. 2007-GS-32-1127

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

Julius Powell

AKA Julius Linbergh Powell

A-2006-32-01863

3/16/2007 10:04 AM

ARREST WARRANT NUMBER

055995

NOTION OF GRAND JURY

TRUE BILL

A. Z. K.

Foreman

Representative of Grand Jury

Date: 4-2-07

VERDICT

Representative of Petit Jury

Date:

CDR# 0095

Indictment for

Kidnapping

§16-3-910

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Kidnapping

§16-3-910

At a Court of General Sessions, convened on APRIL, 2007, the Grand Jurors of Lexington County present upon their oath:

That Julius Powell, did in Lexington County on or about July 04, 2006, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Randy Kirkland by any means whatsoever without authority of law, and without his consent, to wit: the defendant confined the victims at the residence while co-defendants looked for money, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

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



ASSISTANT SOLICITOR