

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

DEC 29 2014

S.C. Supreme Court

THADDEUS CURRY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000839

APPENDIX

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Relevant trial facts

Ronald Coursey lived on Beech Island, South Carolina. He had known the decedent five years. They were roommates. R. 6, ll. 3-13. Coursey and the decedent did not know petitioner. R. 6, ll. 12-13.

Coursey and the decedent were smoking marijuana and drinking on March 18, 2003. It was St. Patrick's Day. Coursey testified they wanted to purchase some marijuana, and sell it for a profit. R. 6, l. 13-7, l. 16.

Coursey and the decedent saw petitioner and Anthony Savage that day. They inquired about purchasing a quarter pound of marijuana from them. Coursey offered that a quarter pound of marijuana usually costs two hundred and fifty dollars depending "on the quality." R. 7, l. 17-8, l. 13. Coursey went with the descendant to an ATM to withdraw the agreed upon price—two hundred and twenty dollars – so that they could purchase the marijuana. R. 8, l. 25-9, l. 25. When Coursey and the decedent returned they were informed "they couldn't do it right now, but they could do it later." R. 9, ll. 22-25.

Coursey acquired a cell phone number from Savage, and he later called him from a pay phone at a gas station.¹ R. 10, l. 10-11, l. 9. The decedent returned from the pay phone and told Coursey the deal "was on." "We're going to meet them on the other side of the gas station." R. 11, ll. 2-11. Once they got to the other side of the gas station, Coursey pulled out his scales to weigh the

¹ The decedent wrote the cell phone number down on his hand. R. 61, ll. 15-23. The fact the phone belonged to Savage was revealed during his testimony. R. 134, ll. 14-19.

marijuana. However, Coursey recalled, "they started getting aggressive, talking to us." "We got the stuff, you need to show us the money." R. 11, l. 24- 12, l. 3.

Coursey remembered petitioner and possibly Savage saying, "give us the fucking money." R. 13, ll. 5-7. Coursey said petitioner walked back into the bushes, returned with a gun, and "started shooting." R. 13, ll. 1-12. The decedent was shot in the head. R. 14, ll. 18-23. Coursey called the police. R. 16, ll. 8-16. Coursey admitted he could not give the 911 dispatcher a description of the shooter following the shooting. R. 40, l. 12- 41, l. 7. Coursey testified a week later the only description he could give the police was that the shooter was a black male wearing a white tee-shirt. R. 43 ll. 12-25. As will be seen infra, the defense would attempt to show that the shooter was in reality either Savage or Simuel.

Black bag evidence

The solicitor began the "black bag" testimony with witness Jeremy Simuel. Simuel testified he worked with petitioner for a while at the Wal-Mart. R. 65, l. 23-66, l. 5. Simuel claimed on the day of the purposed drug deal petitioner was carrying a black bag. R. 66, ll. 18-22. 125. Defense counsel objected because the solicitor was attempting to get into prior events involving petitioner and the alleged black bag, and attempting to get improper character or improper habit evidence before the jury. R. 68, l. 1- 70, l. 13.

However, the solicitor was relentless in his efforts to get these prior prejudicial allegations before the jury. The solicitor asked Savage why he threw petitioner's black bag in the bushes at the gas station. Savage answered that he did not want petitioner to get access to it because *he knew how petitioner acted*. R. 113, l. 21- 114 l. 2. (emphasis added). Defense counsel asked that Savage's answer be stricken under Rule 404 (b), SCRE. The judge not only

refused to strike this testimony as improper, he overruled petitioner's objection. R 113, l. 22-114 l. 8.

Simuel claimed during the incident at the gas station that he stayed inside the vehicle while Savage and petitioner went to get the money for the marijuana. R. 73, l. 9-74, l. 2. Simuel testified that about three minutes passed before petitioner and Savage came running back to the car. Simuel claimed petitioner was saying "I done told you I ain't no joke... let the KKK march this."² R. 74 ll. 4-14.

On cross-examination, Simuel admitted petitioner was wearing a brown jacket on the evening of the drug deal. The significant of that testimony was that the shooter was said to be wearing a white tee-shirt. R. 86 ll. 13-17.

The Court of Appeals held, in its revised opinion, that "Curry contends the testimony regarding 'the 'black bag' where Curry allegedly kept his gun was inadmissible under Rule 404(b), SCRE.³ Any possible error by the circuit court was harmless given the other evidence admitted at trial." State v. Curry, Op. No. 4159 (Refiled February 5, 2007) at n. 2. App. 29.

Sentencing exposure

Defense counsel asked Simuel on cross-examination if he was hoping the state would recommend a light sentence for him given his testimony and his pending charges for murder,

² The KKK reference apparently was to the Ku Klux Klan marching at the Masters in Augusta at the time.

³ Petitioner sought rehearing, inter alia, on the grounds that the Court of Appeals had failed to address this issue in its original opinion. App. 18-20.

attempted armed robbery and possession of a weapon. Simuel denied he wanted a lenient sentence -
- "I'm just hoping that justice is served." R 87 ll. 15-21.

When petitioner earlier attempted to cross-examine Simuel about the potential life sentence he faced for murder and twenty-year sentence for armed robbery, the solicitor objected. The judge sustained the objection. The judge told the jury to disregard anything regarding potential sentences for any of the offenses that are charged. "It's not in the jury's purview..." R. 81, l. 23- 82, l. 25.

Defense counsel took strong exception to the judge's ruling. He cited this Court's decision in State v. Mizzell 349 S.C. 326, 563 S.E.2d 315 (2002) in support of his right to this cross-examination. Defense counsel argued the potential penalties the accomplices faced went to their bias and motive to misrepresent their testimony. This made this perfectly permissible cross-examination. R. 99, l. 15-103 l. 10. The judge stated he was not going to allow the defense to proffer the evidence. He ruled the issue was preserved for appeal as the record stood. R. 102, l. 4-104, l. 22.

The judge reasoned this cross-examination was only deemed admissible in State v. Mizzell because it involved a plea bargain. The judge stated that since there was no evidence of a plea agreement with Simuel in this case, that cross-examination about his sentencing exposure was therefore improper. R. 104, l. 15-105, l. 8.

Savage's testimony - same error repeated

Anthony Savage then testified and he also blamed the shooting on petitioner. R. 117, l. 5-118, l. 23. Savage claimed he said to himself after the shooting -- "I hope he ain't shot this dude." R. 119, ll. 1-24. On cross-examination Savage denied he wanted to make a deal with the state. Savage proclaimed: "I'm just telling the truth. It really doesn't matter." R. 130, ll. 5-10.

Following the testimony, defense counsel asked the judge to revisit the issue of Simuel's and Savage's bias due to their sentencing exposure. Defense counsel argued that he should not be prohibited from arguing to the jury about sentencing exposure and bias. The solicitor argued the judge had ruled correctly and that he should not alter his ruling. The judge then ruled it would be improper for the defense to argue anything regarding sentencing to the jury. R. 195, l. 1-198, l. 4.

In his closing argument, the solicitor told the jury, "There's no doubt in my mind that there are three murderers in this case." R. 222, ll. 7-14. "They know what's going on. . . They know what the plan is." R. 221, ll. 22-24.

Court of Appeals Opinion and Rehearing

The majority of the Court of Appeals agreed the trial judge's rulings and reasoning regarding cross-examination of Simuel and Savage about their sentencing exposure were both error, but it found in both of its opinions that the error was harmless. App. 3-4; 27-29.

Petitioner took strong exception to the holding of harmless error on rehearing.⁴ He noted:

[T]he majority also agreed the trial judge erred by reasoning Mizzell only applied if there was a plea agreement or guilty plea. The lack of a plea agreement, the majority noted, means the witness is more likely to engage in biased testimony in order to obtain leniency in the future. However, the majority of this Court nonetheless concluded that the testimony of Savage and Simuel was cumulative to that of Coursey and Rushon, and therefore the error was harmless.

The fact that Rushon, who later picked up appellant, Savage and Simuel testified that appellant allegedly said to Savage "they would never find it [the gun]" could be construed to mean that appellant was guilty an accessory after the fact for assisting Savage and/or

⁴ As stated, rehearing was denied, but the Court of Appeals issued a revised opinion finding harmless error in the "black bag" Rule 404, SCRE, propensity evidence issue in footnote two. App. 29.

Simuel in destroying or hiding the gun. R. 161; r. 258, l. 3 – 259, l. 24.

Further, the fact that victim of the robbery, Coursey, identified appellant as the shooter should not be viewed as making this fundamental trial error under Mizzell harmless -- particularly given the circumstances of his identification and his statement to the police after the incident.

If cross-examination is the greatest single engine designed at getting to the truth, appellant and the jury were both surely denied its benefit since the jury did not have any real appreciation of Savage's and Simuel's extremely strong motive to misrepresent the truth, and make appellant the scapegoat for the murder to save themselves from life without parole sentences. Moreover, the inaccuracy of eyewitness identification is well documented. The dissent correctly noted:

"Here, Simuel and Savage's testimony was critical to the case's outcome. They testified to Curry's motive; to his possession of a gun similar to that used in the shooting; to his conduct before the after the shooting; and to self-incriminating statements Curry made about discarding the weapon. Most significantly, Savage testified to seeing Curry fire the gun. Without their testimony, the only evidence linking Curry to the crime scene is Coursey's vague and unspecific testimony. *660 *Coursey provided few details of the gunman in the description he provided to the 911 dispatcher immediately after the shooting and in his written statement to police made one week later. Coursey testified the shooting occurred in a dark area, and that he met Curry and Savage for the first time hours before in another dark location. Moreover, Coursey testified he observed the shooting after spending several hours drinking alcohol and smoking marijuana. Consequently, the testimony of Simuel and Savage provided the crucial nexus establishing Curry as the gunman.*"

State v. Curry, 370 S.C. 674, 636 S.E.2d 649, 659-660 (Ct. App. 2006). (emphasis added).

Savage and Simuel had all the motive in the world to implicate appellant since this would result in leniency for them. Their testimony was crucial, and what Rushon and Coursey had to say, in context, did not make this fundamental trial error harmless.

Rehearing petition. App. 17-18.

Jury charge issues

Defense counsel was provided with a copy of the trial judge's proposed jury instructions. Defense counsel requested an instruction that "if two or more combined together to commit an unlawful act and a crime is committed by one of the actors *"as a probable and natural consequence of the acts done in pursuance of the common design,* all present and participating in the unlawful undertaking are as guilty as the one who committed the act." R. 198 l. 5-199 l. 19. (emphasis added).

Defense counsel also took exception to the judge's instruction that "guilt as a principal is shown by actual or constructive presence at the scene as a result of a [prior arrangement]." Counsel argued that this instruction could be construed to mean that if the defendant were present at the crime scene he was guilty as a principal. Counsel argued this amounted to a prohibited presumption, and that it should not be charged. R. 199 ll. 20-200, ll. 13; R.202 ll. 9-2031 ll. 9.

Over objection, the judge charged that "guilt as a principal is shown by actual or constructive presence at the scene as a result of [a] prior arrangement. Therefore, a finding of a prior arranged plan or a common scheme is necessary for finding of guilt as a principal." R. 233 ll. 14-18.

Defense counsel took exception to the judge's hand of one hand of all charge -- as he had previously -- and he renewed his objection to not charging that the homicide had to be a probable or natural consequence of the preexisting plan. R. 241 ll. 22-242 ll. 10.

To exacerbate the error, the jury requested another instruction on the hand of one is the hand of all. R. 244 ll. 13-17. The judge again repeated the objectionable language and refused to give the "probable or natural consequence" instruction requested by the defense. R. 245 ll. 18-

247 ll. 25. The judge again noted defense counsel's continuing objection to this instruction. R.
248 ll. 12-14.

Court of Appeals

The Court of Appeals noted that there were cases from this Court on accomplice liability that approved of jury charges *with and without* the "probable or natural consequences of the acts done in pursuance of the common design." The Court therefore held that petitioner had not shown error in the trial judge's charge, and that the charge as a whole "adequately charged the law regarding 'hand of one hand of all.'" State v. Curry, 370 S.C. 674, 683, 636 S.E.2d 649, 654 (2006). App. 4-6; 29-32.

The dissent agreed with petitioner that the trial judge erred, and wrote that:

I would hold that here, as in Peterson, the facts and circumstances warrant the language requested by Curry. Evidence presented at trial suggested the possibility that the codefendants met Hamilton and Coursey under the pretense of selling them marijuana, but in fact had no marijuana to sell and only intended to rob them of their money. The testimony is not conclusive that the codefendants agreed to use weapons to accomplish the crime; only that one of them apparently had the intention and shot Hamilton during the commission of the crime. Had the jury determined that either codefendant conspired *only* to commit an unarmed robbery and had it further concluded that the State failed to establish beyond a reasonable doubt that a homicide was the natural or probable consequences of the robbery, the appellant would have been entitled to an acquittal on the charge of murder. Crowe and Peterson utilize both "natural" and "probable." Each word has a different meaning. Accordingly, the use of both words was necessary in the case sub judice. The court's failure to include the word "probable" here renders the charge inadequate.

App. 13; 48.

Petitioner on rehearing took exception to the opinion of the majority and also noted:

[T]he other part of the instruction objected to and raised on appeal was not addressed in the opinion. The instruction that guilt as a "principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" was also prejudicial since defense counsel correctly argued this amounted to an impermissible "presumption" since the jury could interpret the charge to mean if a defendant was present at the crime scene he was guilty as a principal. In other words, that "mere presence" at the scene was sufficient evidence of guilt as a principal R. 199 Il. 20- 200, Il. 13; R..202 Il. 9- 2031 Il. 9.

This instruction, when coupled with the refusal to give the "probable and natural consequence of acts done in pursuance of the common design" charge, was so confusing it invited a guilty verdict for the crime of murder on an improper legal basis. Appellant respectfully requests on rehearing that this Court address the effect of the two instructions together, and also reconsider its holding that because the Supreme Court has approved instructions with and without the "natural and probable consequence language" that there was not error in this case given the two objectionable instructions.

The Court of Appeals declined the invitation, and the petition for rehearing was denied.

App. 49.

ARGUMENT

1.

The Court of Appeals erred by finding it was harmless error for the trial court to refuse to allow the defense to cross-examine critical state's witnesses Jeremy Simuel and Anthony Savage about their sentencing exposure for murder and the other charges involved in this case, since this cross-examination was probative of their bias under *State v. Mizzell*. The jury did not have a real appreciation of the extremely strong motive these critical and necessary state's witnesses had to misrepresent the truth and make petitioner the gunman and scapegoat for the unexpected shooting.

In *State v. Mizzell* this Court held that the sentencing exposure of a co-defendant or an accomplice goes to his bias and that it was permissible and, in fact, necessary to explore on cross-examination. This Court also noted, as here: "The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency." *State v. Mizzell* 563 S.E.2d 318. This Court in *Mizzell* further wrote that a defendant's right to permissible cross-examination outweighed the state's right to keep potential sentencing issues from the jury's consideration. Cf. *Illinois v. Brewer* 245 Ill. App. 3rd 890, 615 N.E.2d 787, 790 (1993); *State v. Brown* 303 S.C. 169, 399 S.E.2d 593 (1991).

This Court in *Mizzell* ruled a defendant's constitutional right to such cross-examination was guaranteed under the Confrontation Clause. See *Davis v. Alaska* 415 U.S. 308, 94 S.Ct. 1105 (1974). Further, any fact may be elicited on cross-examination that is probative of interest, bias or partiality. *State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249 (1976)\; Rule 608 (c), SCRE.

The Court of Appeals apparently recognized some the thrust of this Court's opinion in Mizell, but apparently not the necessity of this cross-examination since it held the denial of this cross-examination of these critical state's witnesses was harmless error.

The error, respectfully, was not harmless. Courtney was unable to give the 911 operator a description of the shooter. Petitioner's investigator also testified that another witness who claimed petitioner later bragged about disposing of the gun told him he could not specifically remember which man — petitioner, Savage or Simuel -- actually bragged about disposing of the gun. R. 191, l. 18– 192, l. 12.

Further, police investigator Billy Fleury testified Anthony Savage told him during an interview that he was wearing a white tank top or tee-shirt on the night of the shooting. R. 193, ll. 9–21. As seen, there was evidence a robber or the shooter was wearing a white tee-shirt.

Finally, Savage and Simuel both had an obvious interest in blaming the murder on petitioner, and currying favor with the state. In fact, this Court can take judicial notice from the South Carolina Department of Corrections inmate locator dated March 15, 2005 that Jeremy Simuel is only serving a five year sentence for accessory to a felony. See Alphaa report of the Department of Corrections at p. 463. This was after the solicitor argued there were three murderers involved where he obviously was using Savage and Simuel to convict appellant of murder while currying favor with Savage and Simuel.

Petitioner was denied his fundamental right to meaningful cross-examination and the error in this case was not harmless. Given the bias of the witnesses, and the seemingly conflicting identification evidence, the Court of Appeals respectfully erroneously found the error harmless. That is, that denial of confrontation and cross-examination of Savage and Simuel did not contribute

to the verdict. See Arnold v. State 309 S.C. 157, 420 S.E.2d 834 (1992); Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct 1431 (1986). Certiorari should be granted.

2.

The Court of Appeals erred by ruling that any error in allowing Savage to testify he did not want petitioner to get access to a black bag containing a gun "because I know how he acts" was harmless since this evidence was inadmissible under Rule 404 (b), SCRE, because it indicated past wrongs by petitioner, and it also insinuated petitioner would again act in conformity with his bad character traits. The Court's finding of harmless error is incorrect given its cumulative effect with a jury that did not understand Savage's motive to misrepresent the truth to make petitioner the scapegoat for the shooting.

Evidence of other wrongs or acts or crimes is not admissible to prove the character of a person in order to show he acted in conformity therewith. See Rule 404 (b), SCRE; State v. Gamble 247 S.C. 214, 146 S.E.2d 709 (1966). There are a variety of reasons for not allowing prejudicial propensity or character evidence such as the solicitor was eliciting about petitioner and the black bag in this case.

First, other wrongs or crimes or bad acts testimony has a tendency to raise a variety of collateral issues and divert the jury's attention from the issue immediately before it – the defendant's guilt of innocence in the crime for which he is on trial. Second, this evidence also has a tendency to strip the defendant of the presumption of innocence, and it compels him to meet charges or acts for which the indictment did not put him on notice. Finally, it also tends to confuse the jury regarding the real charge for which the defendant is on trial. See Collins, South Carolina Evidence, §11.1 at page 312 (2000 Ed). This type of propensity bad character evidence is not admissible to

show the defendant was acting in conformity with a character trait. See State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998)

Here, Savage's testimony about the black bag was obviously elicited to show that petitioner's past actions presented the jury with a "loose cannon" as a defendant. It made petitioner out to be a person of bad character that was "out of control" as a human being.

This evidence was inadmissible under Rule 404 (b), SCRE, and it was highly prejudicial where Savage and Simuel had strong motives to misrepresent their testimony, and where the identification evidence was questionable. The jury did not understand -- because of the denial of cross-examination -- the strong motive that Savage had to blame petitioner for the crime, and to insinuate that this was just another occasion where petitioner was acting in conformity with his bad character trait of violence.

The Court of Appeals disposed of petitioner's complaint on rehearing that it had ignored this issue in a summary footnote. State v. Thaddeus Curry, Op. No. 4159 (Refiled February 5, 2007) at n. 2. App. 29. The cumulative effect of the inadmissible propensity evidence with the denial of cross-examination regarding the jury having a real understanding of the motive for Savage and Simuel to misrepresent the truth cannot be ignored. Certiorari should be granted.

3.

The Court of Appeals erred by finding no error in the refusal to instruct the jury that the murder had to be the "probable and natural consequence" of the agreed upon action since this was a correct and necessary instruction on the "hand of one is the hand of all," particularly given the unusual facts of this alleged marijuana deal case or robbery plan without any marijuana to deal case gone awry case.

"The hand of one is the hand of all" is a "dynamite" instruction. The very real danger is its natural tendency is to lead the jury to believe that by presence at the scene of a crime or by agreement to commit a much lesser crime, the defendant is always guilty of the greater crime regardless of its foreseeability. For this reason, respectfully, the "hand of one is the hand of all" instruction should be approached by the trial judge with the caution urged by defense counsel.

The requested instruction came from State v. Dickman 341 S.C. 293, 534 S.E.2d 268 (2000). This Court approved it as a correct instruction on the law.

As seen, the majority of the Court of Appeals found that this Court has approved "hand of one is the hand" of all instructions *with and without* the "probable and natural consequences of the acts done in pursuance of the common design" foreseeability language. The Court therefore held that petitioner had not shown error in the trial judge's charge, and that the charge as a whole "adequately charged the law regarding 'hand of one hand of all.'" State v. Curry, 370 S.C. 674, 683, 636 S.E.2d 649, 654 (2006). App. 4-6; 29-32.

Petitioner respectfully submits that this Court should grant certiorari since the Court of Appeals has essentially found that this Court has cases going both ways on this jury instruction

issue, and that arbitrariness by the trial court regardless of the facts of the case will be allowed. This is an unusual case where the requested instruction was important. There was clearly evidence only a marijuana deal was planned or that a robbery without any marijuana to deal was the agreed to common design, the "probable and natural consequences of the acts done in pursuance of the common design" instruction language was critical to the jury's understanding of the legal concept of the "hand of one is the hand of all."

4.

The Court of Appeals erred by implicitly finding no error in the “guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement” charge since this confusing instruction amounted to a presumption of guilt by presence at the crime scene given the facts of this case. It added further confusion to the “hand of one is the hand of all” instruction.

As seen, defense counsel took exception to the judge’s instruction that “guilt as a principal is shown by actual or constructive presence at the scene as a result of a [prior arrangement].” Counsel argued that this instruction could be construed to mean that if the defendant were present at the crime scene he was guilty as a principal. Counsel told the trial court this amounted to a prohibited presumption, and that it should not be charged. R. 199 Il. 20– 200, Il. 13; R..202 Il. 9– 2031 Il. 9.

Over objection, the judge charged that “guilt as a principal is shown by actual or constructive presence at the scene as a result of [a] prior arrangement. Therefore, a finding of a prior arranged plan or a common scheme is necessary for finding of guilt as a principal.” R. 233 Il. 14–18.

Defense counsel took exception to the judge’s hand of one hand of all charge -- as he had previously -- and he renewed his objection to not instructing that the homicide had to be a probable or natural consequence of the preexisting plan. R. 241 Il. 22– 242 Il. 10.

As also seen above, to make the matter worse, the jury requested another instruction on the hand of one is the hand of all. R. 244 Il. 13–17. The judge *again repeated* the objectionable

language and refused to give the "probable or natural consequence" instruction requested by the defense. R. 245 ll. 18–247 ll. 25. The judge again noted defense counsel's continuing objection to this instruction. R. 248 ll. 12–14.

Defense counsel was correct in arguing that the "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" instruction amounted to a presumption of guilt by presence at the crime scene. Presumptions, which essentially place a burden on the defendant to overcome them, are unconstitutional. See Tate v. State 351 S.C. 418, 570 S.E.2d 522 (2002).

Further, any argument that giving a "mere presence" charge cured the deficiency in the instruction should be rejected. The purpose of a jury instruction is to enlighten the jury, and assist it in arriving at a correct verdict. Confusing instructions obviously frustrate that purpose. Confusing jury instructions should be avoided. See State v. Leonard 292 S.C. 133, 355 S.E.2d 270 (1987).

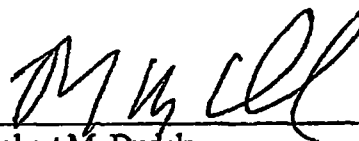
Moreover, merely superimposing a correct statement of law (mere presence) over an erroneous statement of law (presence amounts to guilt as a principal if there was a prior arrangement) only fosters prejudice and confusion. State v. Patrick 289 S.C. 301, 345 S.E.2d 481 (1986); State v. Peterson 287 S.C. 244, 355 S.E.2d 800 (1985).

The trial court erred by giving the constructive or actual presence at the scene amounts to guilt as a principal instruction. When coupled with the trial court's refusal to give the instruction that the homicide had to have been the probable or natural consequence of the agreed upon action, the confusion has passed the breaking point. This issue was squarely presented to the trial court, and to the Court of Appeals in the brief of appellant, and in the petition for rehearing. Petitioner respectfully submits this Court should now grant certiorari and resolve the issue.

CONCLUSION

Based on the foregoing argument, a writ of certiorari to the Court of Appeals should be granted in order to allow full briefing on these issues.

Respectfully submitted,



Robert M. Dudek
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 7th day of May, 2007.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
Reginald I. Lloyd, Circuit Court Judge

THE STATE,

RESPONDENT,


v.

THADDEUS CURRY,

PETITIONER

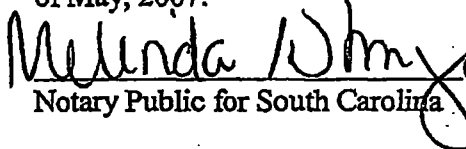
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on the Honorable Kenneth A. Richstad and Jeffrey A. Jacobs, Esquire this 7th day of May, 2007.



Robert M. Dudek
Deputy Chief Attorney for Capital Appeals
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of May, 2007.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2008.

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Certiorari to
Appeal from Aiken County
Reginald I. Lloyd, Circuit Judge**

State v. Curry, Op. No. 4159 (S.C. Ct. App. Oct. 9, 2006)

THE STATE,

Respondent,

v.

THADDEUS CURRY,

Petitioner

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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STATEMENT OF ISSUES ON APPEAL**A. Appellant's Statement of Issues on Appeal**

- I. Whether the Court of Appeals erred by finding it was harmless error for the trial court to refuse to allow the defense to cross-examine critical state witnesses Jeremy Simuel and Anthony Savage about their sentencing exposure and the other charges involved in this case, since this cross-examination was probative of bias and was permissible under *State v. Mizzell*, and the jury did not have a real appreciation of the extremely strong motive these critical and necessary state witnesses had to misrepresent the truth and make petitioner the gunman and scapegoat for the murder absent this cross-examination?
- II. Whether the Court of Appeals erred by ruling any error in allowing Savage to testify he did not want petitioner to get access to a black bag containing a gun "because I know how he acts" was harmless since this evidence was inadmissible under Rule 404(b), SCRE, because it indicated past wrongs by petitioner, and it also insinuated appellant would again act in conformity with his bad character traits and the Court's finding of harmless error was incorrect given the cumulative effect of Savage's claim with a jury that did not understand the motive Savage had to misrepresent the truth to make the petitioner the scapegoat?
- III. Whether the Court of Appeals erred by finding no error in the refusal to instruct the jury that the murder had to be the "probable and natural consequence" of the agreed upon action since this was a correct and necessary instruction on the "hand of one is the hand of all," particularly given the unusual facts of the alleged marijuana deal case or robbery without any marijuana to deal case gone awry?
- IV. Whether the Court of Appeals erred by not finding error in the trial court instructing the jury that "guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement" since this instruction was confusing and amounted to a presumption of guilt by presence at the crime scene under the "hand of one is the hand of all" instruction ?

STATEMENT OF THE CASE

The Petitioner, Thaddeus Curry, was indicted at the May 2004 term of the Aiken County Grand Jury for murder and possession of a firearm during the commission of a violent crime. He was tried from May 10-13, 2004 before the Honorable Reginald I. Lloyd and a jury. The jury convicted Curry of both crimes and Judge Lloyd sentenced him to life for murder and five years, consecutive, for possession of a firearm.

The Petitioner made an appeal to the South Carolina Court of Appeals. On October 9, 2006, the court affirmed the judgement. A petition for rehearing was made. On February 5, 2007, the earlier opinion was withdrawn, substituted and re-filed. App.22. Rehearing was denied on February 5, 2007. App.p. 49.

The Petition for Writ of Certiorari was made on May 7, 2007. This Return follows.

STATEMENT OF FACTS

On March 18, 2003, after a night of smoking marijuana and drinking, Heath Hamilton and Ronald Coursey drove to the Savannah West apartment complex in Augusta, in search of more marijuana. R.p. 6-7, Tr. 100, l. 23 - p. 101, l. 8. When they pulled into the parking lot of the apartment complex, they saw Thaddeus Curry and Anthony Savage. R.p. 7, Tr. p. 101, ll. 17-24. Curry and Savage offered to sell a quarter pound of marijuana to Hamilton and Coursey for \$220. R.p. 8-9, Tr. p. 102, l. 16 - p. 103, l. 8. Curry and Savage told Hamilton and Coursey to "go on and get the money." R.p. 9, Tr. 103, ll. 9-11.

Hamilton and Coursey went to an ATM, withdrew money, and returned to the apartment complex. R.p. 9, Tr. 103, ll. 11-13. Curry and Savage went up to Jeremy Simuel's apartment, and told Hamilton and Coursey that "they couldn't do it right now, but they could do it later."

Savage gave Hamilton his cell phone number, which Hamilton wrote on his hand. R.p. 9-10; 108-109, l. 4, Tr. 103, l. 20 - p. 104, l. 6; p. 204, l. 17 - p. 205, l. 4.

Hamilton and Coursey return to Hamilton's house and smoked some more marijuana. R.p. 10, Tr. 104, ll. 11-14. Curry, Savage, and Simuel, meanwhile, drove around downtown Augusta. R.p. 110, Tr. 206, ll. 12-13. Hamilton called Savage's cell phone. R.p. 110, Tr. 206, ll. 13-14. Savage told Hamilton that they would meet him at a gas station on Sand Bar Ferry Road, in Aiken County. R.p. 10, Tr. 104, ll. 9-22. Hamilton and Coursey went to the gas station, parked, and waited. R.p. 10-11, Tr. 104, l. 23 - p. 105, l. 2.

Jeremy Simuel drove Curry and Savage to Sand Bar Ferry Road. R.p. 66, 67-68, Tr. 162, ll. 11-22; p. 163, l. 18-p. 164, l. 4. Curry had a black bag with him; he "always takes it with him and that's what he had his gun in." R.p. 66, 68, 111, Tr. p. 162, ll. 18-20; p. 164, ll. 5-10; p. 207, ll. 19-23. The weapon was a nine-millimeter pistol. R.p. 125, Tr. 221, ll. 13-21. Hamilton called the cell phone number again, and then Hamilton and Coursey went to the other side of the gas station to meet Curry and his accomplices. Tr. 208, ll. 2-3.

Simuel parked the car. Curry got out of the car with his black bag. R.p. 74, Tr. 170, ll. 9-25. He dropped the bag on the side of the road, and Savage threw it on the other side of some bushes. Tr. 208, ll. 12-16; p. 209, ll. 15-24. Coursey pulled out his digital scales to weigh the marijuana, but Curry and Savage insisted upon seeing the money before they produced the marijuana. R.p. 11-12, 115, Tr. 105, l. 3 - p. 106, l. 10; p. 211, ll. 8-24.

Curry then walked toward the bushes, retrieved the pistol, and shot Heath Hamilton in the head. R.p. 13-14, 117; Tr. 107, l. 15 - p. 108, l. 23; p. 212, l. 13 - p. 213, l. 24.

Curry and Savage ran back to Simuel's car. R.p. 74, Tr. 170, ll. 1-6. In the car, Curry

said, "I think I dome capped him", which meant that he had shot him in the head. Tr. 214, ll. 8-23. Curry said, "I done told, I done told him I ain't no joke, I ain't no joke, you know what I'm saying, I ain't no joke" and "Let the KKK march this." Because it was Masters time and they said something on the new about the Ku Klux Klan was supposed to march in front of Savannah West Apartments and so they were like, "Tell the KKK to march on this. I ain't no joke, I ain't no joke." R.p. 74, Tr. 170, ll. 6-14. Curry said, "You should have seen that Mother Sucker... He was like this and was demonstrating on, I guess how Heath Hamilton was in position after shot him." Tr. 20-24.

Curry, Savage, and Simuel drove away. Curry said to Savage and Simuel, "After tonight ya'll don't know me... Ya'll don't know nothing about me." R.p. 75-76, Tr. 171, l. 3 - p. 172, l. 15.

Later that day, Javon Rushon picked up Curry. Simuel and Savage were also in the vehicle. R.p. 161, Tr. 258, ll. 3-8. Rushon heard Curry saying "something about a jacket, 'Get rid of it.'" R.p. 161, Tr. 258, ll. 12-23. He also heard Curry talking about the murder weapon, saying, "They'll never find it." R.p. 161, Tr. 258, l. 24 - p. 259, ll. 2, 20-24.

Forensic examination determined that Heath Hamilton was killed by a high point Model C nine-millimeter Luger pistol. R.p. 183, Tr. 281, ll. 4-21. Ronald Coursey unequivocally identified Curry as the man who shot his friend.

ARGUMENT

I. The Court of Appeals Properly Concluded That Any Error in the Trial Court's Refusal to Allow Curry's Attorney to Cross-Examine Simuel and Savage Concerning Their Potential Sentences was Harmless. Further any challenge to Savage's examination was properly found to be procedurally barred as to this issue.

Curry argues that the Court of Appeals erred by concluding that any trial court error in refusing to allow his attorney to cross-examine his accomplices regarding the potential sentences they faced was harmless. Respondents submit that certiorari is not warranted where the Court of Appeals reasoning was well-founded.¹ In denying relief, the Court of Appeals found:

In this case, Curry relied on *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002), in support of his argument that he should be allowed to cross-examine his co-defendants as to any possible sentences they faced in connection with Hamilton's death. In *Mizzell*, our Supreme Court found error in the trial court's decision to exclude evidence of possible sentences faced by Mizzell's co-defendant where the parties faced the same charges and the co-defendant had not yet pled guilty or reached a plea agreement with the State. The court found: The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.

Id. at 333, 563 S.E.2d at 318.

Similar to the scenario in *Mizzell*, Curry's co-defendants faced the same charges as Curry and had not pled guilty or reached a plea agreement. The trial court refused to allow Curry to cross-examine his co-defendants on the possible sentences they faced because Savage and Simuel had not pled guilty or reached a plea agreement with the State. We find this ruling contradicts the settled law

¹ Curry continues to argue that he should have been allowed to cross-examine both Simuel and Savage concerning potential sentences. At trial, however, he did not attempt to cross-examine Savage on this issue, and therefore the admissibility of Savage's potential sentences are not before this Court. The Court of Appeals properly found that this issue was procedurally barred as it relates to Savage.

established in Mizzell. Accordingly, we find the trial court erred in barring the cross-examination of Simuel and Savage on the possible sentences they faced.

[7] However, the refusal to allow Curry to cross-examine his co-defendants on any **653 possible sentences they faced in connection with Hamilton's death was harmless. At trial, the testimony given by the co-defendants was not the only evidence of Curry's involvement in the shooting of Hamilton. Ronald Coursey, the other victim of the robbery, unequivocally identified Curry as the shooter. He testified:

Coursey: And then the next I knew, he came up, Mr. Curry, over there had the gun.

Q: You saw Mr. Curry with the gun?

A: Yes, sir, he had the gun the whole time.

Q: What did he do with the gun?

A: ... he started shooting.

...

Q: Could you describe the gun?

A: ... it was either automatic or semi-automatic. It went off real fast.

Q: And how was [Curry] holding it?

A: In one hand.

Q: Okay. And so what did he say when he pulled the gun out?

A: I don't think he said anything, it just happened too fast and he shot and hit [Hamilton] in the head.

...

Q: Did you see who pulled the trigger?

A: Yes, sir. It was Mr. Curry over there.

Moreover, in addition to Coursey, Javon Rushon provided the following testimony regarding a conversation he overheard between Curry and Savage regarding the murder weapon:

Q: What specifically did you hear Mr. Curry-what if anything, did you hear Mr. Curry mention about the gun?

A: "They would never find it." "The hammer came off of it." You know, "It was chopped up."

On cross-examination, Rushon further clarified that it was in fact Curry who was talking about the gun, stating "Thaddeus Curry was talking to [Savage] about it."

The testimony of the co-defendants, Simuel and Savage, was merely cumulative to that given by Coursey and Rushon. As a result, Curry's guilt or innocence did not hinge solely on the testimony of his co-defendants; the testimony of Coursey and Rushon provided other competent evidence upon which a rational verdict of

guilty could be based. Therefore, as the error on the part of the trial judge in limiting the scope of cross-examination could not have reasonably affected the outcome of the trial, it was harmless.

State v. Curry, App.p. 26.

To constitute error, a ruling to admit or exclude evidence must affect a substantial right. Rule 103(a), SCRE; *State v. Johnson*, 363 S.C. 53, 60, 609 S.E.2d 520, 524 (2005). However, error is harmless where it could not reasonably have affected the trial's outcome. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). In considering whether error is harmless, a case's particular facts must be considered along with various factors including: ... the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. *State v. Clark*, 315 S.C. 478, 482, 445 S.E.2d 633, 635 (1994). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). A violation of a defendant's Sixth Amendment right to confront a witness is not *per se* reversible error if the error is harmless beyond a reasonable doubt. *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994).

On cross-examination, Curry's attorney elicited from Simuel that he was charged with murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime as a result of the events that led to the killing of Health Hamilton. He then asked Simuel whether he was aware that he was facing a potential life sentence for murder; Simuel

testified that he was not. R.p. 81-82, Tr. 177, l. 23 - p. 178, l. 12. When Curry's attorney asked Simuel about his potential sentence on the attempted armed robbery charge, the solicitor objected. The court sustained the objection and instructed the jury to disregard any testimony concerning potential sentences. R.p. 82, Tr. p. 178, ll. 13-25. The trial court ruled that State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002) was inapplicable because "[t]here's no deal on the table." R.p. 104, Tr. p. 200, ll. 15-22.

This case is unlike *Mizzell*. In that case, the witness whose potential sentence was at issue was "the only witness to testify as an eyewitness to petitioners' burglary of the home. The lack of physical evidence placing petitioners at the scene enhanced the importance of [that] testimony." In contrast, the only issue in this case was whether Curry or Savage fired the shot that killed Heath Hamilton. It was undisputed that both Curry and Savage were present at the shooting, and that one of them fired the shot. Simuel's testimony did not address this issue.

Savage testified that Curry was the shooter. Savage's testimony was merely cumulative to that of Ronald Coursey, who unequivocally identified Curry as the shooter. Coursey also corroborated the testimony that Curry retrieved the gun from the bushes. R.p. 13, Tr. p. 107, ll. 11-16. Further, a third witness, Javon Rushon, testified that Curry was talking about the murder weapon. *Mizzell* is not controlling.

Moreover, Curry's attorney amply attacked Simuel's credibility. Curry's attorney established that Simuel was charged with murder, attempted armed robbery, and possession of a firearm during the commission of a violent crime. He also established that he was thrice convicted of theft by receiving, and was also convicted of obstruction of justice by way of giving false information to a police officer and of possession of marijuana with intent to distribute.

Curry's lawyer established that Simuel was sentenced to imprisonment on at least some of those charges. R.p. 84-85, Tr. 180, l. 4 - p. 181, l. 3.

More significantly, given that the hand-of-one-hand-of-all doctrine applied, the identity of the trigger puller had little relevance to the case. There was no dispute that Curry was present at the killing. The evidence overwhelmingly established his guilt, whether or not he pulled the trigger. That fact was established even without the testimony of Simuel and Savage. Any error with respect to the cross-examination of those witnesses, therefore, was harmless beyond a reasonable doubt. Certiorari must be denied on this threshold claim.

a. The Procedurally Barred Claim Related to Savage.

Curry argues that the trial court erred by refusing to allow his attorney to cross-examine Anthony Savage concerning his pending charges for armed robbery and possession with intent to distribute. Curry's attorney raised this issue in a motion in limine. He argues that he should be allowed to impeach Savage by cross-examining him on the pending charges "under the rule of admissibility of uncharged bad acts that reflect on credibility under Rule 608(b)" of the South Carolina Rules of Evidence. R.p. 3, Tr. p. 90, ll. 15-21.

This ground is not preserved for appeal. Curry made no objection during the trial, nor did he attempt to introduce the evidence he claims the court did not allow. Rather, this ground is the result only of a motion in limine. Curry did not proffer the evidence or otherwise raise the issue in any form during the trial. Accordingly, it is not properly before this Court. See, S.C. Dep't of Pub. Transp. v. Galbreath, 315 S.C. 82, 82 n.2, 431 S.E.2d 625, 626 n.2 (Ct.App. 1993) ("We note that Galbreath did not subsequently proffer Alford's testimony during the trial, but merely relied upon the *in limine* is granted, it is not the final ruling on the admissibility of the

evidence.... 'We caution the Bench and Bar that these pretrial motions are granted to prevent prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence.'" (quoting State v. Floyd, 295 S.C. 5518, 521, 369 S.E.2d 842, 843 (1988)).

Moreover, Curry here argues a ground different from the ground he argued in his motion in limine in the trial court. In the trial court, Curry argued that he should be allowed to cross-examine Savage under Rule 608(b), which provides that "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be prove by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness a to which character the witness being cross-examined has testified." S.C.R.Evid. 608(b). In this Court, however, Curry claims that the trial court's exclusion of this testimony violates Rule 608©, which provides that "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." S.C.R.Evid. 608©. This argument is therefore not properly before this Court. See, State v. Richardson, 358 S.C. 586, 595 S.E.2d 858 (Ct. App. 2004)("Because Richardson objected to the testimony on a different ground at trial than what he argues on appeal, this argument is not properly before this Court.").

Even were the pending charges relevant to Savage's "character for truthfulness or untruthfulness", see United States v. Reed, 700 F.2d 638, 643 (11th Cir. 1983)("Suffice it to say,

we are unable to perceive that a person's possession of a small amount of marijuana sheds any light whatsoever on his 'character for...untruthfulness.' Though the commission of any crime may in fact cast doubt on the broad question of one's 'credibility', the drafters of the Rules were careful to limit inquiry under Rule 608 to a witness' propensity for honesty"), the rule itself expressly leaves the admission of such evidence to the ample discretion of the trial judge. In this case, he did not abuse his discretion by refusing to admit it.

Finally, any error in the trial court's refusal to allow Curry's attorney to cross-examine Savage concerning his pending charges was harmless, for the same reasons elucidated in Section I above. "In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." State v. McLeod, 362 S.C. 73, 83, 606 S.E.2d 215, 220 (Ct.App. 2004).

As noted above, Savage's testimony was cumulative to that of Ronald Coursey, and it was not contradicted. The state's case was overwhelming; undisputedly, Curry was present at the shooting and the hand-of-one, hand-of-all doctrine applied to the case.

Further, the extent of cross-examination that the trial court permitted was broad. Curry's attorney attacked Savage's credibility thoroughly. Curry's counsel was permitted to elicit from Savage that he was pending trial for murder, armed robbery, and possession of a weapon during the commission of a violent crime and had been incarcerated since April of 2003. R.p. 129, Tr. p. 225, l. 19 - p. 226, l. 4. Curry's attorney also established that Savage had been convicted

previously on unrelated charges of second-degree burglary, grand larceny, possession of a stolen vehicle, and theft by taking. R.p. 129, Tr. 224, l. 16 - p. 225, l. 16. After the recitation of Savage's entire criminal history, the addition of two more pending charges could not have diminished his credibility any further.

The trial court's ruling is not properly before this Court and, if it is error, it is harmless.

Curry's argument fails.

For all the above reasons, certiorari must be denied as to Question One.

II. Certiorari is not Warranted Where Testimony that Savage Knew "How [Curry] Acts" Was not Excludable Under Rule 404(b) or Alternately Was Harmless Error.

Curry argues that Anthony Savage's testimony that "I know how he acts" was inadmissible under Rule 404(b) of the South Carolina Rules of Evidence. In denying the claim, the Court of Appeals dismissed the claim in the following manner in a footnote:

Curry also alleges the trial court erred in admitting improper character or habit evidence during Savage's testimony. Curry contends the testimony regarding the black bag where Curry allegedly kept his gun was inadmissible under Rule 404(b), SCRE. Any possible error by the circuit court was harmless given the other evidence admitted at trial. See, *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1885) (finding that error is harmless where it could not possibly affected the outcome of the trial).

App.p. 29. For the following reasons certiorari must be denied.

How the Issue Was Presented Below.

On direct examination, the solicitor asked Savage why he threw Curry's bag in the bushes. Savage replied that he did not want Curry "to get access to it, because I know how he acts." Curry's attorney objected, and asked that Savage's answer be stricken. The court overruled the objection, but told the solicitor that he could not "go beyond that" and directed him "just to move on." R.p. 113, Tr. 209, l. 22 - p. 210, l. 8.

Analysis

Rule 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." S.C.R.Evid. 404(b). Curry argues that Savage's testimony was "intended to imply" that Curry "had committed other bad acts or crimes in the past." Such

evidence, however, is not the within ambit of Rule 404(b).

Rule 404(b) applies to *specific* instances of prior bad acts. Rule 404(b) codifies the rule in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). See State v. Gagum, 328 S.C. 560, 564 n.2, 492 S.E.2d 822, 823 n.2 (Ct. App. 1997)(“Thus, Rule 404(b) codifies the limitations on the admissibility of evidence of prior bad acts set forth in State v. Lyle”). In Lyle, the Supreme Court stated that [w]hether evidence of other *distinct crimes* properly falls within any of the recognized exceptions noted is often a difficult matter to determine.” State v. Tutton, 354 S.C. 319, 327, 580 S.E.2d 186, 190 (Ct. App. 2003)(quoting State v. Lyle, 125 S.C. at 416, 118 S.E. at 807)(emphasis added).

Curry’s argument before this Court and below seeks to extend extends Rule 404(b) beyond credibility. Curry argues that if testimony “intends to imply” that a defendant committed other acts, crimes or offenses, then Rule 404(b) applies. Rule 404(b) applies, however, to the acts, crimes, or offenses themselves, not to any intent to imply or to any implication of such acts, crimes or offenses without enumeration.

The admission of the testimony of which Curry complains did not violate Rule 404(b) because it was not testimony of discrete prior bad acts.

Alternately, Respondents submits that this brief reference must be deemed harmless beyond a reasonable doubt. Respondents incorporate by reference its analysis set out above in Question I, p. 7-12.

III and IV. The Court of Appeals Properly Determined That The Trial Court's "Hand-of-One, Hand-of-All" Charge was Proper As A Matter of State Law.

Curry contends that the trial court's "hand-of-one, hand-of-all" charge to the jury was erroneous. The trial judge charged:

When two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or as it is sometimes said, the hand of one is the hand of all. I tell you further, ladies and gentlemen of the jury, that prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed[,] is not sufficient to convict the defendant as a princip[al]. Guilt as a princip[al] is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a princip[al]. The state must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

The princip[al] in a crime is one who either actually commits the crime or who is present, aiding[,] abetting or assisting in committing the crime. When the person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent[,] are present at the commission of a crime it does not matter who actually commits the crime, all are guilty. The hand of one, ladies and gentlemen, is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence, as I said, is at the scene of a crime, is not sufficient to convict one as a princip[al] on the theory of aiding and abetting. Intent is also a necessary element. For there must have been a common design or intent to commit the crime and

the crime must have been pursuant, thereto, with a person aiding and abetting by some overt act.

R.p. 234, Tr. p. 341, l. 3 - p. 342, l. 13.

It remains difficult to ascertain precisely the portion of the jury charge that Curry finds objectionable. In State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005), the Court of Appeals approved the following charge as a correct statement of the law:

The mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed is not sufficient to convict the defendant as a principal. Guilt is shown by active or constructive presence at the scene, and the State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting or assisting in the commission of the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent [are] present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all. Present means to be sufficiently near to aid and abet and assist in the commission of the crime. Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant to that plan, with the person aiding and abetting by some overt act.

The charge in the case *sub judice* adequately apprises the jury as to the law regarding mere presence. The charge contains the correct definition for mere presence and adequately covers the law.

Id. at 107, 610 S.E.2d 866 (quoting the trial court's charge). This Court has approved accomplice liability charges that lack language stating an accomplice's criminal act must be "a probable and natural consequence" of the accomplice's common plan. In State v. Langley, 334 S.C. 643, 515

S.E.2d 98 (1999), the Court stated that under “the hand of one is the hand of all” theory, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” In *State v. Kelsey*, 331 S.C. 50, 76-77, 502 S.E.2d 63, 76 (1998), the Court approved a broader accomplice liability charge that stated, “... if a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both.” In *State v. Crowe* the Court approved the following charge for accomplice liability:

[T]wo or more combine together to commit an unlawful act, such as robbery, and, in the execution of that criminal act, a homicide is committed by one of the actors, as a **probable or natural consequence** of the acts done in pursuance of the common design, all present participating in the unlawful undertaking are as guilty as the one who committed the fatal act. This principle was stated in *State v. Cannon*, 49 S.C. 550, 27 S.E. 526: “The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in and steal, and in the execution of this common purpose a homicide is committed by one, as a **probable or natural consequence** of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer.”

258 S.C. 258, 265, 188 S.E.2d 379, 382 (1972) (emphases added). Therefore, the Court’s approval of this charge demonstrates that the “natural and probable consequence” language need not be included in the charge, as requested by Curry, if the charge as a whole adequately conveys the law. Additionally, as the Court of Appeals properly concluded, “with the approval of the disjunctive “or” in the “probable or natural consequence” language of *State v. Crowe*, the trial court’s charge arguably benefitted Curry as it only included the “natural consequences” rather than the “natural or probable” language.” *Id.*, App.p. 31-32.

Respondents submit that certiorari is not warranted in this setting. When viewing the challenged portion of the jury charge as a whole with the rest of the trial court’s instruction, the

trial court adequately charged the law regarding "hand of one hand of all."

"The substance of the law is what must be charged to the jury, not any particular verbiage." Zeigler, 364 S.C. at 107, 610 S.E.2d 866. The trial court's charge to the jury was a correct statement of the law of South Carolina.

A. The Trial Court Properly Refused the Precise Charge Requested by Curry Because Curry Received the Substance of the Charge

As a corollary to Curry's previous argument, he contends that the trial court's failure to charge that the crime must be a natural and probable consequence of the common plan created a presumption of guilt by mere presence at the crime scene. Curry's argument fails to account for the entire jury charge.

The trial court charged the jury that the crime must have been committed "pursuant" to the common design or intent. Further, the court charged that "[i]ntent means intending the result that actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt." R.p. 234, Tr. 342, ll. 14-19.

"When reviewing a jury charge for alleged error, an appellate court must consider the charge as a whole in light of the evidence and issues presented at trial." Pittman v. Stevens, 384 S.C. 337, 613 S.E.2d 378, 379 (2005). Curry received, in substance if not in precise verbiage, the charge he requested. The charge adequately instructed the jury that the murder must have been the result of the common scheme, and that the murderers must have intended to kill their

victim. See State v. Zeigler, 364 S.C. at 107, 610 S.E.2d 866 (“The substance of the law is what must be charged to the jury, not any particular verbiage.”). The charge complied with South Carolina law and Curry’s argument fails. Certiorari must be denied.

CONCLUSION

The Petition for Writ of Certiorari must be denied.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

BARBARA R. MORGAN
Solicitor, Second Judicial Circuit

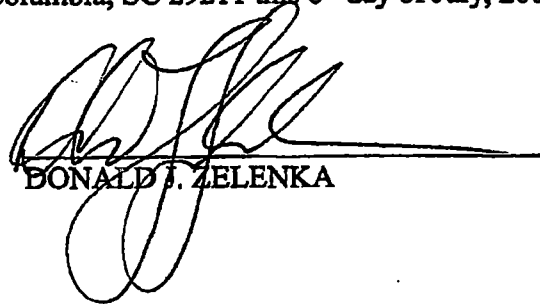
Post Office Drawer 3368
Aiken, South Carolina 29802
(803) 642-1557

By: 
Attorney for Respondent

July 6, 2007

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the *Return to Petition for Writ of Certiorari to the Court of Appeals* in the foregoing action by depositing copies in the United States mail, postage prepaid, to Robert M. Dudek, Deputy Chief Attorney for Capital Appeals, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211 this 6th day of July, 2007.



DONALD J. ZELENA

5444-2100

ym
4-7-08



So. A.C. Sheriff

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 3, 2008

Deputy Chief Appellate Defender for Capital Appeals
Robert M. Dudek
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Curry, Thaddeus
2004-GS-02-00838 and 00839

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

April 3, 2008.”

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,


CLERK

FILED April 7 2008
Luis Godard
C.C.C.P. & G.S.
Sharon Stigge
Deputy Clerk

DES/dmh

2004-GS-02-f.38

Deputy Chief Appellate Defender for Capital Appeals

Robert M. Dudek

Page Two

April 3, 2008

cc: Assistant Deputy Attorney General Donald J. Zelenka
The Honorable Barbara R. Morgan
The Honorable Liz Godard
The Honorable Kenneth A. Richstad

5464-2180



ATTORNEY GENERAL'S OFFICE

RECEIVED

4-7-08

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN (initials)

HAVE COPIES MADE

The South Carolina Court of Appeals

ORDER TRANSMIT

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1622
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1839
FAX (803) 734-1839
WWW.SCCOURTS.OTC

April 4, 2008

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: The State v. Curry, Thaddeus
2004-GS-02-00838 2004-GS-02-00839

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Administrative Specialist

KAR
KAR/rj

cc: Assistant Appellate Defender Robert M. Dudek
Katherine Hudgins, Esq.
Assistant Attorney General Jeffrey A. Jacobs
Barbara R. Morgan, Esquire

STATE OF SOUTH CAROLINA

County of AIKEN

Thaddeus L. CURRY # 301924
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2008 CP-02-1271
2004 GS-02-839-838

Filed 7-24

C.C.C.P. & G.S. - Aiken County
Christa Kincaid
Deputy Clerk
Trial Judge
Trial Atty: Michael G. ...
Court Reporter: Kristen ...
Gen. Prosecutor: ...
Appointed Atty: ...

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention AIKEN COUNTY DETENTION CENTER

2. Name and location of Court which imposed sentence AIKEN COUNTY COURT

3. Name(s) of co-defendant(s) (if any) ANTHONY JEROME SAVAGE,
and JEREMY SIMUEL

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) MURDER 2004-GS-02-839
 - (b) POSSESSION OF A FIREARM DURING THE-

(c) COMMISSION OF A VIOLET CRIME 2004-65-02-83

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

(a) MAY-13-04

(b) LIFE IMPRISONMENT FOR MURDER

(c) FIVE YEARS CONSECUTIVE FOR POSSESSION FOR A FIREARM.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

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

YES

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

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

i. The South Carolina COURT OF APPEALS

ii. _____

iii. _____

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

i. AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. HEARD JUNE 15, 2006, FILED OCTOBER 9, 2006

ii. _____

iii. _____

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

i. SC. Judicial Department - OPINION 4159

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) AFTER-DISCOVERED EVIDENCE
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE REVERSE SIDE FOR ANSWER
- (b) SEE REVERSE SIDE FOR ANSWER
- (c) _____
12. Prior to this application have you filed with respect to this conviction: NO
- (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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

- (a) Please see Reverse Side FOR ANSWER
- (b) Please see Reverse Side FOR ANSWER
- (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? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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. Michael Chesser ATTORNEY AT LAW
PO BOX 1018 104 PARK AVENUE SW Aiken SC 29802
 - ii. ROBERT M. DUDEK; South Carolina Commission
ON Indigent Defense PO. BOX 1159 Columbia, SC 292
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Michael Chesser - AT MY TRIAL
 - ii. Robert M. Dudek - on my Appeal
 - iii. _____

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

Conviction and sentence Reversed and Remanded
For NEW TRIAL OR Vacate The Sentence
and Charges Against My person on Equites and merits of wri

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

NO

STATE OF SOUTH CAROLINA

County of MCCORMICK

VERIFICATION

I, Thaddeus L. Curry / #301924, 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.

Thaddeus L. CURRY #301924

SWORN to and subscribed before me this 21 day of July, 2008.

Penny G. Moxon (L.S.)
Notary Public

My Commission Expires: Feb. 28, 2018

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

I, Thaddeus L. CURRY #301924, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Thaddeus L. CURRY #301924
Applicant

SWORN or affirmed to and subscribed before me this

21 day of July, 2008.

Perry L. Miller
Notary Public

My Commission Expires: Jul 28, 2010

 AFFIDAVIT AD TESTIMONIA

I (Anthony Savage) am making this statement on my own free will. I have not been threatened or harmed in any way to make this statement. On May of 2004 I testified against Thaddeus Curry in a murder case. I (Anthony Savage) was threatened by the police investigator (Billy Fleury) and the solicitor to lie in court. And if I (Anthony Savage) didn't testify I (Anthony Savage) would receive a Life sentence... I was scared for my life and I (Anthony Savage) openly lied in court to get a reduction in my sentence. And I (Anthony Savage) know that the statement I (Anthony Savage) gave back then was wrong and this is the right thing to do at this time.

Anthony Savage 3091313
 Anthony Savage

SUBSCRIBED AND SWORN TO before me
 this 27 day of June 2005.

[Signature]
 Notary Public for South Carolina
 My Commission Expires: 3-30-2009

My Commission Expires
March 30, 2009

I Thaddeus L. Curry was indicted MAY 10, 2004

I Thaddeus LURRY was also in COURT OF General

SESSIONS MAY 10, TERM 2004 A COPY OF MY

ARREST WARRANT was delivered to me 4.17.03

MY ARREST WARRANT was sworn and subscribed

before Judge PATRICK D. Sullivan 4.16.03

I was indicted a year later MAY 10, 2004

RULE 3(C) under Criminal procedure in the South Carolina Rules of Court Hand Book States.

(Action on warrant) within (90) days after receipt of AN ARREST Warrant From The Clerk of Court,

The Solicitor shall take Action on the Warrant

BY (1) Preparing an indictment for presentment to the Grand Jury, which indictment shall be

filed with the Clerk of Court, assigned a Criminal Case number, and presented to The Grand Jury;

(2) Formally dismissing the warrant, noting on the face of the warrant the action taken.

OR (3) making other Affirmative disposition in writing and filing such Action with the Clerk of Court.

Counselor Michael Chesser did not timely move to quash my indictments, Counselor Michael Chesser did not challenge the legality and sufficiency of the process of state Grand Jury before the Jury rendered a verdict in order to preserve the ERROR FOR DIRECT Appellate REVIEW.

I went to Trial the same day I was indicted when it clearly states in the South Carolina State Rules of Court Hand Book Rule 40.(B) General Docket, TRIAL Roster, And Call of cases for TRIAL "Rule 40(B)"

That A Case may not be called for TRIAL until it has been TRANSFERRED to the Jury TRIAL Roster. TRIAL shall be had no earlier than 30 days from the date case first appears on Jury TRIAL Roster. Counster Michael Chesser did not timely move to quash my indictments, Counster Michael Chesser did not challenge the Legality and SUFFICIENCY of the process of state Grand Jury before the TRIAL Jury rendered a verdict in order to preserve the ERROR for DIRECT Appellate REVIEW

Counster Michael Chesser was Ineffective.

QUESTION II.

(A) COUNSEL did not TIMELY MOVE TO QUASH MY INDICTMENTS, COUNSEL did not Challenge The LEGALITY and SUFFICIENCY OF THE PROCESS OF STATE GRAND JURY BEFORE THE JURY RENDERED A VERDICT IN ORDER TO PRESERVE THE ERROR FOR DIRECT APPELLATE REVIEW.

QUESTION II.

(B) AFTER DISCOVERED EVIDENCE

I have a ORIGINAL AFFIDAVIT AD TESTIMONIA FROM MY CO-DEFENDANT ANTHONY JEROME SAVAGE Admitting That he OPENLY LIED AT MY TRIAL TO GET A REDUCTION IN his Sentence.

((Please see Attached COPY OF AFFIDAVIT))
AD TESTIMONIA ON BACK OF POST-
CONVICTION RELIEF APPLICATION

558
QUESTION 16. INEFFECTIVE ASSISTANCE OF COUNSEL

(A) Counsel did not timely move to QUASH MY INDICTMENTS, Counsel did not challenge the LEGALITY and SUFFICIENCY OF THE PROCESS OF STATE GRAND JURY before the JURY rendered A VERDICT in order to preserve the ERROR FOR DIRECT APPELLATE REVIEW.

This Ground has not previously been presented to any COURT because this Ground was not preserved for DIRECT APPELLATE REVIEW DURING MY TRIAL.

QUESTION 16.

(B) AFTER DISCOVERED EVIDENCE WAS PRESENTED TO ME AFTER MY TRIAL AND I WAS TOLD BY MR. ROBERT M. DUDERK MY APPEAL LAWYER THAT I COULD NOT BRING THIS GROUND UP ON DIRECT APPEAL.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
)
)
 Thaddeus Curry, #301924,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-02-1271

RETURN
(Appointment of Counsel Requested)

The Respondent, making its Return to the Application for Post-Conviction Relief filed July 24, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. Applicant was indicted at the May 2004 term of the Aiken County Grand Jury for murder (2004-GS-02-0839) and possession of firearm or knife during commission of or attempt to commit a violent crime (2004-GS-02-0838). Applicant was represented by Michael Chessner, Esquire. On May 10-13, 2004, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was found guilty and sentenced to life imprisonment for murder and a consecutive term of five years incarceration for possession of firearm or knife during commission of or attempt to commit a violent crime.

A Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Curry, 370 S.C. 674, 636

FILED 3-16 2008 9:40 AM
Liz Hodges
 C.C.P. & G.S.
Debra Wilson
 Deputy Clerk

S.E.2d 649 (Ct. App. 2006). The South Carolina Supreme Court denied Applicant's petition for writ of certiorari, and the remittitur was sent on April 4, 2008.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

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

1. Ineffective assistance of counsel.
 - a. "A copy of my arrest warrant was delivered to me 4-17-03... I was indicted a year later May 10, 2004. Rule 3(c) under criminal procedure in the South Carolina Rules of Court Handbook states (action on a warrant) within (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the Grand Jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court. Counsel[o]r Michael Chesser did not timely move to quash my indictments, couns[el]or Michael Chesser did not challenge the legality and sufficiency of the process of State Grand Jury before the jury rendered a verdict in order to preserve the error for direct appellate review."
 - b. "I went to trial the same day I was indicted..." in violation of Rule 40 (b). "...Couns[el]or Michael Chesser did not timely move to quash my indictments, couns[el]or Michael Chesser did not challenge the legality and sufficiency of the process of State Grand Jury before the Trial Jury rendered a verdict in order to preserve the error for direct appellate review. Couns[el]or Michael Chesser was ineffective."
2. After-discovered evidence.
 - a. Affidavit of Anthony Savage that he was threatened by the police investigator and solicitor to lie in court in order to reduce his own sentence.

III.

Applicant alleges that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of

the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

To obtain a new trial based on after-discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). The Respondent submits that the Applicant cannot satisfy these requirements. However, the allegation of newly-discovered evidence probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: *Mary S. Williams*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

2/17, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
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 THADDEUS CURRY, 301924)
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 Applicant,)
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 vs)
)
 STATE OF SOUTH CAROLINA,)
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)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-02-1271

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James V. Painter, Esquire
Hull Towill Norman Barrett & Salley, PC
Post Office Box 1564
Augusta GA 30903

DATED this 12th day of March, 2009.

E. K. Randall
 E. K. Randall, Legal Assistant
 For Respondent

FILED 3-16 2009 9@940
Liz Godard
 C. C. P. & C. S.
Debra D. ...
 Deputy Clerk

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2008-CP-02-1271

3

4

5 THADDEUS CURRY,
Applicant,

6

-vs-

TRANSCRIPT OF RECORD

7

STATE OF SOUTH CAROLINA,
Respondent.

8

9

Post Conviction Relief Hearing

10

Heard on Friday, January 29, 2010

11

Aiken, South Carolina

12

BEFORE:

13

THE HONORABLE W. JEFFREY YOUNG

14

15

16

APPEARANCES:

17

Counsel on Behalf of the Applicant:
William Sussman, Esq.

18

19

Counsel on Behalf of the Respondent, State of SC:
Mary Shannon Williams, Esq.

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23

24

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802-1154

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EXAMINATION INDEX

THADDEUS CURRY

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E X H I B I T I N D E X

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON FRIDAY, JANUARY 29, 2010 AT 12:00 NOON:

2 THE COURT: Ready to proceed?

3 MR. SUSSMAN: Yes, Your Honor.

4 MS. WILLIAMS: May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. WILLIAMS: This is Thaddeus Curry. Case
7 number 2008-CP-02-1271. Mr. Curry was charged with murder
8 and possession of a firearm during commission of a violent
9 crime. And he proceeded to a jury trial before the
10 Honorable Reginald Lloyd on May the 13th, 2004. He was
11 found guilty. He was sentenced to life imprisonment for
12 murder with a five-year sentence for possession of a
13 weapon during a violent crime.

14 There was an appeal in this case that resulted in
15 a published opinion by the Court of Appeals in 2006. The
16 remittitur was sent following a writ of certiori being
17 denied April 4th, 2008. And this application was timely
18 filed on July the 24th of 2008.

19 Mr. Curry is represented today by Bill Sussman.
20 You'll see in your packet Mr. Sussman filed on Mr. Curry's
21 behalf what is captioned as a recast petition, I believe
22 it is. And that -- you'll also have in your packet a
23 third amendment to the application. It does sum up the
24 allegations that Mr. Curry has made. There are numerous
25 allegations of ineffective assistance of counsel.

1 Without further ado, I'll allow Mr. Sussman to
2 proceed.

3 THE COURT: Mr. Sussman, are you ready to
4 proceed?

5 MR. SUSSMAN: Yes, Your Honor. Thank you.

6 The overview of the case is, as Ms. Williams
7 advised, the murder conviction that took place, the trial
8 that took place back in 2004. But it, actually the
9 offense took place on March 17th, 2003, Saint Patrick's
10 Day. So the Court has those dates in mind.

11 There are several issues that have been raised in
12 the recast complaint. I apologize. The third amendment
13 to the petition was supposed to have been included in the
14 recast complaint, but the issues raised there were not.
15 So we want the Court to be aware that that is an
16 additional issue that needs to be addressed.

17 The main thrust of the case is the ineffective
18 assistance of counsel at the trial level. We will have
19 Mr. Curry testify as to what he contends were the things
20 that should have been done on his behalf that were not.

21 We also have his mother, Yvonne Fraraccio, F. R.
22 A. R. A. C. C. I. O., and his sister, Valerie Curry.
23 Ms. Curry was an alibi witness that was not called and
24 Ms. Fraraccio has some other information that is pertinent
25 to the case.

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1 I do want to point out that there was -- one of
2 the main issues we contend our problem is is he was
3 indicted and tried on the same day. There was no motion
4 for continuance made. In fact, it indicates that the
5 grand jury convened on May 6th or they met on May 6th
6 before they convened, so there's some issue regarding the
7 dates in the indictment itself. We also have issue with
8 the wording of the indictment.

9 In the constraints of time, I'll address those
10 issues in a brief to the Court at a later date.

11 THE COURT: All right.

12 MR. SUSSMAN: But I think rather than go through
13 this with any kind of overview, I'll just call Thaddeus
14 Curry to the stand and we'll get started.

15 THE COURT: Thank you. You may call your first
16 witness.

17 MR. SUSSMAN: Thaddeus Curry, please.

18 One thing, Judge. He's got some documents to
19 handle and he's got -- it will help him to speed up his
20 testimony if he can read from his notes. Is there any way
21 that we can at least undo his handcuffs?

22 THE COURT: Yeah. We can take his handcuffs off.

23 MR. SUSSMAN: Thank you, Judge.

24 THADDEUS CURRY, having been duly sworn, was
25 examined and testified as follows:

THADDEUS CURRY - DIRECT

1 THE CLERK: Please take a seat on the witness box
2 and state your full name for the Court.

3 MR. SUSSMAN: Judge, while they're unshackling
4 him, I have a question regarding the procedural matters.
5 Is the transcript part of your packet, the trial
6 transcript?

7 MS. WILLIAMS: Yes, sir.

8 THE COURT: Yes. This is from May of 2004.

9 MR. SUSSMAN: Right. That's correct.

10 THE COURT: That was in front of Judge Reggie
11 Lloyd.

12 MR. SUSSMAN: Right.

13 MS. WILLIAMS: The Judge's packet contains the
14 amended application, the original applications, clerk's
15 records, Department of Corrections' records, the appellate
16 brief and opinion as well as the trial transcript and the
17 State's return.

18 MR. SUSSMAN: All right.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. SUSSMAN:

22 A. Thaddeus Lorenzo Curry.

23 Q. State your name, please.

24 A. Thaddeus Lorenzo Curry.

25 THE COURT: I need for you to speak up so I can

THADDEUS CURRY - DIRECT

- 1 hear you.
- 2 THE APPLICANT: Yes, sir.
- 3 THE COURT: Don't stick your head down.
- 4 THE APPLICANT: Okay.
- 5 BY MR. SUSSMAN:
- 6 Q. Thaddeus Curry?
- 7 A. Yes, sir.
- 8 Q. Has he already been sworn?
- 9 A. Yes, sir.
- 10 Q. Okay. How old are you, Thaddeus?
- 11 A. Thirty.
- 12 Q. How far did you go in school?
- 13 A. To the ninth grade.
- 14 Q. Pardon?
- 15 A. Ninth grade.
- 16 Q. You need to speak up now.
- 17 A. Ninth grade.
- 18 Q. You can read and write?
- 19 A. Yes, sir.
- 20 Q. Where were you living at the time you were arrested?
- 21 A. With my mother in Evans, Georgia.
- 22 Q. In Evans, Georgia?
- 23 A. Yes, ma'am -- I mean. Yes, sir. Martinez.
- 24 Q. Martinez?
- 25 A. Martinez..

THADDEUS CURRY - DIRECT

- 1 Q. That's right across the river in Georgia?
- 2 A. Yes, sir.
- 3 Q. Were you working at the time this offense took place?
- 4 A. Yes, sir.
- 5 Q. Where at?
- 6 A. I was working -- currently working with my father
- 7 doing landscaping, installing sprinklers.
- 8 Q. Is your mother here today?
- 9 A. Yes, sir.
- 10 Q. Yvonne Fraraccio?
- 11 A. Yes, sir.
- 12 Q. And your sister?
- 13 A. Yes, sir.
- 14 Q. Now, did you hire Mr. Chesser or was he appointed to
- 15 represent you?
- 16 A. Appointed.
- 17 Q. And it was Michael Chesser?
- 18 A. Yes, sir.
- 19 Q. Lawyer from Aiken?
- 20 A. Yes, sir.
- 21 Q. Is he here today?
- 22 A. Yes, sir.
- 23 Q. All right. And did he have an investigator working
- 24 for him?
- 25 A. Yes, sir.

THADDEUS CURRY - DIRECT

1 Q. What was his name?

2 A. David Cunamin.

3 Q. Cunamin?

4 A. Yes, sir.

5 Q. And who represented you on your appeal?

6 A. Robert Dudek.

7 Q. Now did you prepare a petition for post conviction
8 relief?

9 A. Yes, sir.

10 Q. That's your signature on the petition?

11 A. Yes, sir.

12 MR. SUSSMAN: And for the Court's benefit, his
13 original petition is actually attached to the recast
14 petition that I did.

15 THE COURT: Okay.

16 MR. SUSSMAN: So we have that.

17 BY MR. SUSSMAN:

18 Q. All right. When did Mr. Chesser first meet with you?

19 A. My attorney, Michael Chesser, and I first met in
20 between the end of May or the beginning of June. My
21 attorney, Michael Chesser, asked me to explain to him
22 where I was on the evening of March 17th, 2003.

23 Q. Now you understand that when you start talking about
24 your meetings with Mr. Chesser, it's -- there's no
25 attorney-client privilege, when you talk about -- when

THADDEUS CURRY - DIRECT

1 you're talking about what you discussed with Mr. Chesser.

2 Do you understand that?

3 A. Yes, sir.

4 Q. Okay. Go ahead.

5 A. The evening of March 17th, 2003, Saint Patrick's Day,
6 I told him that I was at my mother's house with my mother
7 until eight o'clock p.m. or nine o'clock p.m. when a young
8 lady by the name of Margie Darden came to my mother's
9 house and asked me to go to the liquor store with her
10 because she was only 19 or 20 and I was 23 at the time.

11 Margie Darden gave me some money and asked me to buy
12 her two drinks, Jack Daniels and two -- Tequila Rose.
13 Margie Darden and I left the liquor store and from there
14 we went to my sister's, Valerie Tonisha Curry, job which
15 is Food Lion. Valerie --

16 Q. Now, this time frame that you're discussing was the
17 evening before the shooting took place?

18 A. Yes, sir; March 17th.

19 Q. Okay. The shooting took place on the early morning
20 hours, about 1:30 in the morning on March 18th?

21 A. Yes, sir.

22 Q. Okay. Continue.

23 A. Valerie worked there as a cashier. While Margie
24 Darden and I was at the Food Lion, Margie Darden and I
25 bought Coca-Cola to drink with the Jack Daniels and I

THADDEUS CURRY - DIRECT

1 bought a pack of Newport 100s. Margie Darden bought her

2 --

3 THE COURT: You're going to have to slow down.
4 Is he just reading this prior statement?

5 MR. SUSSMAN: He's got a statement. I'm not sure
6 exactly how --

7 THE APPLICANT: I'm just telling him what
8 happened, sir.

9 THE COURT: Well, you look like you're just
10 reading every word, word for word.

11 THE APPLICANT: No. I was telling you what I
12 told him, sir.

13 THE COURT: Okay.

14 THE APPLICANT: Valerie worked there as a
15 cashier. While Margie Darden and I was at Food Lion,
16 Margie Darden and I bought Coca-Cola to drink with the
17 Jack Daniels and I bought a pack of Newport 100s. Margie
18 Darden bought herself a pack of Kools.

19 After we left my sister's job, Margie Darden and
20 I went to Margie's apartment which is located almost
21 directly across from the Food Lion. My sister Valerie
22 worked there. Margie and I played cards. We listened to
23 the radio until my sister, Valerie, got off of work.

24 Q. Thad, let's do this. I've got a copy of the notes you
25 made. And in order to make it a little easier for the

THADDEUS CURRY - DIRECT

1 Court, why don't I ask you some questions based on your
2 notes?

3 A. Okay. Yes, sir.

4 Q. And that will speed things up.

5 A. Okay.

6 Q. All right. So basically you were with Margie Darden
7 and your sister the evening before the shooting took
8 place?

9 A. Yes, sir.

10 Q. And you stayed at Margie's house until about two
11 o'clock in the morning?

12 A. Yes, sir.

13 Q. And your mother lived down the street. So you went
14 down the street after that?

15 A. Yes, sir.

16 Q. Now you were with your mother -- you were with Margie
17 and Valerie up until about two o'clock in the morning?

18 A. Yes, sir.

19 Q. The shooting took place at 1:30?

20 A. Yes, sir.

21 Q. Now, did you tell Mr. Chesser --

22 A. Yes, sir.

23 Q. -- during the various times that you met with him over
24 the summer of 2003 about these alibi witnesses?

25 A. Yes, sir.

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- 1 Q. Okay. Did he actually have an investigator go out and
2 speak to Valerie?
- 3 A. Yes. David Cunamin.
- 4 Q. David Cunamin. That was the investigator?
- 5 A. Yes, sir.
- 6 Q. He had him appointed?
- 7 A. Yes, sir.
- 8 Q. Did Valerie -- was Valerie called as a witness?
- 9 A. No, sir.
- 10 Q. Do you know why?
- 11 A. Because, actually I was -- actually, the day I was
12 indicted was March, I mean, May 10th, 2004.
- 13 Q. Right.
- 14 A. The same day I was indicted, Michael Chesser took me
15 to trial. He didn't move for a continuance and --
- 16 Q. Did you know before March 10th, have any notice at all
17 that you were --
- 18 A. No, sir.
- 19 Q. -- going to go to trial?
- 20 A. No, sir. We never had a prior -- indictment, no
21 notice, no nothing.
- 22 Q. Did you ever get a copy of an indictment?
- 23 A. No, sir.
- 24 Q. All right. Now, let me guide you a little bit on
25 that.

THADDEUS CURRY - DIRECT

- 1 A. Okay. Yes, sir.
- 2 Q. So Valerie was never called?
- 3 A. No, sir.
- 4 Q. How about Margie Darden?
- 5 A. No, sir.
- 6 Q. But they were both interviewed?
- 7 A. Yes, sir.
- 8 Q. And they were your alibi witnesses?
- 9 A. Yes, sir.
- 10 Q. Now did you have something else you wanted to say
- 11 about that issue?
- 12 A. No, sir.
- 13 Q. All right. We've covered that.
- 14 A. Yes, sir.
- 15 Q. Now, let's move onto the 9-1-1 dispatcher. There were
- 16 some other discrepancies in -- well, let me strike that
- 17 and start over again.
- 18 The victim in this case was a fellow named Heath
- 19 Hamilton?
- 20 A. Yes, sir.
- 21 Q. Right. There was a fellow that was with him named?
- 22 A. Ronald Corsey.
- 23 Q. Right. When Mr. Hamilton was shot, Mr. Corsey called
- 24 the police?
- 25 A. Yes, sir.

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- 1 Q. He called 9-1-1?
- 2 A. Yes, sir.
- 3 Q. There was a 9-1-1 transcript?
- 4 A. Yes, sir.
- 5 Q. There was a 9-1-1 tape?
- 6 A. Yes, sir.
- 7 Q. Were either of those introduced into evidence?
- 8 A. No, sir.
- 9 Q. Why would that have been important for your case?
- 10 A. Because all through this transcript Ronald Corsey.
- 11 states that it was too dark, he didn't see anything. And
- 12 he's asked numerous times about this. And he was even
- 13 asked, what color shirt did this individual have on. And
- 14 he said it was too dark, and that he didn't see anything.
- 15 Q. That's what he said in the 9-1-1 tape?
- 16 A. Yes, sir. He gave no physical prior description, no
- 17 nothing.
- 18 Q. And yet that 9-1-1 tape was not introduced into
- 19 evidence?
- 20 A. No, sir.
- 21 Q. Okay. Now, just so the Court understands, this was
- 22 allegedly a drug deal that was supposed to take place in
- 23 Beech Island, South Carolina?
- 24 A. Yes, sir.
- 25 Q. And allegedly you and a fellow named Anthony Savage

THADDEUS CURRY - DIRECT

1 were supposed to meet the victim, Heath Hamilton, and his
2 buddy, Ronald Corsey; over there to do a drug transaction?

3 A. Yes, sir.

4 Q. And during this meeting that took place at 1:30 in the
5 morning, allegedly Savage and Corsey said that you pulled
6 out a gun and shot Hamilton?

7 A. Yes, sir. Can I talk to you a little bit about that?

8 Q. Go ahead.

9 A. Actually Anthony Savage admitted to having on a white
10 tank top T-shirt the night of this crime. He admitted
11 this to Investigator Billy Fleury.

12 Also at trial what he said was that he supposedly, me
13 and him supposedly went with a guy name Jeremy Simuels and
14 Jeremy Simuels supposedly had parked down the street and
15 that him and I supposed to have walked up the street.

16 He's saying that, and his testimony is that I supposed
17 to run around first. He was on the side of the store.
18 And I was supposed to run around first, bring Ronald
19 Corsey and Heath Hamilton to the side of the store where
20 he was and that I supposed to be the shooter.

21 Q. Right.

22 A. But, Ronald Corsey said that Anthony Savage supposedly
23 had run around to the front of the store and run around to
24 the side of the store where I was at and I was supposed to
25 be the second individual with a white tank top T-shirt on,

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- 1 not supposed to be the killer.
- 2 These are two conflicting statements in testimony.
- 3 Q. I understand that, but Corsey testified; did he not?
- 4 A. Yes, sir.
- 5 Q. And Savage testified?
- 6 A. Yes, sir.
- 7 Q. Well, weren't those conflicts brought out?
- 8 A. No, sir.
- 9 Q. They were not?
- 10 A. No, sir.
- 11 Q. Mr. Chesser failed to bring those conflicts in the --
- 12 A. Yes, sir.
- 13 Q. -- testimony out?
- 14 A. Yes, sir.
- 15 Q. Did he argue those to the jury?
- 16 A. No, sir.
- 17 Q. Did he cross-examine either of these two gentlemen
- 18 about --
- 19 A. No, sir.
- 20 Q. -- their failure to -- about the inconsistencies?
- 21 A. No, sir.
- 22 Q. Now, let's talk about Jeremy Simuels; S. I. M. U. E.
- 23 L. S.
- 24 A. Yes, sir.
- 25 Q. He was another State's witness?

THADDEUS CURRY - DIRECT

1 A. Yes, sir. Actually he said that he was at home with
2 his wife and kids.

3 Q. All right. Now, let me ask you a couple questions to
4 guide you.

5 A. Okay.

6 Q. Simuels was talked to by the police basically on the
7 same day of the shooting?

8 A. Yes, sir.

9 Q. He gave a statement?

10 A. Yes, sir.

11 Q. A written statement?

12 A. Yes, sir.

13 Q. And that statement was that he was home with his wife?

14 MS. WILLIAMS: I would object to this whole thing
15 because the best evidence would be the actual statement.

16 THE COURT: Sustained.

17 MR. SUSSMAN: The statement was actually
18 introduced into the trial and is a part of the trial
19 transcript.

20 THE COURT: I mean, we're here on a different
21 trial today.

22 MR. SUSSMAN: Yes, Your Honor.

23 BY MR. SUSSMAN:

24 Q. Okay. Did the statement that Mr. Simuels give to the
25 police conflict with his trial testimony?

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1 A. Yes, sir.

2 Q. Were you aware that there was going to be a change in his
3 testimony?

4 A. No, sir.

5 Q. Was -- did Mr. Chesser talk to you about the change in
6 his testimony?

7 A. No, sir.

8 Q. Okay. So basically Simuels says he wasn't there
9 initially and now when he testified he said he was there?

10 A. Yes, sir.

11 Q. All right. Were you given all the discovery documents
12 by Mr. Chesser?

13 A. Actually I was given a 9-1-1 dispatch with Ronald
14 Corsey, Ronald Corsey's statement, a statement from Robert
15 William Glenn, a statement from Jeremy Simuels and, like,
16 four or five interviews from Qulletrice Rushun, one from
17 Javon Rushun, Robert --

18 Q. Let me stop you there.

19 A. Okay.

20 Q. So Ms. Rushun was Simuels' girlfriend?

21 A. Yes, sir.

22 Q. And she also gave a statement to the police, or did
23 she?

24 A. She --

25 Q. She did not give a statement to the police?

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1 A. David Cunamin.

2 Q. Anyway, she would have said that Simuels --

3 MS. WILLIAMS: I would object on the basis of
4 speculation.

5 THE COURT: Rephrase your question.

6 MR. SUSSMAN: All right.

7 BY MR. SUSSMAN:

8 Q. Are you aware that your investigator spoke with
9 Ms. Rushun?

10 A. Yes, sir.

11 Q. And did they discuss with you what Ms. Rushun said?

12 A. Yes, sir. I actually have interviews with me today.

13 Q. And basically she said that her boyfriend was with her
14 that night?

15 MS. WILLIAMS: Hearsay at this point.

16 THE COURT: Sustained.

17 MR. SUSSMAN: Okay.

18 BY MR. SUSSMAN:

19 Q. Well, let me ask you this: Was Ms. Rushun, Jerry
20 Simuels' wife or girlfriend, ever called to testify?

21 A. No, sir.

22 Q. Did Mr. Cunamin, your investigator, know what she had
23 to say?

24 A. Yes, sir.

25 Q. Would it have differed from what Jerry Simuels said in

THADDEUS CURRY - DIRECT

1 trial?

2 A. Yes, sir.

3 Q. And yet she was never called?

4 A. No, sir. Actually she told -- and it's testimony --
5 MS. WILLIAMS: Object. Again, hearsay.

6 THE COURT: Sustained.

7 BY MR. SUSSMAN:

8 Q. You have her -- do you have her interview?

9 A. Yes, sir.

10 Q. You have it with you here today?

11 A. Yes, sir.

12 MR. SUSSMAN: We would like to ask the Court to
13 allow us to introduce that interview into evidence.

14 MS. WILLIAMS: Your Honor, I don't it's a self-
15 authenticating document. There's no evidence of where it
16 came from. If Mr. Chesser can recognize it and say it was
17 in his file, I would not object to it for the limited
18 purpose of something Mr. Chesser looked at. But I would
19 of course object to it as being truthful or being the full
20 interview.

21 THE COURT: Right, not for the matter asserted.

22 MR. SUSSMAN: That's fine. We'll defer to that
23 to that time.

24 THE COURT: Okay.

25 BY MR. SUSSMAN:

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- 1 Q. At any rate, Ms. Rushun was not called to testify?
- 2 A. No, sir.
- 3 Q. Did Mr. Chesser move for a continuance so he could
- 4 call these witnesses?
- 5 A. No, sir.
- 6 Q. Her name was -- the lady we're talking about is
- 7 Qulletrice Rushun?
- 8 A. Yes, sir.
- 9 Q. Q. U. L. L. E. T. R. I. C. E. R. U. S. H. U. N.
- 10 A. Yes, sir.
- 11 Q. So as I understand it, there was no physical evidence
- 12 tying you to this case?
- 13 A. No, sir.
- 14 Q. There was no fingerprints or DNA?
- 15 A. No, sir.
- 16 Q. There was basically the testimony of Mr. Corsey who
- 17 identifies you as the person that shot Mr. Hamilton?
- 18 A. Yes, sir.
- 19 Q. And there were discrepancies in what Corsey said that
- 20 were not brought out by Mr. Chesser?
- 21 A. Yes, sir.
- 22 Q. And then Mr. Simuels also was a witness against you?
- 23 A. Yes, sir.
- 24 Q. Who was a co-defendant, by the way?
- 25 A. Yes, sir.

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1 Q. And there were -- he changed his statement basically?

2 A. Yes, sir.

3 Q. And Mr. Chesser did not bring out a witness that could
4 have impeached his testimony?

5 A. No, sir.

6 Q. All right. And then the only other evidence was, I
7 believe, was Mr. Savage?

8 A. Yes, sir.

9 Q. Who -- Anthony Savage which was a co-defendant?

10 A. Yes, sir.

11 Q. And of course he said he was with you and he said you
12 were the shooter?

13 A. Yes, sir.

14 Q. Now you have attached to your original petition for
15 post conviction relief, an affidavit that purports to be
16 from Mr. Savage?

17 A. Yes, sir.

18 Q. Where did that come from?

19 A. It was -- it's signed by a notary public. Actually I
20 don't know where it came from. It was sent to me in
21 McCormick Correctional Institution.

22 MS. WILLIAMS: Your Honor, I would object to the
23 admission of that affidavit because it is completely not
24 verified.

25 MR. SUSSMAN: I haven't moved to enter it yet.

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1 I'm just asking where it came from.

2 THE COURT: Okay.

3 MR. SUSSMAN: But she has anticipated what I'm
4 going to do.

5 THE COURT: If you intend to put it into
6 evidence, I will deny that.

7 MR. SUSSMAN: I understand that, Judge.

8 THE COURT: Thank you.

9 MR. SUSSMAN: I'm just trying to get as much in
10 as I can.

11 BY MR. SUSSMAN:

12 Q. But that statement, that document came to you while
13 you were in McCormick County --

14 A. Yes, sir.

15 Q. -- McCormick Correctional Institute?

16 A. Yes, sir.

17 Q. Was Mr. Savage also there at the time?

18 A. He was currently on the yard. I was in --

19 Q. Was he in the institution?

20 A. Yes, sir.

21 Q. So you were both in the institution at the same time?

22 A. Yes, sir.

23 Q. Where was -- what was your status?

24 A. I was -- actually I was on SMU lockup with the officer
25 that's present now.

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- 1 Q. You were what?
- 2 A. I was on SMU. It's called lockup.
- 3 Q. Lockup?
- 4 A. Yes.
- 5 Q. SMU, that's some maximum security thing?
- 6 A. It's separate from the yard.
- 7 Q. So you weren't free to move around?
- 8 A. No, sir.
- 9 Q. But Savage was?
- 10 A. Yes, sir.
- 11 Q. And this statement or this document that's attached to
12 your petition was -- how did you get it?
- 13 A. It was sent to me through the mail.
- 14 Q. Okay. All right. So you get mail?
- 15 A. Yes, sir. They just slide it under your door or hand
16 it to you if you're awake or not.
- 17 Q. I see. Where is Mr. Savage now?
- 18 A. Home.
- 19 Q. I think part of the complaint you have is what
20 happened on appeal was that your lawyer was not allowed to
21 go into any leniency promise to Savage or Simuels?
- 22 A. Yes, sir.
- 23 Q. When was Simuels sentenced on these charges?
- 24 A. Actually, probably like seven days after -- oh.
25 Charged?

THADDEUS CURRY - DIRECT

1 Q. Yeah.

2 A. Oh.

3 Q. When was he sentenced?

4 A. Oh. When he was sentenced. Like seven days after me.

5 Q. And what did he get?

6 A. Accessory to a felony.

7 Q. Five years?

8 A. Yes, sir. He's actually home now.

9 Q. And that's the same charge that Savage got?

10 A. Yes, sir.

11 Q. But both these guys were asked if they had any deals
12 with the State; weren't they?

13 A. Yes, sir.

14 Q. And they denied it?

15 A. Yes, sir.

16 MR. SUSSMAN: -- and, Judge, if you'll bear with
17 me, I'm going through some of these notes and trying to
18 make sure we cover the highlights.

19 THE COURT: Yes, sir.

20 MR. SUSSMAN: Thank you.

21 BY MR. SUSSMAN:

22 Q. Another person that testified was Javon Rushun?

23 A. Yes, sir.

24 Q. And that was actually this Qulletrice's brother?

25 A. Yes, sir.

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1 Q. Who was -- and that's -- Qulletrice was Jeremy's wife-
2 girlfriend?

3 A. Yes, sir.

4 Q. What was the problem with -- how did Mr. Chesser
5 mishandle Javon Rushun, because he testified?

6 A. He was actually interviewed by David Cunamin, too.
7 Well, I can't talk about that, so.

8 Actually -- let me see.

9 Mr. Rushun said that he was asked to go along with
10 Jeremy Simuels' statement, and after he signed the
11 statement to implicate me in this crime. And this is part
12 of the transcript.

13 Q. Okay. Well, did Mr. Chesser cross-examine Mr. Rushun
14 about his testimony?

15 A. No, sir.

16 Q. But Mr. Rushun was not even there at the time this
17 shooting took place?

18 A. No, sir. He indicated as being at the apartments.

19 Q. So apparently the allegation and the testimony was
20 that you and Savage met up with these two guys at the
21 Savannah West Apartments --

22 A. Yes, sir.

23 Q. -- earlier that evening?

24 A. Yes, sir.

25 Q. Where is that at?

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1 A. Augusta, Georgia.

2 Q. And that supposedly there was going to be an
3 arrangement maybe to meet up later on?

4 A. Yes, sir.

5 Q. And then later on when the meeting took place in Beech
6 Island -- is that where it happened?

7 A. Yes, sir.

8 Q. Was alleged to have happened?

9 A. Yes, sir.

10 Q. -- that Hamilton got shot allegedly by your hand?

11 A. Yes, sir.

12 Q. But your defense to the case and the real complaint
13 that you have with Mr. Chesser was that he failed to call
14 your alibi witnesses --

15 A. Yes, sir.

16 Q. -- that he knew about beforehand?

17 A. Yes, sir.

18 Q. And part of the problem also was that your case was
19 indicted and tried on the same day?

20 A. Yes, sir.

21 Q. You had no notice beforehand?

22 A. No, sir.

23 Q. Okay.

24 A. Can I say something? I mean, I had no notice because
25 I -- from what my understanding of what I read it says

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1 that a grand jury deliberations are held in secrecy. And
2 if they convened the same day I went to trial, how could
3 we know that I'm going to trial.

4 Q. Right.

5 A. You know what I'm saying.

6 Q. You wouldn't know beforehand when they're meeting on
7 your case.

8 A. No, sir. That's why I couldn't call my alibi
9 witness. He never moved for a continuance which I never
10 understood.

11 Q. And you never got -- you were never told that Simuels,
12 who was basically a non-witness --

13 A. Yes, sir.

14 Q. -- all of a sudden has become one of the State's key
15 witnesses against you?

16 A. Yes, sir.

17 Q. And that information was never conveyed to you before
18 trial?

19 A. No, sir.

20 Q. Did Mr. Chesser ever discuss with you -- I'm switching
21 now. Did he ever discuss with you anything about pleading
22 out to a lesser-included charge of some kind?

23 A. No, sir.

24 Q. Was there any plea negotiation done in this case
25 before your trial?

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1 A. He said something about 30 years, but actually Michael
2 Chesser's telling me he's going to subpoena all of these
3 people to trial, Qulletrice Rushun, Javon Rushun, Jeremy
4 Simuels and Miss Valerie Tonisha Curry.

5 Q. And what now?

6 A. Ms. Valerie Tonisha Curry.

7 Q. Valerie Curry, your sister?

8 A. Yes, sir.

9 Q. Well, Javon Rushun did testify?

10 A. Yes, sir. He did.

11 Q. And Simuels did testify?

12 A. Yes, sir; but before trial, you know, we thought --

13 Q. You thought Simuels was going to be your witness?

14 A. Yes, sir.

15 Q. What is the current sentence you're serving?

16 A. A life sentence plus five years but they tell me
17 without parole.

18 Q. So you're not -- so you have no parole eligibility?

19 A. That's what the parole board says.

20 Q. Were you ever served with any notice that you were
21 going to be facing life without parole?

22 A. No, sir.

23 Q. Was that ever discussed with anybody?

24 A. No, sir. Not with me.

25 Q. Let me ask you this: Did you ever have a discussion

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1 with Mr. Chesser about any mitigation on your behalf in
2 the event you got convicted and given life?

3 A. No, sir.

4 Q. Do you know what mitigation is?

5 A. Yes, sir.

6 Q. Evidence about your background, your family, things
7 that the Judge might want to consider in deciding what
8 kind of sentence to give you if you get convicted.

9 A. Yes, sir.

10 Q. None of that was ever discussed with you?

11 A. No, sir.

12 Q. To your knowledge, were any of your family members
13 contacted regarding coming to court and testifying for you
14 at sentencing?

15 A. No, sir.

16 Q. Were you sentenced right after the verdict was
17 returned?

18 A. Yes, sir. Same day.

19 Q. Did Mr. Chesser ask for time to present mitigation
20 evidence to the Court?

21 A. No, sir.

22 Q. How many times did you actually meet with Mr. Chesser,
23 just roughly?

24 A. Only the times when he came and actually gave me the
25 interviews of the people that he interviewed and said he

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1 was calling to trial. That was it.

2 Q. Can you give the Judge an estimate?

3 A. I think, I'd say about, probably like four times.

4 Q. Let's see. You were arrested on March 18th; is that
5 right? Were you arrested on the day --

6 A. No, sir.

7 Q. How long after the shooting were you arrested?

8 A. A month later basically, exactly like a month.

9 Q. The end of April, about April 19th?

10 A. April 16th, April 17th. Somewhere around up in there.

11 Q. And then you first met with Mr. Chesser the end of
12 May?

13 A. Yes, sir.

14 Q. Now when did you have your preliminary hearing?

15 A. Like six months later, like August 8th, September 8th,
16 something like that.

17 Q. Do you have any idea why it took so long to have a
18 preliminary hearing?

19 A. No, sir.

20 Q. During the preliminary hearing, Investigator Fleury
21 testified?

22 A. Yes, sir.

23 Q. Did he ever mention anything about jury --

24 MS. WILLIAMS: Object on the basis of hearsay.

25 MR. SUSSMAN: I haven't gone into the content of

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1 what he said yet.

2 THE COURT: Don't.

3 MS. WILLIAMS: You asked him to tell you what he
4 said.

5 MR. SUSSMAN: Not yet. I just asked him if he
6 testified. I'm getting there. She's anticipating.
7 Getting me before I get it out.

8 BY MR. SUSSMAN:

9 Q. Was there any mention of Mr. Simuels as a witness for
10 the State?

11 MS. WILLIAMS: I would still object on the basis
12 of hearsay.

13 THE COURT: Sustained.

14 BY MR. SUSSMAN:

15 Q. Was Mr. Simuels there to testify?

16 A. No, sir.

17 Q. Did Robert Glenn testify?

18 A. No, sir.

19 Q. All right. Now, I haven't asked you about Robert
20 Glenn; have I?

21 A. No, sir.

22 Q. Tell the Judge why Mr. Robert Glenn is important in
23 this case and why his failure to be called as a witness by
24 Mr. Chesser impacted on your outcome.

25 A. I can't get it in because he never called him about

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1 the interviews that he had with David Cunamin. He said
2 something different, but I can't tell you what he said.

3 Q. So let me just ask you this: Glenn was interviewed by
4 David Cunamin?

5 A. Yes, sir.

6 Q. And his testimony would have contradicted --

7 A. Yes, sir.

8 Q. -- some evidence at trial?

9 A. Majorly. Yes, sir.

10 Q. Major evidence?

11 A. Yes.

12 Q. And Mr. Chesser knew that --

13 A. Yes, sir.

14 Q. -- because his investigator talked to Mr. Glenn?

15 A. Yes, sir.

16 Q. Did you see a copy of the statement that was given?

17 A. I actually have it with me today.

18 Q. Okay. And yet Mr. Glenn was never called as a
19 witness?

20 A. No, sir.

21 Q. Okay. This was a -- actually you were picked out of a
22 lineup; weren't you?

23 A. Yes, sir.

24 Q. And Glenn picked you out?

25 A. Yes, sir.

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1 Q. And Corsey picked you out?

2 A. Yes, sir. This picture from this lineup actually came
3 from 2002. And I was the only -- but the murder that they
4 saying -- I mean, it did happen, but they trying to say
5 that I did, was in 2003. They put me in this photograph
6 lineup with six people, but I'm the only person in this
7 lineup with a white tank top T-shirt on.

8 Q. I see. Did Mr. Chesser argue that that was overly
9 suggestive?

10 A. At the pretrial motions but never in trial.

11 Q. Okay. But you did have a Biggers, what they call
12 Biggers' motion?

13 A. Yes, sir.

14 Q. And the Judge denied it?

15 A. Yes, sir.

16 Q. Was that ever appealed?

17 A. No, sir.

18 Q. But in the actual trial of the case, that discrepancy
19 and the lineup was never brought out by Mr. Chesser?

20 A. No, sir. The jury never heard it.

21 Q. And Glenn never testified?

22 A. No, sir.

23 Q. But it was referenced in the trial that Glenn picked
24 you out of a lineup?

25 A. Yes, sir.

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1 Q. And so you're contending that if Glenn had been called
2 as a witness --

3 A. It was referenced in pretrial. My bad.

4 Q. Okay. If Glenn had been called as a witness then you
5 would have been able to rebut that?

6 A. Yes, sir.

7 MS. WILLIAMS: Object to anything that Glenn
8 would say.

9 THE COURT: Sustained.

10 MR. SUSSMAN: Thank you, Your Honor. Let's move
11 on.

12 BY MR. SUSSMAN:

13 Q. Cunamin did testify; did he not?

14 A. Yes, sir.

15 Q. Did he testify to all of these taped interviews that
16 he did with these people?

17 A. He was never asked about them.

18 Q. Well, who called him as a witness?

19 A. Mr. Chesser.

20 Q. Well, let me ask you this: Did you have
21 communications with Mr. Chesser about what you wanted to
22 see done in your trial?

23 A. Yes, sir. He promised me that he would subpoena --

24 Q. Hold on. Hold on.

25 A. Okay.

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1 Q. Let me get you there.

2 A. Thank you, sir.

3 Q. Would these conversations with Mr. Chesser take place
4 at the jail?

5 A. Yes, sir.

6 Q. You were locked up the whole time?

7 A. Yes sir.

8 Q. You never got a bond?

9 A. No, sir.

10 Q. Okay. And during these conversations there were
11 things that you wanted him to do?

12 A. Yes, sir.

13 Q. Tell the Judge what those were.

14 A. For one, to call these --

15 Q. Tell the Judge --

16 A. Excuse me. For one, to call these witnesses to my
17 trial. And, number two, to have a speedy trial because I
18 was actually locked up for 33 months. I had never been
19 indicted and I wanted to know why.

20 And I had all these interviews that, uh, I can't say
21 what they said, but it was in my favor. That's the only
22 thing I got to say. And, I mean, he never called none of
23 them.

24 Q. So these were people that you felt could have either
25 helped you or the interviews that were done with them, if

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1 it had been brought out would have helped you; is that
2 right?

3 A. Yes, sir.

4 Q. Now during Jeremy Simuels' testimony which was
5 different from his statement, his statement was actually
6 introduced into evidence --

7 A. Yes, sir.

8 Q. -- for the jury's consideration?

9 A. Yes, sir.

10 Q. And there were discrepancies between his statement and
11 his testimony?

12 A. Yes, sir.

13 Q. Were those ever brought out by Mr. Chesser or argued
14 to the jury?

15 A. I can't recall.

16 Q. Okay.

17 A. I know I asked him to object to the perjured testimony
18 but he didn't.

19 Q. Because you felt that the statement he gave and the
20 testimony he gave were so directly opposite each other
21 that he had to be lying on one or the other?

22 A. Yes, sir. Either he lied to the police that he signed
23 the statement to or he lied to the judge. Either way.

24 Q. Was there any objection made to his testimony based on
25 that argument?

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- 1 A. No, sir.
- 2 Q. Was there any Brady motion made that this --
- 3 A. No, sir.
- 4 Q. -- information should have been given to the defense
- 5 10 days in advance of trial?
- 6 A. No, sir.
- 7 Q. Was any continuance asked for --
- 8 A. No.
- 9 Q. -- to explore some of this other information?
- 10 A. No, sir.
- 11 Q. Okay. Now in your indictment, it basically states
- 12 that you killed this Mr. Hamilton in Aiken County on March
- 13 18th?
- 14 A. Yes, sir.
- 15 Q. It gives no other details?
- 16 A. No, sir.
- 17 Q. And I think we raised that in the petition that that's
- 18 not sufficient, constitutionally sufficient certainly
- 19 under the sixth amendment to give you enough information
- 20 from the statutory notice to prepare your defense.
- 21 A. Yes, sir.
- 22 Q. Specifically your alibi defense.
- 23 A. Yes, sir.
- 24 Q. Aiken County, would you consider that a large county
- 25 or a small county?

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1 A. I believe it's like the fourth largest county in South
2 Carolina. I'm not sure. I know it's a lot of, like,
3 cities inside Aiken County, towns.

4 Q. Okay. Was a speedy trial demand ever filed?

5 A. No, sir.

6 Q. Did you ask Mr. Chesser to file one?

7 A. Yes, sir.

8 Q. Now, you and Savage -- one of the State's key
9 witnesses, one of the three -- were actually charged in an
10 attempted armed robbery about a year or two before this
11 murder took place?

12 A. Yes, sir.

13 Q. And during that prosecution, did you --

14 A. Implicate.

15 Q. -- implicate Mr. Savage?

16 A. Yes, sir. I did.

17 Q. Did Mr. Savage know about that?

18 A. Yes, sir.

19 Q. How did he know about that?

20 A. Because we was arrested in Aiken County at the time
21 and he had his motion for discovery and I had, also had my
22 motion for discovery.

23 Q. In the motion for discovery, it indicated that you had
24 given a full confession?

25 A. Yes, sir.

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- 1 Q. So, Savage knew that?
- 2 A. Yes, sir.
- 3 Q. Before he testified against you in this murder trial?
- 4 A. Yes, sir.
- 5 Q. And before he gave his statement involving your
6 alleged involvement in this murder?
- 7 A. Yes, sir.
- 8 Q. I see. Was that fact brought out in cross when
9 Mr. Chesser had Savage on the stand?
- 10 A. No, sir; but we talked about it numerous times and he
11 said he would because that's showing that he had motive to
12 lie on me in court.
- 13 Q. Okay. And I know we already talked about you were
14 never served with any kind of written notice regarding
15 life without parole. Did you ever discuss that as a
16 possible penalty with Mr. Chesser?
- 17 A. This is my first time hearing about it.
- 18 Q. Were -- was there any information that you had about
19 any witnesses taking a polygraph test?
- 20 A. Yes, sir.
- 21 Q. What was that?
- 22 A. Javon Rushun failed and also -- I mean. Excuse me.
23 Javon Rushun failed and also Jeremy Simuels failed. This
24 is what the document says.
- 25 Q. Was that ever brought out on cross?

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1 A. No, sir.

2 Q. And I think during the pretrial motions, the
3 prosecutor mentioned that you were being charged with
4 attempted armed robbery?

5 A. Yes, sir.

6 Q. Were you actually ever indicted for attempted armed
7 robbery?

8 A. No, sir.

9 Q. Did Mr. Chesser ever object to that reference to the
10 Court about you being charged with attempted armed
11 robbery?

12 A. Actually we got these indictments the same day. So,
13 no, sir, but we got them the same day so...

14 Q. The same day of trial?

15 A. Yes, sir. This is the first time I'd ever received
16 them, because it's the same day I was indicted, same day I
17 went to trial.

18 Q. And now, let's talk about Mr. Dudek for a minute.
19 Robert Dudek was your appellate counsel?

20 A. Yes, sir.

21 Q. And do you feel that Mr. Dudek failed to represent you
22 properly on your appeal?

23 A. Yes, sir.

24 Q. Now we know he raised the issue about, under Mizell
25 about you being limited, your counsel being limited from

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1 cross-examining Savage and Simuels, the two co-defendants,
2 about their leniency. And he raised the issue about the
3 jury charge, about the hand of one is the hand of all?

4 A. Yes, sir.

5 Q. What other issues do you feel he could have raised on
6 appeal?

7 A. The 9-1-1 call. Also --

8 Q. What about the 9-1-1 call?

9 A. Because this, Mr. Ron Corsey admits that he seen
10 nothing the night of March 17th through 18th.

11 Q. In his 9-1-1 call?

12 A. Yes, sir. He says it was too dark. He didn't see
13 anything. He didn't know what the color shirts they had
14 on, nothing. No physical description or nothing. Only
15 physical description he said for one of the guys was that
16 he had a bald head.

17 At the time I had a full head of hair. This is -- you
18 can see my, uh, pictures when I came inside Aiken County.

19 Q. Right.

20 A. I lost my hair back here.

21 Q. And then the lineup, you wanted him to file an appeal
22 on the denial of the lineup being --

23 A. Yes, sir.

24 Q. -- in evidence?

25 A. Yes, sir. I asked him that.

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1 Q. Did you ever meet with Mr. Dudek to discuss these
2 issues?

3 A. No, sir. He never -- we never actually met.

4 Q. Did you talk to him on the phone?

5 A. I wrote him letters.

6 Q. Did he write you back?

7 A. Yes, sir.

8 Q. Did he ever send you a copy or a draft of the brief he
9 was filing on your behalf?

10 A. Yes, sir.

11 Q. After it was filed or before?

12 A. After it was filed.

13 Q. All right. Now we've covered a lot of information.
14 Is there anything else that you felt Mr. Chesser should
15 have done on your behalf that he failed to do that we
16 haven't already talked about?

17 A. Yes, sir.

18 Q. Go ahead and tell the Judge what that is.

19 A. In my pretrial motion, that Neals versus Bigger
20 hearing, Billy Fleury, he actually -- can I read this
21 through?

22 THE COURT: I'd rather you just testify.

23 THE APPLICANT: Okay. He actually said that he
24 told Ronald Corsey, did he pick the right guy.

25 THE COURT: Okay.

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1 THE APPLICANT: This is the Neals versus Bigger
2 hearing. This is -- excuse me, sir. I have to find it,
3 please.

4 Please see trial transcript, page 17 line 20
5 through 25 and page 18 line one.

6 THE COURT: All right.

7 THE APPLICANT: And this was never brung in front
8 of the jury.

9 BY MR. SUSSMAN:

10 Q. This is what?

11 A. The jury never heard that.

12 Q. Is there anything else that you wanted the Judge to
13 know about that we haven't already dealt with?

14 A. No, sir.

15 Q. Okay. You know, take, make sure you -- I don't want
16 you to feel rushed into this, but at the same time I don't
17 want to repeat everything we're already done. But this is
18 your chance to tell --

19 A. Okay.

20 Q. -- the Judge.

21 A. Oh, yes. Yes, sir. On page 161 lines 17 through 21.

22 Q. Now, are you referring to the trial transcript?

23 A. Oh. Yes, sir.

24 Q. All right.

25 A. Jeremy Simuels claims that I pulled up in a 325 BMW at

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1 Savannah West Apartments. But this is, if you pay close
2 attention to this, this is after Ronny Corsey and he
3 Claims he has left the apartments.

4 And the State's case is saying that I was actually
5 there when he was there. But he's saying that, like, I
6 believe like a page before, that these guys said I left
7 the apartment complex.

8 Q. And so what did Mr. Chesser fail to do?

9 A. He never brung this to the attention of the jury in
10 the closing arguments.

11 Q. Did he cross-examine Mr. Simuels about this?

12 A. No, sir.

13 Also the clothes are different. Jeremy Simuels said I
14 had on a pair of -- excuse me. This is page 172 line 19
15 to 25 in the trial transcript. Jeremy Simuels' claimed
16 that I had on a brown starter coat and some blue jeans
17 pants.

18 Ronald Corsey on page -- excuse me, sir. Okay.
19 Ronald Corsey claims -- please see trial transcript,
20 Ronald Corsey direct examination, page 34 line 11 through
21 19. Ronald Corsey claims that I, Thaddeus Curry had on a
22 white shirt, a wife beater better known as a tank top and
23 some jean shorts when I was supposed to been at Savannah
24 West Apartments.

25 Q. So this is the discrepancy in the two State's

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1 witnesses' description that you feel Mr. Chesser should
2 have brought out on cross?

3 A. Yes, sir.

4 Q. And he failed to do that?

5 A. Yes, sir. Also, I don't actually remember the page
6 number, but Ronald Corsey in the 9-1-1 dispatch and on the
7 stand at one point said that the murder weapon was a
8 three-foot long gun.

9 And Anthony Savage in his testimony, he says that it
10 was a nine millimeter handgun. So one is saying it was
11 supposed to be like a rifle, and the other one's saying it
12 was a handgun.

13 Q. Was that ever argued?

14 A. No, sir. And I asked him about it plenty of times.

15 Q. And that was never brought out on cross?

16 A. No, sir.

17 Q. So one witness said it was a two- to three-foot long
18 rifle and the other one said it was a nine millimeter
19 handgun?

20 A. Yes, sir.

21 Q. Was the gun ever recovered?

22 A. No, sir. Not my knowledge.

23 Q. All right. Anything else?

24 A. I feel Mr. Chesser failed to object under Rule 3-C. of
25 criminal procedures that the State lacked subject matter

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1 jurisdiction to hear my case because it had been passed
2 the 90 days. And I had been indicted 13 months later and
3 the arrest warrants should have been dismissed within the
4 90 days from my understanding, unless upon a written order
5 from the clerk of court -- I mean, excuse me, a circuit
6 judge.

7 Q. So you weren't tried within the 90 days?

8 A. No, sir.

9 Q. So you feel like there was a violation of criminal
10 rule procedure --

11 A. Yes, sir.

12 Q. Three-C.

13 A. Rule 3-C.

14 Q. And Mr. Chesser never objected or filed a motion?

15 A. No, sir. And from my understanding that any
16 objections should be made under 17-19-90, objections to
17 any defense in the indictment or anything regarding to the
18 indictment. And I feel he's ineffective for not raising
19 them arguments.

20 Q. On the day the indictment was returned?

21 A. Yes, sir. On the day that indictment was returned.

22 Q. He never moved for a continuance?

23 A. He never moved for a continuance. He told me I was
24 going, I mean, when I got to the county -- I mean, to the
25 county -- here to, what is this? Aiken County --

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1 Q. Courthouse?

2 A. -- courthouse..

3 Q. Yeah.

4 A. He just told me we was going for a hearing. I didn't
5 actually know I was going to trial. He told me when I got
6 here.

7 Q. Well, when did you talk to him? You talked to him
8 before you came here for trial?

9 A. No, sir. This is --

10 Q. When did you meet with him when you said you were here
11 for a hearing?

12 A. When we was sitting right there, right over there in
13 that chair.

14 Q. What hearing did you think you were here for?

15 A. He said the Neals versus Bigger hearing.

16 Q. Lineup challenge?

17 A. Yes, sir. Yes, sir.

18 Q. When did you actually know you were going to be in
19 trial?

20 A. I mean, how could I know, sir? I mean, if the grand
21 jury's held in secrecy, the deliberations, how could he
22 know I was going to trial?

23 Q. So, when did you actually know you were going to
24 trial?

25 A. I mean, we had no prior indictment. We had no

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1 indictment for trial. I mean, I got indicted the same
2 day. As soon as they handed the indictment to him, I'm in
3 trial.

4 Q. I gotcha.

5 A. Yes, sir.

6 Q. Did you ask him to postpone the case?

7 A. Yes. Yes.

8 Q. Was any postponement request made?

9 A. No. He told me he couldn't.

10 Q. All right. Anything else?

11 A. (Reviewing paperwork).

12 MR. SUSSMAN: And, Judge, while he's looking
13 through his notes, I do want to let the Court know I plan
14 on asking permission at the close of the evidence to brief
15 some of these legal issues if the Court would allow me to
16 do that.

17 THE COURT: Do you have any objection?

18 MS. WILLIAMS: To submitting a brief at the close
19 of evidence? No, as long as can I, too.

20 THE COURT: You may. All right. Did you find
21 anything more?

22 THE APPLICANT: I'm just going to -- I don't want
23 to waste no more time.

24 MR. SUSSMAN: I'm sorry. I didn't hear that.

25 THE COURT: If he had found what he wanted to.

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1 MR. SUSSMAN: Are we done? Do you have anything
2 else you wanted to say?

3 THE APPLICANT: No, sir.

4 MR. SUSSMAN: Okay. Stay there. Answer any
5 questions that Ms. Williams may have for you.

6 THE APPLICANT: Okay.

7 CROSS-EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Now, Mr. Curry, you were served with a warrant in
10 April of 2003; is that correct?

11 A. Yes, ma'am.

12 Q. And in that warrant, was the date of the murder
13 listed?

14 A. Yes, ma'am.

15 Q. And was the location listed as Kerry Drive in Beech
16 Island, South Carolina?

17 A. Yes, ma'am.

18 Q. And that was about a year before your trial?

19 A. Yes, ma'am.

20 Q. Now you've also made an issue about moving for a
21 speedy trial. Why did you want to have a speedy trial?

22 A. Because Mr. Chesser had interviewed a lot of witnesses
23 and he told me that he'd subpoena these witnesses to my
24 trial and I had nothing to worry about because these
25 witnesses will come testify in my defense.

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1 Q. But you also wanted a continuance?

2 A. A continuance?

3 Q. Uh-huh.

4 A. No. I never asked for a continuance.

5 Q. Didn't you testify earlier that you had asked
6 Mr. Chesser for a continuance because you didn't know you
7 were up for trial?

8 A. No. This is not the same day I went to trial. This
9 is like 13 months later. This is May 10th, same day I got
10 indicted. Yes, I asked him to move for a continuance
11 because I just got indicted. I had no time to prepare a
12 defense to my case. I wasn't even aware that Jeremy
13 Simuels was going to testify against me.

14 Q. So why did you want a speedy trial and then want a
15 continuance?

16 A. Because six months later Jeremy Simuels said he was at
17 home with his wife and kids in his statement. And I had,
18 like, four peoples' interviews and the interviews he says
19 I was at Savannah West Apartment.

20 I actually have the interviews with me today.

21 Q. What changed about Mr. Simuels' statement that
22 affected your wanting this continuance?

23 A. He said he was in a whole another state at the time.
24 Then when I go to trial, he said that he drove me over to
25 this crime. But in the statement he said he was at home

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1 with his wife and kids. He never mentioned my name in his
2 statement, period.

3 Q. But Simuels says he was -- you're talking about
4 Simuels' testimony during the trial; right?

5 A. Yes, sir -- I mean, yes, ma'am.

6 Q. Why did you need a continuance before the trial
7 started because of what Simuels said?

8 A. Because the day I got indicted was the same day I went
9 to trial.

10 Q. Uh-huh.

11 A. That is a violation, to my understanding because how
12 can I go to trial the same day I've been indicted and I
13 never had an indictment prior to my trial. I never had a
14 notice that I was going to trial. He never had a notice
15 that I was going to trial, Mr. Chesser.

16 Q. So you wanted a speedy trial for a charge that didn't
17 exist in your mind?

18 A. Ma'am?

19 Q. You didn't have an indictment yet when you asked for a
20 speedy trial, too; right?

21 A. I was never aware of none of this.

22 Q. You weren't worried about it?

23 A. I wasn't aware that I wasn't indicted.

24 Q. Okay. So you knew what the charges were, though?

25 A. Yes, ma'am. They gave me a arrest warrant.

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1 Q. Okay. And in your application you mentioned that your
2 attorney should have met with you more often so you could
3 decide whether or not to plead guilty. Can you tell me
4 about that?

5 A. No, ma'am. I'm not a lawyer. I don't understand what
6 you just asked me.

7 Q. In your application you mentioned that your attorney
8 should have met with you more often so you could decide
9 whether or not to plead guilty. Can you tell me about
10 that?

11 A. If -- yes, that's his job. That's just my
12 understanding. That's his job.

13 Q. Would you have pled guilty?

14 A. No, ma'am.

15 Q. Now, you're telling me that you did receive the
16 warrant. You did know the location; right?

17 A. This is an arrest warrant. I'm talking about
18 indictment. This is -- from my understanding, under State
19 versus Rutger and also under 17-19-30 allegations
20 sufficient for murder, that this, the time of death and
21 the time and place is important. This is material in an
22 indictment. And this has to be proved in the indictment
23 by the grand jury before it reaches the jury in a trial.

24 Q. And, but a minute ago you told me that you had your
25 warrant so you knew what to prepare for?

THADDEUS CURRY - CROSS

1 A. That's my arrest warrants.

2 Q. Yes.

3 A. Arrest warrant and indictments are two different
4 things, ma'am.

5 Q. So you didn't think that the charge in your warrant
6 was what they were going to try you for?

7 A. Ma'am, my co-defendants had the same, same arrest
8 warrants I had, but they got indicted for different
9 things. Just because I'm arrested for something doesn't
10 mean I'm going to be indicted for the same thing.

11 Q. So you were preparing witnesses without an indictment
12 even though you didn't think the warrant -- the charges in
13 the warrant were going to be what you were charged with?

14 A. I had to prepare some type defense.

15 Q. So why did you prepare a defense to the charges in
16 warrant if you did not believe that's what they were
17 charging you with?

18 A. Because --

19 MR. SUSSMAN: I'm going to object that, Judge.

20 THE APPLICANT: Thank you.

21 MR. SUSSMAN: I think, A., it's argumentative and
22 B., it misstates his testimony. That's not what he said.

23 THE COURT: I'll sustain the objection.

24 BY MS. WILLIAMS:

25 Q. All right. With regard to this confession that you

THADDEUS CURRY - CROSS

1 gave about Savage, that was as to his 2002 robbery?

2 A. Yes, ma'am.

3 Q. And in 2003 you were still friends with him; right?

4 A. No, ma'am.

5 Q. So, you didn't know him at all when this happened?

6 A. After 2002 we basically end it. Why would he come
7 talk to me? Why would I -- why would he commit any type
8 crime with me? Why would he even hang around me?

9 Q. Now did you see Savage with his discovery packet?

10 A. Ma'am?

11 Q. Did you see Mr. Savage with his discovery packet in
12 2002?

13 A. No, ma'am. We were separated but we had the same
14 attorney, Robert Dudek.

15 Q. For trial in 2002?

16 A. No. That's appellate counsel. I mean -- excuse me,
17 public defender.

18 Q. And did you see him with his discovery?

19 A. Robert Dudek told me he had his discovery. We had the
20 same lawyer.

21 Q. For the same charge?

22 A. Yes, ma'am.

23 Q. How was that charge resolved?

24 A. They dropped the charges against him in two thousand
25 -- I believe later on after this, after he testified

THADDEUS CURRY - CROSS

1 against me in this case. And mine was nolle processed
2 (sic) in 2006.

3 Q. So you don't actually know what Savage had of your own
4 knowledge, though? You're just guessing what he had based
5 on what your attorney told you.

6 A. I know what he had because he was threatening me,
7 that's how I know.

8 Q. When did you tell Mr. Chesser about your alibi?

9 A. The same day I met him.

10 Q. What day is that, or approximately?

11 A. Like, the end of May, beginning of June. I actually
12 have his notes.

13 Q. Okay.

14 A. What -- he wrote down what I said.

15 Q. How did the indictment affect the preparation of that
16 alibi?

17 A. Excuse me, ma'am?

18 Q. How did your indictment affect the preparation of that
19 alibi?

20 A. Because I was indicted and when I went to trial the
21 same day, we had no -- he should have moved for a
22 continuance because that's what a effective lawyer would
23 do, move for a continuance to call my alibi witness
24 forth. How can this man call my alibi witness forth when
25 he never knew that I was getting indicted until the same

THADDEUS CURRY - CROSS

- 1 day I got indicted?
- 2 Q. Did he talk to any of your alibi witnesses?
- 3 A. Yes, ma'am.
- 4 Q. And did he tell you anything about what they had said?
- 5 A. Yes, ma'am.
- 6 Q. Did he talk to you about what his opinion was of those
- 7 statements?
- 8 A. He said that I had nothing to worry about, how can I
- 9 be in two places at one time.
- 10 Q. How do you know what your co-defendants' sentences are
- 11 in this case?
- 12 A. Because, actually now, my lawyer, he just -- he, I
- 13 guess, got it off the computer. And we got, we have
- 14 them. Both of them is home, are home now.
- 15 Q. You don't know that of your own knowledge, either?
- 16 A. Yes, I know of that my own knowledge.
- 17 Q. How? Were you at their plea?
- 18 A. At -- excuse me?
- 19 Q. Were you at their guilty pleas?
- 20 A. No. I was at Kirkland when Mr. Simuels came through.
- 21 He came through a week after me, and he went to Manning.
- 22 That's how I know this.
- 23 Q. Okay. And this affidavit that you've attached to your
- 24 application, did you see it signed?
- 25 A. No, ma'am.

THADDEUS CURRY - CROSS

1 Q. And is Tony Savage here today?

2 A. No, ma'am.

3 Q. And he's your enemy?

4 A. Yes, ma'am.

5 Q. Okay. Now were discrepancies between Simuels'
6 statement and his testimony brought out by the solicitor
7 at your trial?

8 A. Was it brought out?

9 Q. Uh-huh. Was it brought out by the solicitor?

10 A. No, ma'am.

11 Q. Are you sure?

12 A. He asked him was he lying. Yes, ma'am. He asked him
13 was he lying and he admitted to lying. He said that he
14 was lying through the whole trial.

15 Q. The solicitor brought that out for you, right?

16 A. Yes, ma'am.

17 MS. WILLIAMS: Okay. Thank you.

18 THE COURT: Any redirect?

19 MR. SUSSMAN: Just on that last part.

20 MS. WILLIAMS: Okay. I'm sorry.

21 MR. SUSSMAN: Go ahead. Go ahead.

22 CROSS-EXAMINATION (CONTINUED)

23 BY MS. WILLIAMS:

24 Q. What was the alibi story that you told Mr. Chesser?

25 A. I was -- initially I was at home with my mother,

THADDEUS CURRY - REDIRECT

1 Ms. Yvonne Fraraccio. Margie Darden came to my mother's
2 house to pick me up to go -- because it was Saint
3 Patrick's Day, and she wanted me to go buy her some
4 alcohol, some Jack Daniels and Tequila Rose.

5 We left from there, to the liquor store, and went to
6 my sister's job which was Food Lion. From there -- we
7 bought Coca-Cola. And from there we went to Margie Darden
8 house which is actually across the street from the Food
9 Lion.

10 And from there my sister got off work probably like
11 11, 11:30 and joined us. And we stayed to Margie house
12 until after two o'clock p.m. (sic), and she took me back
13 to my -- my sister, Valerie Tonisha Curry took me back to
14 my mother's house and we went to sleep.

15 Mr. Chesser then knew this.

16 Q. And that's what you told him the very first time you
17 met with him?

18 A. Yes, ma'am. I have his notes with his handwriting.

19 MS. WILLIAMS: All right. Thank you.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. SUSSMAN:

23 Q. So, Mr. Chandler, Everett Chandler, the prosecutor,
24 did bring out the fact that Simuels lied; right?

25 A. Yes, sir. Yes, sir.

THADDEUS CURRY - REDIRECT

1 Q. But you didn't know that Simuels was going to admit to
2 lying until the trial?

3 A. No, sir. I never knew.

4 Q. If you had known that in advance, would you have other
5 witnesses prepared to come to court?

6 A. Yes, sir. Because we got interviews from his wife
7 naming everybody at Savannah West Apartment in the
8 interview with the investigator. And she doesn't mention
9 my name, period.

10 Q. And she also would have rebutted what her husband
11 said?

12 A. Yeah. She said he was at home with her in this
13 interview.

14 Q. So the reason why you wanted a continuance was not
15 because you did not want a speedy trial but you wanted to
16 get ready for trial?

17 A. Yes, sir, because how were -- I mean, how can we call
18 these people when I just got indicted, you know.

19 Q. I understand. Well, you got indicted and tried the
20 same day?

21 A. Same day. The very same day. May 10, 2004. That's
22 when they returned the indictment and that same day I went
23 to trial.

24 Q. Let's talk about Margie Darden, D. A. R. D. E. N.

25 A. Yes, sir.

THADDEUS CURRY - RECROSS

1 Q. This was the girl you were with that night?

2 A. Yes, sir.

3 Q. She was interviewed; wasn't she?

4 A. Yes, sir.

5 Q. And was she going to back you up?

6 A. I can't --

7 MS. WILLIAMS: I would object to anything that
8 Margie Darden said.

9 THE COURT: Sustained.

10 BY MR. SUSSMAN:

11 Q. Let me ask you this: Was she married?

12 A. Yes, sir.

13 Q. Was her husband overseas when you were with her?

14 A. Yes, sir.

15 Q. Was he back at the time of your trial?

16 A. Yes, sir.

17 Q. You didn't have a relationship with her?

18 A. We had once, I mean, just -- it was like, you know,
19 one thing led to another, but really it was just friends.

20 Q. How did you meet her?

21 A. Through my sister, Valerie Tonisha Curry, and my
22 mother, Yvonne Fraraccio.

23 MR. SUSSMAN: All right. Thank you, sir.

24 THE APPLICANT: Thanks.

25 THE COURT: Any recross? Ms. Williams, any

1 opportunity to present your case but, I mean, this is the
2 end of the week. There's going to be a number of
3 witnesses here. So I would basically stop the testimony
4 now with the understanding that we will resume the full
5 testimony, if it takes a day or two at that point in time
6 then we could do that.

7 Is there any objection from counsel to that?

8 MS. WILLIAMS: Nothing from the State. That's
9 not objectionable with us.

10 MR. SUSSMAN: No objection, Your Honor.

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

12 MR. SUSSMAN: Thank you, Your Honor.

13 THE COURT: Case is --

14 MS. WILLIAMS: Held open.

15 THE COURT: -- kind of held in abeyance pending
16 my return. Thank you.

17 MR. SUSSMAN: Thank you, Judge.

18 THE COURT: If you would place this first on the
19 docket for the next PCR.

20 MS. WILLIAMS: Indeed.

21 THE COURT: Thank you.

22 END OF DAY'S PROCEEDINGS: 1:05 P.M.

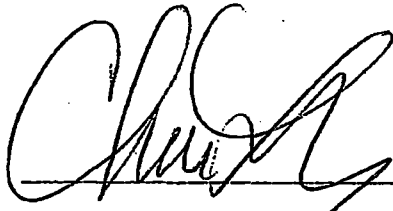
23 CERTIFICATE OF REPORTER

24 I, Cheri L. Young, Registered Professional Reporter,
25 and Official Court Reporter for the State of South

1 Carolina, do hereby certify that the foregoing transcript
2 of proceedings heard on Friday, January 29, 2010, in
3 Aiken, South Carolina, was reported by me using machine
4 shorthand and realtime computer-aided translation and is a
5 true, accurate and complete transcript of the proceedings
6 had and evidence introduced in the hearing of the matter.

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

9 I have hereunto set my hand this Wednesday, the 3rd
10 day of March, 2010.

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13  (051014)

14 Cheri L. Young, RPR
15 Official Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

CIRCUIT COURT
2008-CP-02-01271

THADDEUS CURRY,
Applicant,

-vs-

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
Respondent.

Heard on Wednesday, July 14, 2010
Aiken, South Carolina

BEFORE:

THE HONORABLE W. JEFFREY YOUNG

APPEARANCES:

Counsel on Behalf of the Applicant:
William J. Sussman, Esq.

Counsel on Behalf of the Respondent, State of SC:
Mary S. Williams, Esq.

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802-1154

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BRENDA BRISBIN - DIRECT

1 ON WEDNESDAY, JULY 14, 2010 AT 4:02 P.M.:

2 THE COURT: Please be seated.

3 MS. WILLIAMS: Your Honor, could we agree on
4 something really fast? This is the case that we began
5 hearing last term in January and we continued that
6 hearing, ran out of time. So we're going to finish that
7 hearing off today.

8 There was a quick question raised about an
9 indictment in the Applicant's indictments. And I believe
10 that Ms. Brisbin can shed some light, from the solicitor's
11 office, in that regard. So we're going to take her out of
12 order just to let her say that and then Mr. Sussman will
13 continue with the Applicant's case.

14 THE COURT: Okay. Very well. Ms. Brisbin.

15 BRENDA BRISBIN, having been duly sworn, was
16 examined and testified as follows:

17 THE CLERK: Have a seat and state your name for
18 the Court.

19 THE WITNESS: Brenda Brisbin, B. R. I. S. B. I.
20 N.

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. And, Ms. Brisbin, you're with the solicitor's office;
24 is that correct?

25 A. Yes, I am.

BRENDA BRISBIN - CROSS

1 Q. And how long have you been there?

2 A. Ten years.

3 Q. And I just have a very fast question for you. You
4 were not involved in this case; is that correct?

5 A. Correct.

6 Q. Tell me about the solicitor's practice. When does the
7 grand jury meet before a general sessions term of court?

8 A. The grand jury meets the Thursday prior to the first
9 week of court.

10 Q. So, would it be unusual for an indictment, true
11 billed, to bear a date on the indictment of, indicating
12 the next week's term of court? The true bill would be on
13 a Thursday, the indictment would indicate the term of
14 court for the next week?

15 A. That's the way it's always done.

16 MS. WILLIAMS: Thank you. That's all I have.

17 THE COURT: Any questions Mr. Sussman?

18 MR. SUSSMAN: Yes, I do, Judge.

19 CROSS-EXAMINATION

20 BY MR. SUSSMAN:

21 Q. First of all, just to familiarize yourself with the
22 issue, and the indictment which understand is part of the
23 record -- I have another copy, I can have marked as an
24 exhibit but --

25 MS. WILLIAMS: It's part of the record.

BRENDA BRISBIN - CROSS

1 MR. SUSSMAN: It's in your packet?

2 MS. WILLIAMS: Yes.

3 THE COURT: I've got it.

4 MR. SUSSMAN: See on the back where it says that
5 it was filed on May 6th and true bill was returned on May
6 6.

7 THE COURT: Says May 6, 2004.

8 MR. SUSSMAN: Right.

9 THE COURT: Right.

10 MR. SUSSMAN: But then on the -- well, I don't
11 know if it's the front. I guess it's the front. The
12 other page anyway,

13 THE COURT: July 24th, 2000 --

14 MR. SUSSMAN: Well, it says that a court of
15 general sessions convened on May 10th, the grand jurors of
16 Aiken County present et cetera, et cetera so.

17 THE COURT: Well, that would be when the court of
18 general sessions convened. The grand jury would have
19 already met.

20 MR. SUSSMAN: Okay. Your Honor, well, we were
21 confused about that because it indicated that, you know,
22 the clerk of court would have filed this on May 6. And we
23 thought it looked like the grand jury didn't meet until
24 May 10th.

25 But I think Ms. Brisbin has clarified that, but I

1 want to ask her a few questions.

2 THE COURT: All right.

3 BY MR. SUSSMAN:

4 Q. And of course the grand jury when they meet, no notice
5 of that is given to the defense counsel because they're
6 supposed to meet in secrecy?

7 A. Right.

8 Q. So defense counsel was not present?

9 A. Right.

10 Q. But the grand jury -- is the solicitor's office
11 present?

12 A. I believe our investigator, Norwood Bodie, usually is
13 present.

14 Q. Were you involved in this particular presentment?

15 A. No.

16 Q. So you don't have any personal knowledge of exactly
17 how the grand jury met or when or when the indictment was
18 true billed?

19 A. No.

20 Q. Okay. Who normally files the indictments?

21 A. The paralegal does the filing of them, I suppose.

22 Q. Okay. But they're filed with the clerk of court?

23 A. Yes.

24 MR. SUSSMAN: Your Honor, if I could have just
25 one second? I think I'm through.

THADDEUS CURRY - DIRECT

1 (Pause.)

2 MR. SUSSMAN: That's all I have. Thank you.

3 THE COURT: Thank you. Any redirect questions?

4 MS. WILLIAMS: No, sir.

5 THE COURT: All right. Thank you.

6 MR. SUSSMAN: Your Honor.

7 THE COURT: Yes, sir.

8 MR. SUSSMAN: In order to try to make this as
9 smooth a flow as we can, we got most if not all of
10 Mr. Curry's testimony in last time, but we were just a
11 little rushed.

12 There was an issue that I maybe did not define as
13 clearly as I could have with his testimony. All I want to
14 do, if it's okay with the Court, is to recall Mr. Curry,
15 address one particular issue regarding his alibis because
16 that would set up the testimony that we have coming.

17 THE COURT: That's fine since there's six months
18 between.

19 MR. SUSSMAN: I can't remember what I did last
20 week so...

21 THE COURT: You may call him.

22 MR. SUSSMAN: Mr. Curry, please.

23 THADDEUS CURRY, having been duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please have a seat. State your full

THADDEUS CURRY - DIRECT

1 name, please.

2 DIRECT EXAMINATION

3 BY MR. SUSSMAN:

4 Q. With the Court's permission, I'm just going to lead
5 him with a few sentences to get us going. Do you recall
6 last time you were here and testified?

7 A. Yes, sir.

8 Q. Okay. Did you state your name for the record already?

9 A. Yes, sir (sic).

10 Q. Okay. And of course we reviewed all the allegations
11 that you have regarding the ineffective assistance that
12 Mr. Chesser rendered you during your trial?

13 A. Yes, sir.

14 Q. And as part of your petition for post conviction
15 relief, it's my understanding that you allege that there
16 were certain witnesses that were not presented on your
17 behalf that should have been?

18 A. Yes, sir.

19 Q. Well, let me preface that by asking you: You did meet
20 with Mr. Chesser?

21 A. Yes, sir.

22 Q. And you met with him at least three or four times
23 before trial?

24 A. Yes, sir.

25 Q. And you were arrested, when?

THADDEUS CURRY - DIRECT

- 1 A. April 16th, 2003.
- 2 Q. Of 2003. And you went to trial when?
- 3 A. May 10th, 2004.
- 4 Q. And you were in jail for about a year?
- 5 A. Yes, sir.
- 6 Q. And he met with you in jail?
- 7 A. Yes, sir.
- 8 Q. Now during your meetings with Mr. Chesser, did you go
9 over with him your actions the night leading up to the
10 shooting?
- 11 A. Of my whereabouts; yes, sir.
- 12 Q. All right. Okay. And tell us -- now, first of all,
13 it was the early morning hours of --
- 14 A. March 18th 2003; yes.
- 15 Q. -- March 18th, at about 1:30 in the morning when the
16 shooting took place?
- 17 A. Actually I believe the autopsy report says around
18 2:05 a.m. in the morning.
- 19 Q. What time?
- 20 A. Around 2:05.
- 21 Q. So around two in the morning?
- 22 A. Yes, sir.
- 23 Q. So the evening of the 17th, the night before, you told
24 Mr. Chesser your whereabouts?
- 25 A. Yes, sir.

THADDEUS CURRY - DIRECT

1 Q. Who were you with? What you doing?

2 A. Yes.

3 Q. You told him you were with your mom, who's present in
4 court?

5 A. Yes, sir.

6 Q. She was not called as a witness?

7 A. No, sir.

8 Q. Then you were with your sister?

9 A. Yes, sir.

10 Q. She's present in court?

11 A. Yes, sir.

12 Q. She was not called as a witness?

13 A. No, sir.

14 Q. And then you made a phone call to your fiancée?

15 A. Yes, sir.

16 Q. She's present in court? Correct?

17 A. Yes, sir.

18 Q. She was not called as a witness?

19 A. No, sir.

20 Q. Did you tell Mr. Chesser about these individuals that
21 would have given you an alibi witness?

22 A. Yes, sir.

23 Q. Okay. Do you know why he did not call them?

24 A. No, sir.

25 Q. All right. Then the only other -- did you ever get a

THADDEUS CURRY - DIRECT

1 statement -- I'm switching gears for a minute, Judge.

2 There was a big issue regarding a witness who gave a

3 statement that said that he was not there that night, and

4 then he testified in trial that he was present.

5 Do you remember who that was?

6 A. Yes, sir. Jeremy Simuels.

7 Q. Let me show you a document I have marked as something.

8 Defendant's (sic) Exhibit One. This was previously shown

9 to Ms. Williams.

10 MS. WILLIAMS: Yes, sir. I'm not sure whether we

11 put this in last time, but we had discussed this before

12 the hearing.

13 MR. SUSSMAN: This document, was this given to

14 you as part of your discovery packet? May I approach the

15 witness, Your Honor?

16 THE COURT: Yes.

17 MR. SUSSMAN: Thank you.

18 BY MR. SUSSMAN:

19 A. Yes, sir.

20 Q. Is that a statement that Mr. Simuels gave to the

21 police?

22 A. Yes, sir.

23 MR. SUSSMAN: Your Honor, I'd put this into

24 evidence if I may.

25 THE COURT: Any objection?

THADDEUS CURRY - DIRECT

1 MS. WILLIAMS: Pardon? I don't have an objection
2 to that statement at this time.

3 MR. SUSSMAN: Thank you. It was also introduced
4 at the trial.

5 (Thereupon, Applicant's Exhibit No. 1, Simuels'
6 statement, was received into evidence.)

7 BY MR. SUSSMAN:

8 Q. Now, part of your complaint is that Mr. Simuels was
9 called as a State's witness and gave totally different
10 testimony than what's in his written statement?

11 A. Yes, sir.

12 Q. And you were not told about that before trial?

13 A. No, sir.

14 Q. And Mr. Chesser did not move for a continuance?

15 A. No, sir.

16 Q. And in fact, you were indicted on May 10th?

17 A. Yes, sir.

18 Q. Apparently, or May 6th and you were tried --

19 A. Well, he said the grand jury, the court of general
20 sessions convened on May 10th, 2004 and my trial started
21 May 10th, 2004.

22 Q. Right. And were just indicted apparently four days
23 before that?

24 A. Yes, sir.

25 Q. All right. Had you known -- had you been aware or

THADDEUS CURRY - DIRECT

1 been made aware by the State of Mr. Simuels' change in
2 testimony, would that have altered your trial strategy?

3 A. Yes, sir.

4 Q. How so?

5 A. Basically --

6 Q. Tell the Judge now.

7 A. Yes, sir. Basically Mr. Simuels, he gave a
8 statement. And in his statement he said he was at home
9 with his wife and kids that night. In the statement he
10 also says that he went in for the night at 12 o'clock.
11 The only people that he mentions in the statement was Tony
12 who was Anthony Savage, Javon Rushon, his fiancée,
13 Quelletrice Rushon, the victim that got killed, Heath
14 Hamilton and, I believe, Ronald Corsey.

15 These are the only people that he mentions. Now at my
16 trial, he comes to my trial and he says that, basically to
17 make a long story short, is that a guy named Marcus drove
18 me to Savannah West Apartments. And said that I got this
19 guy, Marcus car with a black bag, and that I got out of
20 Marcus car and got into his car, Jeremy Simuels' car with
21 this black bag.

22 This was never mentioned prior to my trial. Had I
23 known this I would have asked my lawyer to investigate
24 Marcus, to go out and question him and ask him where his
25 whereabouts was that night because I know I wasn't with

THADDEUS CURRY - DIRECT

1 Marcus that night.

2 And furthermore Jeremy Simuels, he testified not only
3 that he left Savannah West Apartments but he left me in
4 Augusta, Georgia. And that he -- he claims that he drove
5 me over here to Beech Island, South Carolina. And that he
6 said that I got out of his car, committed this crime and
7 ran back to his car.

8 None of this information was disclosed to the defense
9 prior to my trial. I was not aware that Jeremy Simuels
10 would testify to this -- he, he actually went from a non
11 witness to a State star witness and I wasn't aware of
12 this.

13 Q. Had you been aware of that, what would you have done?

14 A. Actually I would have asked Mr. Chesser to call Marcus
15 as a witness.

16 Q. The guy that was referenced in the statement?

17 A. Yes.

18 Q. You knew who he was?

19 A. Yes, sir. I knew exactly where he stayed. I know
20 where he worked. He was a MP for Fort Gordon, military
21 police.

22 Q. Was that inconsistency in Simuels' testimony ever
23 argued to the jury at the end of the case?

24 A. No, sir. Also the black bag was never mentioned in
25 this indictment. I mean, this, this statement. He never

THADDEUS CURRY - DIRECT

1 mentioned a black bag. He never mentioned leaving Georgia
2 period.

3 And this surprised me at my, at court. And I had no
4 defense against it. You know what I'm saying. And
5 furthermore, like I say, Michael Chesser, he never called
6 none of my alibi witnesses for it. So basically it was
7 like a one-sided trial.

8 They, the only thing the jury heard was this right
9 here, that -- how Michael Chesser put it is that Jeremy
10 Simuels said I had on these type clothes. Ronald Corsey
11 claim I had on these type clothes. This is actually like
12 putting me this there, you know what I'm saying. They
13 don't mean nothing else. They don't hear nothing about
14 where I was that night, none of my alibi witnesses or
15 nothing was called.

16 Now, had also -- let me see.

17 Also, Jeremy Simuels's wife, Quелletrice Rushon.

18 THE COURT: What's his name?

19 THE APPLICANT: Jeremy Simuels. His wife,
20 Quелletrice Rushon, she had gave a statement to a
21 investigator that worked for Mr. Chesser. And in the
22 statement she said, she doesn't mention my name period.

23 THE COURT: Is this in response to your specific
24 question?

25 MR. SUSSMAN: Well --

THADDEUS CURRY - DIRECT

1 THE COURT: He's just kind of going on and on and
2 on.

3 MR. SUSSMAN: Yeah, I know, Judge. I'm not
4 sure -- I think the main question was, how -- if Simuels'
5 change in his testimony had been revealed to the defense
6 prior to trial, how would that have changed his strategy
7 and how is he deprived of a fair trial by not being given
8 that notice before trial.

9 And I think he did cover the issue regarding this
10 one gentleman, Marcus, that was supposedly with him. They
11 could have subpoenaed Marcus to refute that.

12 And I think what he was trying to tell you is
13 that this same guy Jeremy Simuels' sister, also gave a
14 statement that would have refuted Simuels' trial testimony
15 had they been told prior to trial that Simuels was going
16 to now be a star witness for the state.

17 Does that summarize it right there?

18 THE WITNESS: Yes, sir. And I wanted to point
19 something else too about a statement.

20 THE COURT: You got to respond to his specific
21 question.

22 THE APPLICANT: Okay.

23 THE COURT: I'm not going to let him go on a
24 monologue for a half hour.

25 MR. SUSSMAN: Sorry, Your Honor.

THADDEUS CURRY - DIRECT

1 BY MR. SUSSMAN:

2 Q. There is something else in Simuels' statement that you
3 feel would have changed your trial strategy?

4 A. Actually what I was talking about, in Simuels'
5 statement he only mentions three black males; himself,
6 Jeremy Simuels, Anthony Savage, which is Tony, and Javon
7 Rushon.

8 The State case was saying that it was just three black
9 males at this apartment complex. And these are the two
10 black males that testified and said that they was there.
11 No one ever mentioned me as being there.

12 Q. And that was not argued by Mr. Chesser?

13 A. No, sir.

14 Q. All right. Okay. Well, the statement is now in
15 evidence for the Judge to review.

16 A. Yes, sir.

17 Q. And he can compare that to the trial testimony that
18 Simuels gave at trial to see if there's a vast
19 difference.

20 A. Yes, sir.

21 Q. Okay. When did you actually become aware that Simuels
22 was going to testify against you and change his statement
23 completely?

24 A. I was never aware of that.

25 Q. You were never told that?

THADDEUS CURRY - DIRECT

1 A. No, sir. There was never --

2 Q. Mr. Chesser never told you that?

3 A. No, sir. It was never a different statement disclosed
4 to the defense.

5 Q. And that night that this allegedly took place, you
6 were actually at your sister's friend's apartment?

7 A. Yes, sir.

8 Q. And there were other individuals present?

9 A. Yes, sir.

10 Q. Did you tell that to Mr. Chesser?

11 A. Yes, sir. At the time I did.

12 Q. Were any of these individuals questioned?

13 A. No, sir.

14 Q. Were they ever called to trial?

15 A. No, sir.

16 Q. So there would have been approximately four, maybe
17 five people that could have given you an alibi for your
18 whereabouts that night?

19 A. Yes, sir.

20 Q. And none of them were called?

21 A. No, sir.

22 Q. But you told Mr. Chesser about these individuals?

23 A. Yes, sir.

24 Q. I think that -- is there anything -- now, I don't want
25 to give you an open ended -- but, is there any specific

EVONNE FRARACCIO - DIRECT

1 point that we did not raise previously or in the last few
2 minutes that you wanted to address to the Judge?

3 THE APPLICANT: No, sir.

4 THE COURT: Ms. Williams?

5 MR. SUSSMAN: Ms. Williams? Answer any questions
6 Ms. Williams has for you.

7 THE APPLICANT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MS. WILLIAMS:

10 Q. This will be very brief. Mr. Curry, what's the name
11 of the girl whose house you were at?

12 A. Margie Darden.

13 MS. WILLIAMS: Thank you. That's all.

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

15 THE APPLICANT: Yes, sir.

16 THE COURT: You may call your next witness.

17 MR. SUSSMAN: Thank you, Judge. I would call
18 Evonne Fraraccio.

19 EVONNE FRARACCIO, having been duly sworn, was
20 examined and testified as follows:

21 THE CLERK: Please have a seat in the box and
22 state your full name for the Court.

23 THE WITNESS: Evonne Fraraccio. Fraraccio is F.
24 R. A. R. A. C. C. I. O.

25 THE COURT: You may proceed.

EVONNE FRARACCIO - DIRECT

1 DIRECT EXAMINATION

2 BY MR. SUSSMAN:

3 Q. Thank you, ma'am. Thank you, Your Honor. Tell the
4 Judge your relationship to Thad Curry.

5 A. I'm his mother.

6 Q. Okay. Now, and you reside in Augusta?

7 A. Yes.

8 Q. Augusta, Georgia?

9 A. Yes.

10 Q. Okay. Now, this event that led Thad to be here today
11 occurred on the day following Saint Patrick's Day which
12 would be March 18th, I think. And March 17th he was with
13 you --

14 A. Yes.

15 Q. -- is that right? Tell the Judge where Thad was --
16 actually where was he living on March 17th?

17 A. He was living with me on March 17th.

18 Q. Okay. And let's start, say, in the afternoon. Where
19 was Thad that day?

20 A. He was home with me. We were watching some movies.
21 He had a bunch of videos where he and his fiancée had
22 brought over to the house and we were watching and we had
23 been playing some Scrabble, stuff like that.

24 Q. Who is fiancée?

25 A. Charlette Broadwater.

EVONNE FRARACCIO - DIRECT

- 1 Q. I'm sorry?
- 2 A. Charlette Broadwater.
- 3 Q. Is she here today?
- 4 A. Yes, she is.
- 5 Q. We're talking about March 17th, 2003?
- 6 A. Uh-huh.
- 7 Q. Is that right?
- 8 A. Yes.
- 9 Q. And you were home with Thad. And then did someone
- 10 come over about six o'clock that night?
- 11 A. Yes. Margie Darden came over.
- 12 Q. And who is she?
- 13 A. She's a friend of my daughter, Felicia. And she was
- 14 coming over to get Thaddeus. She wanted him to come to
- 15 her Saint Patrick's Day party. And she -- that's the only
- 16 thing I knew at that time.
- 17 Q. And what time was that that Margie Darden came over?
- 18 A. It was about six o'clock..
- 19 Q. Okay. And you lived where at that time?
- 20 A. On Wheeler Road. [REDACTED].
- 21 Q. In Martinez?
- 22 A. Yes.
- 23 Q. Martinez, Georgia?
- 24 A. Uh-huh.
- 25 Q. How long did Margie come over?

EVONNE FRARACCIO - DIRECT

- 1 A. You mean -- how long --
- 2 Q. Once she came over around six?
- 3 A. How long did she stay there?
- 4 Q. Yes.
- 5 A. About 20 minutes.
- 6 Q. All right. And did she -- was Thad there?
- 7 A. Yes.
- 8 Q. Did she leave without with or without Thad?
- 9 A. At that point she did, because Thaddeus needed to get
- 10 a bath and get dressed. She wanted him to come with her,
- 11 but he wasn't ready so she say she'll be back to pick him
- 12 up at eight o'clock.
- 13 Q. So did Thad stay there with you until eight o'clock?
- 14 A. Yes, he did.
- 15 Q. Did anybody else come over?
- 16 A. He did have a visitor. Anthony Savage came over.
- 17 Q. Did Thad stay there with you?
- 18 A. About -- they just was out there talking. He said he
- 19 had to shoot, shoot some pool. And I really thought they
- 20 was going to shoot some pool, but he was talking about
- 21 talking.
- 22 Q. Uh-huh. And did Thaddeus stay there with you?
- 23 A. He was outside and I --
- 24 Q. Was he at your residence?
- 25 A. Yeah. I was in the house and he told me he was going

EVONNE FRARACCIO - DIRECT

1 to go shoot some pool with Anthony Savage. I actually
2 thought he was going to shoot pool is what I'm saying.

3 Q. Did Thaddeus stay there in the residence with you?

4 A. I'm trying to understand what you're saying, did he
5 stay in the residence. What you said, did he stay there
6 in the house with me the whole time while he was talking
7 to Anthony Savage?

8 Q. Did he stay in the residence, at the residence with
9 you?

10 A. When I closed the door I'm assuming he went someplace
11 for about 10 minutes.

12 Q. Okay. But he came back?

13 A. Right.

14 Q. And then he was there until Margie Darden came over?

15 A. Yes.

16 Q. So which is, what, about eight o'clock?

17 A. Yeah. She came back at eight o'clock.

18 Q. Where did they go then?

19 A. Well, she said they were going to the store because
20 she had told Thaddeus that she had to go pick some things
21 up first. That's why she left. And she told him when she
22 come back he better be ready. So when she came back to
23 get him, he was ready.

24 Q. Okay.

25 A. Uh-huh. And then they left.

EVONNE FRARACCIO - DIRECT

1 Q. Where was your understanding they were going?

2 A. To the store.

3 Q. Okay.

4 A. You know, she said she was going to go get her an
5 outfit and she was going to get some decorations, then she
6 was going to go to the store to pick up crab legs and
7 other stuff.

8 Q. Did Thad come back with her?

9 A. When she came back, when?

10 Q. Did she ever come back to your house after that?

11 A. Yeah. She came back to my house. She brought me back
12 some crab legs and some whole steamed green beans and some
13 steamed rice.

14 Q. Was Thaddeus with her?

15 A. Yeah, they were together.

16 Q. What time was that?

17 A. That was between 9:30 and 10.

18 Q. Okay. What was your understanding they were going to
19 after that?

20 A. I assume they were going back over to her house.

21 Q. Okay. And is there anything else you know about his
22 whereabouts that night?

23 A. As far as I know he was there because when my daughter
24 called me around one I was asleep and she woke me up. She
25 was letting me know that they were going to be coming home

VALERIE FELICIA CURRY - DIRECT

1 soon.

2 Q. Who was coming home?

3 A. Felicia and Thaddeus was coming home soon.

4 Q. Do you know if they came home or you went back to
5 sleep?

6 A. I went back to sleep. When I woke up the next morning
7 they were home.

8 Q. What time was that?

9 A. Probably about 10.

10 MR. SUSSMAN: Answer any questions from
11 Ms. Williams, please.

12 THE COURT: Ms. Williams?

13 MS. WILLIAMS: I don't have any questions.

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

15 MR. SUSSMAN: We call his sister, her daughter,
16 Felicia.

17 THE COURT: Come forward, please.

18 VALERIE FELICIA CURRY, having been duly sworn,
19 was examined and testified as follows:

20 THE CLERK: Please have a seat in the box and
21 state your full name for the Court.

22 THE WITNESS: My name is Valerie Curry, V. A. L.
23 E. R. I. E.

24 DIRECT EXAMINATION

25 BY MR. SUSSMAN:

VALERIE FELICIA CURRY - DIRECT

- 1 Q. Is Felicia your middle name?
- 2 A. Yes. I go by Felicia.
- 3 Q. Okay. And what is your relationship with Thaddeus
- 4 Curry?
- 5 A. He's my brother, my older brother.
- 6 Q. Pardon me?
- 7 A. My older brother.
- 8 Q. And was that your mother that just testified?
- 9 A. Yes.
- 10 Q. Did you hear her testify?
- 11 A. Yes.
- 12 Q. Okay. Now, where were you on the night of March 17th,
- 13 on Saint Patrick's Day?
- 14 A. I was at work.
- 15 Q. This was in 2003?
- 16 A. Yes.
- 17 Q. Where were you working?
- 18 A. Food Lion.
- 19 Q. Where at?
- 20 A. On Belair Road.
- 21 Q. How far is that away from your mom's house?
- 22 A. Less than five minutes driving.
- 23 Q. Were you living at your mother's with Thaddeus like
- 24 she said?
- 25 A. Yes.

VALERIE FELICIA CURRY - DIRECT

- 1 Q. What did you do at Food Lion?
- 2 A. I was a cashier.
- 3 Q. All right. Do you recall getting off work that night?
- 4 A. Yes. I got -- I was scheduled to get off at 11 so it
- 5 was like in between 11:30 and 11 when I got off.
- 6 Q. And where did you go?
- 7 A. I went to Margie's house.
- 8 Q. Margie Darden?
- 9 A. Yes.
- 10 Q. She's a friend of yours?
- 11 A. Yes.
- 12 Q. And who was there when you got there?
- 13 A. It was her, my brother and some more guys.
- 14 Q. What guys?
- 15 A. Some guys of her friends. It was her friends.
- 16 Q. Do you know how many?
- 17 A. About five or six.
- 18 Q. Okay. And they were all over at Margie's house?
- 19 A. Yes.
- 20 Q. And how long did you stay at Margie's house?
- 21 A. I stayed there almost all night long, but we went
- 22 home.
- 23 Q. Okay. Was Thaddeus with you the whole time?
- 24 A. Yes, sir.
- 25 Q. Did he go anywhere?

VALERIE FELICIA CURRY - DIRECT

1 A. No.

2 Q. Okay. And was he in the presence of these other guys
3 that were there?

4 A. Yes.

5 Q. Okay.

6 A. Yes, sir.

7 Q. All right. And then at any time during the day,
8 during that night when you were there with Thaddeus and
9 Margie and these other guys, did Thaddeus call anybody?

10 A. He called his girlfriend from my phone.

11 Q. And who was that?

12 A. Charlette.

13 Q. What time was that?

14 A. I don't know.

15 Q. Sometime between 11:30 and when you went home?

16 A. Yes.

17 Q. What time did y'all go home?

18 A. We went, we left there -- I think it was, like, three
19 o'clock in the morning when we left.

20 Q. Did you call your mom at one or about one o'clock like
21 she said you did?

22 A. Yes. To tell her I was coming home, that we was
23 coming home, we wasn't going to stay over.

24 Q. All right. And you say that Thaddeus did call his
25 girlfriend?

VALERIE FELICIA CURRY - CROSS

1 A. Yes, sir.

2 Q. Charlette?

3 A. Yes.

4 Q. Was that with your phone or his phone?

5 A. My phone.

6 Q. Okay. All right. Did you hear the conversation?

7 A. No.

8 Q. All right. And then after the party was over you and
9 Thad went home?

10 A. Yes, sir.

11 Q. And he was with you the whole time?

12 A. Yes.

13 MR. SUSSMAN: Answer any questions Ms. Williams
14 may have for you.

15 THE COURT: Ms. Williams?

16 CROSS-EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Ms. Curry, do you recall speaking with an
19 investigator, David Cunamin, from Mr. Chesser's office?

20 A. Yes, ma'am.

21 Q. And did you tell him about the version of events that
22 night and how y'all had gone to Margie's house?

23 A. Yes, ma'am.

24 Q. Do you recall telling him that you had fallen asleep
25 at some point, probably about 1:30?

CHARLETTE BROADWATER - DIRECT

1 A. I did.

2 Q. Okay. And did you really know how long you had been
3 asleep at that point?

4 A. No, but I knew it wasn't long. I was, like, the time
5 I went to sleep Margie had came in and woke me up.

6 MS. WILLIAMS: All right. Thanks.

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

8 MR. SUSSMAN: If I could.

9 THE COURT: Sure.

10 REDIRECT EXAMINATION

11 BY MR. SUSSMAN:

12 Q. Do you know how far away this place is that you were
13 at from South Carolina?

14 A. Her apartment?

15 Q. Yeah.

16 A. I guess about 15 or 20 minutes. I guess 10 minutes
17 away driving.

18 Q. Uh-huh. Okay. But that would be -- do you know how
19 -- never mind. That's fine.

20 THE COURT: All right. Thank you. You may step
21 down. Next witness.

22 MR. SUSSMAN: We call Charlette Broadwater.

23 CHARLETTE BROADWATER, having been duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please have a seat and state your

CHARLETTE BROADWATER - DIRECT

1 full name.

2 THE COURT: Please state your name for the
3 record.

4 THE WITNESS: My name is Charlette Broadwater.

5 THE COURT: You may proceed.

6 MR. SUSSMAN: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. SUSSMAN:

9 Q. Ms. Broadwater, what is your relationship or what was
10 your relationship to Thaddeus Curry in 2003?

11 A. He was my fiancée of about two and a half years.

12 Q. I can't hear you.

13 A. He was my fiancée of about two and a half years.

14 Q. Do you live in Augusta?

15 A. South Carolina.

16 Q. Okay. Do you work in Augusta?

17 A. Yes.

18 Q. Okay. And at the time that this event -- do you
19 recall when this happened that Thaddeus was charged with
20 murder back in March of 2003?

21 A. Yes.

22 Q. Okay. And do you recall that he was charged with
23 murder on the early evening, early morning hours I should
24 say of March 18th, 2003?

25 A. Yes.

CHARLETTE BROADWATER - DIRECT

1 Q. All right. Were you with him that evening before --
2 were you with him March 17th, which I believe we've
3 acknowledged is Saint Patrick's Day?

4 A. No.

5 Q. Did he call you?

6 A. He always called me.

7 Q. Pardon me?

8 A. He always called me.

9 Q. Okay. I realize this is seven years later.

10 A. Eight.

11 Q. And when was it that you heard that you might be
12 called as a witness in this case?

13 A. Last night.

14 Q. Okay. If you had been asked this same question seven
15 years ago, do you think you would have had a better
16 memory?

17 A. Yes.

18 Q. But tell the Judge at least for clarity purposes, what
19 was your normal routine with Thaddeus as far as contact,
20 communications, whatnot.

21 A. We were together almost, probably 95 percent of the
22 time. And if we weren't together he always called, at
23 least three times a day, to let me know if he was going
24 anywhere, what he was doing and check on me and my
25 daughter. Always.

CHARLETTE BROADWATER - DIRECT

1 Q. So if he had been at a party or somewhere else with
2 Felicia, would it have been a common practice of his or an
3 uncommon practice of his to have called you?

4 A. Common, very common.

5 Q. All right. Did anyone from Mr. Chesser's office ever
6 contact you?

7 A. No.

8 Q. Or communicate with you at all regarding any contact
9 that Thaddeus had with you that night?

10 A. No.

11 Q. All right. Do you have any idea what time he would
12 have called you that night?

13 A. I stay up pretty late, so he would have probably
14 called me around midnight.

15 Q. Is that something that he would have done, that he has
16 done in the past --

17 A. Uh-huh.

18 Q. -- when you're apart?

19 A. Yes.

20 Q. But y'all were not living together?

21 A. No.

22 Q. Were you engaged to be married?

23 A. Yes.

24 Q. When was the marriage set for?

25 A. We hadn't set a date.

1 Q. But you had been going out with him for?

2 A. Two and a half years, almost three years.

3 Q. You were engaged?

4 A. Yes.

5 MR. SUSSMAN: Answer any questions Ms. Williams
6 may have.

7 THE COURT: Ms. Williams?

8 CROSS-EXAMINATION

9 BY MS. WILLIAMS:

10 Q. Do you have any recollection of being at his mother's
11 house this day when Margie came by?

12 A. No, I wasn't there.

13 MS. WILLIAMS: Thank you. That's all.

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

15 MR. SUSSMAN: Your Honor, if I have just one
16 question. He wants me to ask her the --

17 THE COURT: Yeah. Just stay right there.

18 REDIRECT EXAMINATION

19 BY MR. SUSSMAN:

20 Q. Do you have any idea where he was that night?

21 A. Yeah. He was with his sister.

22 Q. How do you know that?

23 A. Whenever he went anywhere he was always with his
24 sister.

25 MS. WILLIAMS: I would move to strike that.

MICHAEL CHESSER - DIRECT

1 THE COURT: Strike that from the record.
2 Speculation.

3 MR. SUSSMAN: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. SUSSMAN: Your Honor, could I have just one
6 second? I think that concludes the testimony.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. SUSSMAN: That's all we have, Your Honor, at
10 this point subject to rebuttal.

11 THE COURT: Thank you. Ms. Williams?

12 MS. WILLIAMS: Your Honor, the State will call
13 Michael Chesser.

14 MICHAEL CHESSER, having been duly sworn, was
15 examined and testified as follows.

16 DIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Mr. Chesser, can you tell me just generally about your
19 legal practice? How long you've been practicing?

20 A. Let's see. I've been practicing for 15 years in
21 almost, say, 90 percent of criminal law. So at the time I
22 did this case in '04, it would have been maybe nine years
23 of practice in criminal law. I had practiced previously
24 in tax law in Greenville and Spartanburg, but I came to
25 Aiken and started this in 1995.

MICHAEL CHESSER - DIRECT

1 Q. Now, because we're going to go into some investigation
2 questions, can you give us a brief overview of your
3 recollection of the facts? And then I'm going to ask you
4 some questions about the investigation that you did given
5 those facts.

6 A. Well, I'd like -- if it please the Court. I'd like to
7 just give an overview of what this case was about.

8 This case arose on, toward the night of Saint
9 Patrick's Day. That is, it actually happened about 2:15
10 in the morning on March 18th. So, but the night in
11 question was March the 17th, and that was of '03, 2003.

12 The decedent was a young man. Heath Hamilton, I
13 believe his name was. And he and a friend on Saint
14 Patrick's Day night, they wanted to make arrangements to
15 buy some marijuana. And my recollection was it was a
16 quarter pound of marijuana, that amount.

17 And he and his friend, who I believe his name was
18 Ronald Corsey, they went to various places trying to buy
19 this quarter pound of marijuana. And one of the places
20 they went to was an apartment complex and where somebody
21 named Jeremy Simuels had an apartment.

22 Now, at this point I'll just -- rather than sort of
23 argue the disputed facts, the State's theory was that he
24 goes there to Jeremy Simuels' apartment. They have a talk
25 about getting back together later. But in any event, the

MICHAEL CHESSER - DIRECT

1 State's theory was that Thaddeus Curry was there, Jeremy
2 Simuels was there and Anthony Savage was there.

3 So, there was some discussion about this, and then it
4 was through a series of phone calls, arrangements to meet,
5 at what I would call a quick shop which is located in
6 Beech Island which is on what we call Sandbar Ferry Road
7 which is really not very far from Augusta. For us who
8 live in Aiken, we're always going over to Augusta. And we
9 go on what's called the Jefferson Davis Highway Number 1.
10 And Beech Island is just off to the left just before you
11 get into Augusta.

12 So there's a quick shop there.

13 Again, the State's theory is that this meeting is set
14 up approximately two a.m. on March 18th. And the
15 testimony was presented that Hamilton and Corsey arrive in
16 a vehicle, these other subjects that are going to sell
17 them the marijuana, and one shot is fired through the
18 door. Instead of a marijuana sale a shooting occurred.

19 One shot is fired through the door and that shot
20 enters the left side of Heath Hamilton's head and comes
21 out the right and he dies. That's the only shot that is
22 fired.

23 The other individual in the vehicle who, again, I
24 think his name is Ronald Corsey, is sort of in a state of
25 shock but he pushes the body of Heath Hamilton over to the

MICHAEL CHESSER - DIRECT

1 right. He assumes the driver's position, pulls the
2 vehicle around to the front of this quick shop and calls
3 the police. And the police immediately respond.

4 Again, to give the Court a feel for the case, I've got
5 some photos and I wonder -- there's only five or six, just
6 to give the Court a feel for the case and again maybe they
7 could be introduced.

8 THE COURT: Do you have any objection to those?

9 MR. SUSSMAN: I don't know, Judge. I don't know
10 what photos he's talking about.

11 (Photographs handed to Mr. Sussman.)

12 (Pause.)

13 MR. SUSSMAN: I object on the basis of relevance.
14 This has no relevance to the issues raised in a post
15 conviction relief. It shows the shooting scene.

16 I think it's being introduced merely to prejudice
17 the Court. It's such a heinous crime, why should we give
18 him a new trial.

19 I would object to this as being relevant.

20 THE COURT: I'm going to sustain that at this
21 point. He can say why he made his decision.

22 BY MS. WILLIAMS:

23 Q. Okay. I'll see if we can tie them in a little bit
24 later.

25 A. If it please the Court. If I could tell you sort of

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1 about this.

2 So, this Heath Hamilton he was killed by one shot.
3 And of course it's a murder case. And so the question is
4 who fired the shot or who are the individuals that made
5 this arrangement.

6 And one of the other individuals was Anthony Savage.
7 And the individual whose apartment that Heath Hamilton and
8 Ron Corsey went to was Jeremy Simuels. So both those
9 individuals testified at trial.

10 So, I would, I want to tell the Court about that but
11 if it please the Court, one of the issues, the main issue
12 raised is the alibi defense, the question of alibi.

13 And Mr. Curry raised an alibi from day one. And his
14 alibi was that he was at the apartment of Margaret
15 Darden. And his sister, who just testified, Valerie
16 Curry, she likewise was consistent that Thaddeus Curry was
17 not out and about on the night of March 17th, early
18 morning of March 18th, he was at the apartment of Margaret
19 Darden.

20 And so, I, for this case, hired an investigator, an
21 experienced investigator out of Augusta. He actually had
22 an associate conduct this interview which I would offer of
23 Margaret Darden as evidence.

24 Q. Let me do this a little bit. You had your
25 investigators conduct several interviews; is that

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1 correct?

2 A. That's correct.

3 Q. And did they report the results of those interview to
4 you in some type of typed-up format?

5 A. Yes.

6 Q. I move to -- I believe this is a copy from your file
7 but this is of Margaret Darden. It is of an interview
8 that she had with David Cunamin.

9 And was this given to you by your investigators as a
10 result of the conversation with Ms. Darden?

11 A. Yes.

12 MS. WILLIAMS: And I would move that into
13 evidence at this time.

14 THE COURT: Any objection?

15 MR. SUSSMAN: We'd object on the grounds of
16 hearsay. There were a number of statements that were
17 taken.

18 THE COURT: Well, this trial is concerning
19 whether he was ineffective counsel. I'm going to allow it
20 in for the purpose that he was on notice to this
21 investigation.

22 MS. WILLIAMS: Not for the truth, but for the --

23 THE COURT: The fact that he had this statement
24 in making his decision concerning the trial.

25 MR. SUSSMAN: We stipulate that he had a statement

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1 from Margie Darden but the content of it, I think, we
2 would object to it --

3 THE COURT: I'm not looking at it from the
4 standpoint of what's in it is the truth. I'm looking at
5 it from the standpoint is this is what he relied on in
6 making his trial strategy. Whether or not it's true is
7 really irrelevant, but he, in making the trial strategy,
8 relied on it. That's all.

9 MR. SUSSMAN: I'm with you on that, Judge. I
10 understand.

11 THE COURT: All right.

12 (Thereupon, State's Exhibit No. 1, statement of
13 Margie Darden, was received into evidence.)

14 BY MS. WILLIAMS:

15 Q. All right. Now, as a result of this statement how did
16 you approach to this alibi change?

17 A. Well, the point is that Ms. Darden denied that
18 Mr. Curry was there. And whether or not that is true, it
19 put me in a position to where I can't use her as a
20 witness. I can't put somebody on the stand -- she's not
21 going to be of any use to us if she's going to say
22 essentially the family put me up to this and Thaddeus
23 Curry was not at my house that night.

24 But in any event, the idea -- what I did was to
25 investigate the alibi that Mr. Curry had. And

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1 Ms. Darden's testimony would have been necessary to
2 substantiate it, to present it to a jury. And it appeared
3 that it would, you know, if she's going to say he wasn't
4 there, then we don't have an alibi.

5 Q. Now was Ms. Darden the only person you investigated or
6 did you have several other folks that you spoke to, or
7 your investigators spoke to? I'm sorry.

8 A. They -- in my file -- it's been a while on this case,
9 but in my file of course the investigators spoke to
10 Valerie Felicia Curry who testified here today. And,
11 again, she stated that they were at Ms. Darden's and I
12 couldn't really substantiate that.

13 I interviewed -- the investigator interviewed also
14 Robert Glenn. This Robert Glenn was a third individual.
15 He was, like, a cousin or uncle to either Heath Hamilton
16 or Ronald Corsey. And he, at some time he was present
17 when they were, the negotiations were going on about the
18 purchase of a quarter pound of marijuana.

19 But at any rate so I had him interviewed. And those
20 are the interviews that I have in my file.

21 Q. Now tell me about -- when you received the trial, tell
22 me about the strategy that you employed there, and what
23 your primary goals were in approaching this.

24 A. Well, let me say this: I've had a number of murder
25 trials. And when you have the State in a position of

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1 putting a co-actor on the stand to say, in this case
2 Anthony Savage, to take the stand and say, I went with
3 Thaddeus Curry and this is what happened.

4 And also Jeremy Simuels testified and say, I drove
5 Anthony Savage and Thaddeus Curry to the scene, and this
6 is what happened.

7 It is a difficult case. So in terms of trial
8 strategy, there was no question there was a murder. It
9 was a who-did-it. And so, the idea that you have Anthony
10 Savage and Jeremy Simuels testifying and the idea is to
11 discredit them with the possibility being, well, perhaps
12 it was Anthony Savage that committed this.

13 And so, it was -- basically the idea was to try to
14 undermine the credibility using the prior record, Anthony
15 Savage had a pretty extensive prior record, and any
16 inconsistencies that I could.

17 And there was one item in particular which was the --
18 there was a statement that the shooter had a white shirt
19 on. And even though, as I recall, the hand of one and the
20 hand of all was charged in the instructions in this case,
21 still a jury wants to know who fired the shot. And there
22 was some question about that.

23 And so I had gotten Billy Fluery who was a chief
24 investigator with the sheriff's department, gotten his
25 notes which would seemed to indicate that Jeremy Savage --

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1 or excuse me, Antonio (sic) Savage had on a white T-shirt
2 and so I was attempting to show that Antonio Savage was
3 the shooter.

4 Q. I'm going to try to address some of the things that
5 Mr. Curry raised at the last hearing. So I'm sorry if
6 this comes a little disjointed.

7 Mr. Curry has stated that you didn't move for a
8 continuance. He didn't know he was going to trial and he
9 didn't get an indictment in this case. And we've already
10 noted that the indictment was handed down right before the
11 case.

12 Did you have notice of the case and what he was
13 charged with?

14 A. We knew from the beginning that he was going to be
15 charged with murder and the possession of a weapon in the
16 commission of a violent crime.

17 I believe that the indictment or the particular one, I
18 don't recall, I mean, I have some correspondence in my
19 file dated June 23rd of '03 listing warrants which charged
20 murder and possession of a weapon in the commission of a
21 violent crime. And I have listed on this letter not
22 indicted. And this is a letter to the investigator. But
23 so, apparently the warrants were in existence but it
24 hadn't been presented to the grand jury.

25 So we were on notice. And this letter is dated June

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1 23rd of '03. The offense happened in '03. So this was
2 fairly early on in the case.

3 The trial was conducted in May of '04. So, this
4 letter is June of '03 which indicates that the warrant's
5 charging murder and possession of a weapon during the
6 commission of a violent crime. So I didn't think notice
7 was an issue because we had a lot of notice.

8 Q. Beg the Court's indulgence for just a moment. I'm
9 trying to review notes from that previous hearing.

10 (Pause.)

11 Had you discussed the strategy with him? Had you
12 discussed with him that you would not be presenting this
13 alibi or what your defense would consist of? I know it's
14 been six years but...

15 A. I will tell you this: I do not remember a specific
16 conversation. My practice would be to tell him simply
17 that Ms. Darden was not going to testify consistent with
18 his alibi.

19 We had good communication in general throughout this
20 case. And we had good communication starting early on.
21 Again, this letter I have to the investigator is detailed
22 and it references things that Mr. Curry and I had talked
23 about and it's from June of '03. Again, the trial took
24 place in May of '04. So we had good communication.

25 MS. WILLIAMS: I think that's all I have for you

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1 right now.

2 THE COURT: Mr. Sussman.

3 CROSS-EXAMINATION

4 BY MR. SUSSMAN:

5 Q. First of all, when did you know that this case was
6 going to be actually called for trial? When the trial was
7 held, I think on May 10th, 2004, when would you have
8 actually been notified that, hey, Mr. Chesser, this case
9 is going to be called for trial?

10 A. Let me look for a second, see if there's anything in
11 my file.

12 Q. All right.

13 A. I would just -- in response to this, I have a letter
14 dated April of '04 which would have been just a month
15 prior to this. And it's to the prosecutor. And it
16 states, Dear Everett: I've discussed the plea offer you
17 made with Mr. Curry and he does not wish to plea bargain.
18 Also enclosed please find a motion for bond reduction.
19 Note that this bond was initially set by Judge Williams.
20 I appreciate your kind assistance in getting this matter
21 before the Judge.

22 So, that is not 100 percent responsive but it
23 indicates that I told the solicitor that there is no deal
24 in this case.

25 And so, my inference from this letter is we were --

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1 just let us know when you're calling it for trial.

2 Q. Well, I mean, there are negotiations that take place
3 between the defense counsel and the prosecutor pretty much
4 at any time during the pendency of a case. Would you
5 agree with that?

6 A. I think it's -- my recollection in this case and from
7 this letter is that we rejected, there was nothing --
8 there was nothing that we were going to do that we said,
9 you know, and I discussed it with Mr. Curry, is, we're not
10 talking anything that you're going to offer.

11 In other words, on a murder case sometimes you might
12 get an offer of 30 years. Sometimes you might get an
13 offer of voluntary for 25. Sometimes you might get an
14 offer to plead straight up to voluntary.

15 My recollection of Mr. Chandler's offer was that it
16 was 30 years. He would have to -- but his offer I
17 discussed with Mr. Curry and anything along those lines
18 Mr. Curry rejected.

19 And so, when you say, you know, do they continue,
20 normally they do. In this case my recollection is that
21 they broke down.

22 Q. But the point is you can't recall when you were
23 actually notified the case would be set for trial?

24 A. No.

25 Q. And in fact, the case was not indicted until May 10th

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1 of '04 which is the actual date of trial?

2 A. I don't have any knowledge of that. There is, you
3 know, a document. You've got the document. I just was,
4 relied on the warrants.

5 Q. Were you ever given a copy of the indictments prior to
6 trial?

7 A. Not to my knowledge.

8 Q. Is that the common practice in this circuit to proceed
9 to trial without indictments being given to the defense?

10 A. No.

11 Q. And let's talk about Jeremy Simuels for just a
12 second. His name keeps popping up. And we have his
13 statement.

14 He gave a written statement during the course of the
15 investigation. Have you had a chance to review that?

16 A. Yes.

17 Q. And then he testified for the State in the trial of
18 the case; is that correct?

19 A. Yes.

20 Q. And the testimony he gave was substantially different
21 from the statement that he gave, the written statement.
22 Would you agree with that?

23 A. Yes.

24 Q. Now, when were you made aware by Mr. Chandler or
25 anybody with the solicitor's office that Simuels was going

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1 to testify to something dramatically different than what
2 he gave in his written statement?

3 A. Well, my recollection is and again, you know, really
4 what I need to do is to go through and find a specific
5 document that would respond to it because it's a very
6 valid and good question.

7 But my recollection is that he was given a polygraph
8 and so on and that he changed his story to indicate that,
9 you know, more or less consistent with his trial
10 testimony. I'm not saying a hundred percent consistent,
11 but that I was aware, you know, early on, fairly early on,
12 three or four months after the commencement of the case,
13 that his story had changed 180 degrees.

14 Q. Did you discuss that with Mr. Curry?

15 A. I discussed everything with Mr. Curry. We had very
16 good communication in this case.

17 Q. Well, having known that do far in advance that
18 Simuels' testimony was going to change, did you
19 investigate this fellow Marcus that you said was in the
20 car with him and Thaddeus Curry when they drove up to
21 these apartments?

22 A. What I investigated -- in response to that, again,
23 it's been a while. I've got a letter dated June 23rd, '03
24 to the investigator. And this is what I asked to be
25 investigated and in response to it, I would simply ask

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1 that this be accepted into evidence or I can read it.

2 Q. Well, if it refreshes your recollection as to how you
3 respond to that question, I don't think there's any
4 objection to that, I don't think.

5 A. Okay.

6 Q. The question was: Having -- since you apparently knew
7 that Simuels was going to change his testimony, I asked
8 you about this guy Marcus that supposedly was referenced
9 by Simuels as being in the car with Mr. Curry. So did you
10 ever make any attempt to find this Marcus to see if he was
11 going to contradict Simuels or not?

12 A. No.

13 Q. Okay. You also indicated that, again -- what document
14 did you have in your file that indicated that Simuels was
15 going to change his testimony? You said he gave a
16 polygraph?

17 A. Well, I have a polygraph for him dated April 14th of
18 '03 which indicates, you know, some deception as far as
19 his prior story.

20 Q. But that doesn't indicate what his -- what his trial
21 testimony was going to be, does it? It just says that he
22 lied about his story.

23 A. Right. I don't want to waste the Court's time. I'm
24 looking for this document.

25 THE COURT: All right.

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1 BY MR. SUSSMAN:

2 Q. What you're looking for is some indication that
3 Simuels' testimony is going to be markedly different from
4 his written statement?

5 A. Right. I don't see any document to that effect.

6 Q. Okay. And you don't have anything in writing from the
7 solicitor that indicates, hey, Simuels is going to be a
8 witness and this is going to be his testimony, it's
9 different?

10 A. I can't find a document to that effect.

11 Q. Did you file a Brady motion in this case?

12 A. Yes. I filed a Rule Five and Brady motion as a matter
13 of course.

14 Q. You referenced this letter that you talked about of
15 June 23rd, 2003 that you wrote to the investigator. In
16 the letter you referenced that Javon Rushon's sister,
17 Jeremy Simuels' wife, was a crucial witness.

18 Do you recall why she was a crucial witness?

19 A. She was supposed to be -- as I recall, she was
20 supposed to be in the apartment with Jeremy Simuels
21 when -- that's what Jeremy Simuels' statement, his initial
22 statement that he gave on March 18th, the day after this.
23 Jeremy Simuels says, I was in bed with my wife.

24 And so presumably I wanted to try to confirm Simuels'
25 story.

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1 Q. And she would have confirmed it or not confirmed it?

2 A. Well, the idea at that point was I was probably
3 seeking to -- well, his -- the -- Simuels' story basically
4 is that I didn't do anything. In other words, for the
5 Court's --

6 Q. She just said he was home, didn't he? His statement
7 initially was that he was just home?

8 A. Well, he said he was at home but he also says Heath
9 came by who was the decedent. He also says Tony was there
10 at Jeremy Simuels' apartment. Tony went out and talked to
11 them. They came back later. He says, I took Tony to the
12 store. He said, I didn't see Heath then. I went back in
13 for the night. Tony asked me to take him to Tiffany's
14 house. I told him no. Tony left around 12. He was
15 walking. A few minutes later Javon left, there was
16 another individual, with Tonisha. I didn't see Jerome or
17 Tony again until today, that is March 18th. Tony came
18 over around three.

19 And so -- and then he says that he was told that Heath
20 had been killed. So basically his statement as it was on
21 March the 18th says that Tony was there. And that's
22 Antonio Savage.

23 And so it's just -- I felt like his wife would be an
24 important corroborative witness as to who was there and
25 who wasn't when Heath got there to try to talk about

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1 buying some marijuana.

2 Q. And so if you had known that Simuels was going to
3 change his testimony and say that he was in fact with
4 Thaddeus, you could have in fact called his wife to
5 confront that? I mean, your investigator actually
6 interviewed Quelletrice Rushon, did he not? And she also
7 verified that Thaddeus Curry wasn't there that night.

8 A. Well --

9 Q. You've got that. You were talking about the statement
10 your investigator made. Do you have that statement that
11 he interviewed Quelletrice Rushon?

12 A. Right.

13 Q. And she verifies that Curry wasn't there. Did you see
14 anybody else with Heath or Tony in the parking lot? No.

15 So I guess the questions is if you have these other
16 witnesses that would have verified that Curry was not
17 there and would have refuted the trial testimony of
18 Simuels, which I think everyone agrees was pretty
19 devastating to the defense, you could have had these
20 sisters and wives and whatever come to court and testify
21 in rebuttal?

22 A. Well, you know, talking about what you're saying, I
23 guess, is if I don't go with this alibi. I mean, because
24 the alibi is what Thad is saying from the beginning is I'm
25 over at Margie Darden's. And that's what his sister is

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1 saying. And that's what everybody is saying except Margie
2 who says, he wasn't at my place and they put me up to
3 this.

4 So assuming I don't go with the alibi that my client
5 tells me to go with, then you're saying that I could have
6 impeached Jeremy Simuels by having some people who would
7 testify that Thaddeus Curry wasn't present at Jeremy's
8 that night.

9 And is that possible? The -- I can't say that's not
10 possible. I haven't seen this interview with Quelletrice
11 Rushon since 2004.

12 Q. Well, let me ask you this: Did you see the one, the
13 interview that your investigator had with Winfred Javon
14 Rushon? Did you see that interview? Do you have that
15 interview? This is actually Simuels' wife's sister.

16 A. Do you want to show it to me?

17 Q. Yes. If I may approach the witness?

18 THE COURT: You may.

19 BY MR. SUSSMAN:

20 Q. What I'm handing you is an interview that your
21 investigator had with Winfred Javon Rushon. That's the
22 brother-in-law. And specifically look on page seven.

23 A. (Reviewing document). Well, this is an interview of
24 this Winfred Javon Rushon. And looking at page seven it
25 says --

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1 MS. WILLIAMS: I think if you just want to put
2 the whole thing in as he's done the one before that I put
3 in. It can be considered as to the reasonableness and not
4 as to the truth, but I think the whole thing comes in.

5 THE COURT: Okay.

6 THE WITNESS: Well, referring to this part.

7 MR. SUSSMAN: So we would move that into evidence
8 for the purposes of showing that he had notice of the
9 existence of these statements.

10 THE COURT: That's correct.

11 MR. SUSSMAN: So that would be, I'm not sure what
12 number that is.

13 MS. WILLIAMS: State's Two (sic).

14 (Thereupon, Applicant's Exhibit No. 2, statement
15 of Winfred Javon Rushon, was received into evidence.)

16 MR. SUSSMAN: We'll mark -- what's the guy's name
17 again? Rashawn? What's the name of that?

18 THE WITNESS: This individual is Winfred W. I N.
19 F. R. E. D. Javon, J. A. V. O. N. Rushon, R. U. S. H. O.
20 N. but I would point out, you directed my attention to
21 page seven. And what he says was, I assume that Thaddeus
22 was there but I didn't see him because Thaddeus and
23 Antonio always hang together.

24 BY MR. SUSSMAN:

25 Q. Was he ever called as a witness?

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1 A. No. And I don't see how that testimony would help.

2 Q. As a matter of fact Javon was called as a witness but
3 you never --

4 MS. WILLIAMS: Not Winfred, but Javon. I think
5 this was attached to it. There are several statements.

6 THE COURT: Okay. They would need to come in.
7 Javon Rushon was called?

8 MR. SUSSMAN: Yes.

9 MS. WILLIAMS: I think the confusion lies in the
10 name Winfred versus Javon.

11 THE COURT: Okay. Thank you. Mr. Rushon was
12 called by the State?

13 MR. SUSSMAN: Right. That's correct. And so,
14 the question would be: Did you ever ask him about whether
15 or not he saw Thad Curry there?

16 MS. WILLIAMS: I believe the transcript would
17 reflect the answer to this question.

18 THE COURT: Page 260 was the cross-examination.

19 THE WITNESS: There was, what -- I believe that
20 the record will speak for itself but I believe that what
21 Mr. Rushon testified to was that a day or two after this,
22 that is say on March 18th or March 19th, my recollection
23 is that there was an event at a car wash. In other words,
24 there were several of these individuals, the testimony was
25 there was several of them at a car wash. And at that

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1 point there was conversation about the murder weapon, a
2 pistol. In other words -- again my recollection is that
3 there was testimony that Mr. Curry may have disposed of
4 it.

5 And so my cross-examination of Mr. Rushon
6 beginning on page 260 is about this -- Rushon testified
7 about this conversation at the car wash. And so, I asked
8 him about, using this prior interview that he did not tell
9 the investigator about -- that he didn't really overhear
10 this. In other words, he told the investigator he didn't
11 really hear what they were saying.

12 And this was on page 261 line 11. Where in his
13 testimony for the State he said, I heard Thaddeus say
14 something like the hammer came off or words to that
15 effect.

16 So his testimony for the State, my recollection
17 would be that it was basically about this event a day or
18 two later at a car wash where he testified that Thaddeus
19 Curry talked about the disposition of the firearm.

20 And so I cross-examined him with respect to
21 that.

22 As to your question about whether I should have
23 asked him about whether he was sure or not that Thaddeus
24 was at Jeremy Simuels' apartment, I guess it doesn't
25 appear that I asked him anything about that. I don't know

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1 that he testified to that. Maybe he did.

2 BY MR. SUSSMAN:

3 Q. Well, your investigator -- I'd like to show you what's
4 been marked as Applicant's Exhibit Three which is an
5 interview with Quelletrice Rushon. And specifically ask
6 you to review the statement and take a look at the top of
7 page four. Do you have that one?

8 A. Yes, I do. Thank you.

9 Q. Where the investigator had apparently confirmed that
10 this person did not see Thad Curry in the presence of
11 these other fellows which is kind of in conflict with what
12 Simuels had testified to in trial.

13 Again, we move that in.

14 THE COURT: Any objection, Ms. Williams?

15 MS. WILLIAMS: Again, this falls under the --

16 THE COURT: Just for the purpose of --

17 MS. WILLIAMS: Exactly.

18 (Thereupon, Applicant's Exhibit No. 3,
19 Quelletrice Rushon's statement, was received into
20 evidence.)

21 THE COURT: Well, let me say this. You asked me
22 earlier about talking to the wife of, I guess his wife, of
23 Jeremy Simuels. I guess this gets all confusing.

24 But so this is Javon Rushon's sister. On page
25 three doesn't she say, it says, Tony just happened to come

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1 over here at the same time that Heath was here. And so
2 that would be Antonio Savage.

3 BY MR. SUSSMAN:

4 Q. I think it's been confirmed over and over again that
5 Savage was there.

6 A. Right.

7 Q. The question is, there's no real reference to Curry
8 being there. And these people were not questioned or
9 called in the trial to conflict with -- see, are you sure
10 that you knew that Simuels was going to change his
11 testimony before trial?

12 A. Uh--

13 Q. Because it seems like, wouldn't you have called these
14 people to testify in conflict to what Simuels said in
15 trial? I mean, you have nothing in your file that
16 indicates that anyone gave you notice that Simuels was
17 going to change his testimony; do you?

18 A. Well, it's a big file and unfortunately the
19 probability is that after he failed that polygraph,
20 usually at that point they conduct an interview. And that
21 would have been conducted by Billy Fluery.

22 Q. And they would have given you a copy of that
23 interview?

24 A. Right.

25 Q. But you don't have that? And you've been doing this

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1 -- you were doing this, what, nine years before this case?

2 A. Well --

3 Q. I mean, is that yes?

4 A. Yes.

5 Q. An experienced trial attorney, if you had been given
6 notice that a witness for the State was going to change
7 their testimony, wouldn't you have tried to find witnesses
8 to refute or impeach that State's witness and call those
9 other witnesses in rebuttal?

10 A. Well, in response to that, I think you have to look at
11 the, sort of totality of the evidence.

12 Heath Hamilton was accompanied by Ronald Corsey to
13 this parking lot -- I mean, to this apartment, Jeremy
14 Simuels' apartment. And so, Ronald Corsey testified at
15 the trial to going there. He testified to who he talked
16 to and so forth.

17 The vehicle that was used in this was, my recollection
18 is that it was Jeremy Simuels' vehicle.

19 So, normally when somebody changes their story the
20 primary thing that I use to impeach them is their prior
21 statement. And then also any incentive to falsify any
22 bias, any charges they're facing.

23 And with Jeremy Simuels in terms of his testimony that
24 he drove Antonio Savage and Thaddeus Curry to this
25 location, what I would -- the primary thing I would

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1 impeach him with would be his prior statement and I would
2 impeach him with the fact that he was facing charges,
3 either murder or accessory.

4 Q. And you did that?

5 A. Right. But in terms of calling other people --

6 Q. And this would be his wife and his brother-in-law who
7 were also there?

8 THE COURT: Let him answer the question.

9 MR. SUSSMAN: I'm sorry, Your Honor.

10 THE WITNESS: But -- well at this point, I will
11 say this: If Jeremy Simuels is going to get up there and
12 change his story, the odds of his relatives coming in and
13 contradicting him is not good.

14 BY MR. SUSSMAN:

15 Q. But you had -- may I ask a question?

16 THE COURT: You may ask a question.

17 BY MR. SUSSMAN:

18 Q. But you had an investigator, David Cunamin, who's a
19 very good investigator with Gene Staulcup, had their
20 statements that are in your file that said by omission
21 that Curry was not there, I didn't see anybody else out
22 there.

23 THE COURT: Is there an objection?

24 MS. WILLIAMS: I don't think that's an accurate
25 representation of what these statements say. They just

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1 don't say that Thaddeus Curry -- they don't say that
2 Thaddeus Curry wasn't there.

3 THE COURT: They just didn't see him.

4 MS. WILLIAMS: They don't talk about Thaddeus
5 Curry at all. In fact, Ms. Rushon doesn't even know him,
6 thinks he might have hung out with a friend. Doesn't say
7 that that's him because she's not -- does Ronald know
8 Thaddeus. She doesn't even know him.

9 MR. SUSSMAN: Okay. I'll rephrase the question
10 then.

11 BY MR. SUSSMAN:

12 Q. It appears at least that there was an issue between
13 what Simuels said about being present and not being
14 present. He gets a written statement that he wasn't even
15 there. He was at home with his wife and then later on he
16 testifies at trial which you may or may not have known
17 about in advance, that he wasn't in fact at home. He was
18 with Curry. He drove him to this site and the shooting
19 took place.

20 So there was an issue regarding whether or not Simuels
21 was there or not; correct?

22 A. Yes.

23 Q. And there certainly was an issue about whether or not
24 Curry was there or not; correct?

25 A. Where?

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1 Q. At this apartment complex where he met up supposedly
2 with the victim and came back later and they drove out to
3 the killing site. There was an issue about whether or
4 not -- Curry himself told that you that he was not there;
5 did he not?

6 A. Well, that's a good question. You know, he wrote me
7 various letters about it. I've got a lot of statements
8 from Thaddeus Curry but as to whether or not he denied
9 having met Heath at Jeremy Simuels' parking lot, I cannot
10 say yes or no at this point.

11 Q. Well, the reason I asked you that is because I thought
12 you said at the very beginning of your testimony was alibi
13 was his defense from the very beginning.

14 A. Alibi as to the night of, you know -- the statements
15 that, you know, his sister gave and that he gave was that
16 at some point he went over to Margie Darden's apartment.
17 But as to what time that was, that was in question.

18 And then as to what time it was at the various
19 meetings that were had between Heath and individuals over
20 purchasing marijuana, I just -- as to exactly what time
21 those were, I can't recall.

22 Q. Okay. All right. But at any rate, nobody went back
23 out and asked either Rushon or his sister as to whether or
24 not -- well, did you see Curry there?

25 A. The only thing that was asked of them would have been

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1 in these investigative reports.

2 Q. I understand that, but nobody ever followed up. If
3 there had been any follow up you would have probably
4 gotten another investigative report?

5 A. That's exactly what I said.

6 Q. All right. Well, knowing that you had his sister and
7 a mother, both of whom said that Curry was with them for
8 most of that night, I mean, did you know that that's what
9 -- first of all -- strike that. Let me withdraw that and
10 try to clean that up.

11 Did anyone talk to Thaddeus's mother regarding his
12 whereabouts that evening?

13 A. I talked to various family members at various times
14 throughout my representation of Thaddeus Curry.

15 Q. Okay. But you don't have any recollection or any
16 notes that Ms. Curry told you that he was with her for at
17 least up until eight o'clock that night?

18 A. The alibi that I had was the one that his sister and
19 he gave me which was he was at Margie Darden's which it
20 was my conclusion was not true.

21 Q. Did you ever try to find out who else might have been
22 at that apartment?

23 A. Besides his sister and Margie Darden, no.

24 Q. Were you aware that Margie's Darden's husband had come
25 back from overseas?

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1 MS. WILLIAMS: Your Honor, I object. That's
2 assuming facts not in evidence.

3 THE COURT: Sustained.

4 MR. SUSSMAN: Your Honor, I'm asking what he
5 might have known.

6 THE COURT: Well, your client told him he was one
7 place and the alibi witness dissolved on him and quite
8 frankly from the testimony of these witnesses today he
9 didn't have a decent alibi.

10 MR. SUSSMAN: Sure.

11 THE COURT: I mean, based upon what they said
12 today there was no alibi.

13 MR. SUSSMAN: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. SUSSMAN: Well, again, you know, I'm trying
16 to find out what he might have known back then regarding
17 why Darden may not have said --

18 THE COURT: Well, I mean he can't go on
19 everything. You're trying to basically say he didn't call
20 every single witness in the world. And that isn't simply
21 the case. Ask him a question.

22 BY MR. SUSSMAN:

23 Q. Were you aware that -- did Ms. Darden tell you --
24 first of all, did you ever speak to Ms. Darden directly?

25 A. I don't recall.

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1 Q. Okay. Well, Curry tells you that he was at Darden's
2 apartment and your investigator tells you, well, I spoke
3 to Darden and she's not going to back him up, right?

4 A. Yes.

5 Q. Did you ever call Ms. Darden yourself?

6 A. My recollection is I spoke with her but it's vague.

7 Q. Did anyone from -- did Mr. Curry or his sister or
8 anyone tell you that Darden was not going to back him up
9 because her husband had come back from the military?

10 A. My impression of the reason Darden would not -- I
11 mean, she was -- she expressed some fear. And so I was
12 not going to sit there and say, Thad, you need to go talk
13 to Margie to get her to back you up because she expressed
14 some fear in her statement that, and I don't say that
15 lightly. And I don't like saying it but she, you know,
16 felt like -- put it this way. There was some pressure and
17 I didn't want to subject her to undo pressure. In other
18 words, if she's saying that he wasn't there, I'm not going
19 to pressurize her or put her in a situation that she
20 doesn't need to be in if she's a witness to change her
21 stories, you know, to make it more favorable unless I have
22 a very good reason to think that she is not telling the
23 truth. And of course I had her interviewed in a situation
24 where I would trust that she was not under any pressure to
25 say anything untrue.

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1 Q. Let me ask you this. This is -- get off this topic
2 and try to close this up. There was an issue, I think you
3 had testified, about Ronald Corsey who was actually an
4 eyewitness to the case?

5 A. Yes, sir.

6 Q. You had talked about the 9-1-1 tape and because you
7 had evidence that Mr. Corsey saw the shooting. Do you
8 recall the 9-1-1 tape where Mr. Corsey said he could not
9 identify the shooter?

10 A. I would say yes. I mean, it's been a while but that
11 is my recollection of the 9-1-1 tape.

12 Q. But then the 9-1-1 tape nor transcript was put into
13 evidence. Can you explain why?

14 MS. WILLIAMS: Do you want a copy of the
15 transcript?

16 THE COURT: Excuse me. Do you need to look at
17 the transcript?

18 THE WITNESS: Yes, sir.

19 MS. WILLIAMS: A transcript of the 9-1-1 tape.

20 THE COURT: Oh.

21 THE WITNESS: Excuse me.

22 MR. SUSSMAN: I can probably do that.

23 MS. WILLIAMS: I've got a copy if I can just get
24 copies of everything after everything is over.

25 THE WITNESS: Thank you.

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1 BY MR. SUSSMAN:

2 Q. If I may, this might help you speed this along. You
3 had that transcript and I think you were questioning
4 Mr. Corsey about the, what he said in the transcript. And
5 I think Judge Lloyd stopped you at that point and said,
6 you can't just publish the transcript because it's not in
7 evidence yet. Do you recall that?

8 A. Uh --

9 Q. You were using this transcript to refresh Corsey's
10 recollection that he could not identify the shooter and
11 could not give a description --

12 A. Right.

13 Q. -- and in the middle of your questioning of Mr. Corsey
14 on, I can't read the page number, 120 --

15 A. I will tell you this --

16 Q. -- 125 of the trial transcript, Judge Lloyd stopped
17 you and said, you can't publish this transcript unless
18 it's in evidence. I'll give you the option of putting the
19 transcript in evidence or the tape. Do you remember that?

20 A. I don't remember it. I don't doubt it.

21 Q. Okay. Well, that's fair. Neither one was ever put in
22 evidence.

23 A. I'll tell you what my recollection is, why I didn't
24 put the 9-1-1 tape in evidence. And that's because it was
25 too emotional. You'd have to hear it. It's one of those

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1 tapes, and I'm sure you've heard similar tapes, that you
2 don't want in evidence.

3 The transcript. My recollection is I did not want the
4 whole transcript in evidence.

5 Q. Even though the eyewitness, at least at the time of
6 the call, could not identify the shooter?

7 A. Correct.

8 Q. And there's no other physical evidence connecting
9 Mr. Curry to this case. So it was all eye -- it was all
10 witness testimony; was it not?

11 A. I think that's essentially correct. There's a
12 question about clothes and so forth, but I think to say
13 that there was no physical evidence, I think that's
14 correct.

15 There was testimony to the effect that he used to
16 carry around a certain kind of gun, you know, similar to
17 the one that was used but no gun was ever recovered.

18 Q. If the information that Simuels was going to change
19 his testimony had come to you on the day of trial as a
20 surprise, would you have moved for a continuance?

21 A. I don't know. But I could -- Antonio Savage had given
22 a fairly extensive statement. And I can look for it again
23 and I apologize. Really I wish that I had all of this at
24 my fingertips. But the odds are 95 percent that Antonio
25 Savage says that Jeremy Simuels drove him. I mean, they

MICHAEL CHESSER - REDIRECT

1 had to get there somehow.

2 And so, that is the issue. That is the change in the
3 testimony, that Jeremy Simuels drove him. And the idea --
4 I just don't think it's likely at all that I was unaware
5 of that prior to trial.

6 Q. It's not likely that you were unaware of it?

7 A. Correct.

8 MR. SUSSMAN: Your Honor, could I just have one
9 second?

10 THE COURT: Yes.

11 (Pause.)

12 THE WITNESS: If I --

13 THE COURT: Wait.

14 MR. SUSSMAN: That's all we have.

15 THE COURT: All right. Thank you. How long do
16 you expect your redirect?

17 MS. WILLIAMS: I'm going to make it very very
18 snappy.

19 REDIRECT EXAMINATION

20 BY MS. WILLIAMS:

21 Q. Does the State typically give you a summary of what a
22 witness is expected to say prior to the trial or do they
23 give you any written statements as required by Brady?

24 A. What was the last part of that question?

25 Q. I said: Does the State give you a summary of what

MICHAEL CHESSER - REDIRECT

1 every witness they think might say or do they give you
2 written statements as required by Brady?

3 A. Generally, you know, they don't give me a summary but
4 they give me the statements.

5 Now, I was telling counsel and I got the statement
6 here of Antonio Savage which I got from Billy Fluery's
7 file. And I remember going over there and getting it. On
8 the second page he says, Jeremy was driving and he made --
9 it says, discussion to go. They don't even have any money
10 and Thad had a gun.

11 But -- so, Antonio Savage, his statement right here,
12 which is detailed and written out, dated 4-16 of '03,
13 states that Jeremy was driving. And so, that was not a
14 surprise to me.

15 Q. And Samuals was a co-defendant; is that correct?

16 A. Simuels. Yes.

17 Q. I'm sorry. And he was represented by an attorney most
18 likely?

19 A. Right. And I do not recall, my -- my -- in this type
20 of case, Antonio Savage and Jeremy Simuels what I'd
21 suspect is their cases were simply held off. I doubt they
22 had even pled guilty. That would be typical. They would
23 be charged but their charges would not have been -- they
24 wouldn't even have taken their plea because even a plea to
25 murder, you'd be looking at least 30. And they would

MICHAEL CHESSER - REDIRECT

1 probably want to give cooperating witnesses less time than
2 that.

3 Q. In your experience, co-defendants tend to come in and
4 claim culpability for something or --

5 A. Well, it's routine to, unfortunately, to have a
6 statement at first, like Jeremy Simuels' is, which says I
7 wasn't there. And then to have it change. That's -- but
8 that doesn't excuse it, but obviously it happens a lot.

9 Q. And just briefly. Problems with the alibis. You have
10 the falling asleep and also do juries tend to look at
11 family members -- can you tell me, do you have any opinion
12 about that?

13 A. I've had a number of cases where literally my client's
14 alibi witnesses has been their mother. And I assure you
15 that is not effective.

16 It's, you -- I mean, if that's all you've got and it's
17 real, then you have to go with it, but those are obviously
18 the least-effective alibis.

19 Q. And I'm just going to ask you. This is just kind of a
20 shot in dark but something I noticed in the transcript.
21 At the end during sentencing you state on page 367, you
22 had this case for a year and initially you talked with his
23 family but then that communication broke off. His mother
24 did manage to make it here today but neither his mother or
25 sister were here yesterday.

MICHAEL CHESSER - REDIRECT

1 Does that ring any bells about any communication
2 problems you may have had with them?

3 A. I'm sorry. What are you reading?

4 Q. The transcript at page 367. This is, like I said, a
5 shot in the dark. I'm talking at line 10.

6 I didn't know if there was maybe any background there
7 about communication problems.

8 A. Three sixty-seven.

9 Q. If you don't remember anything that's --

10 A. Well, what happened initially was we pursued the
11 alibi. Again, Thaddeus gave me a detailed alibi to
12 begin.

13 And my recollection is that actually I went out there,
14 to my recollection, to talk with his sister. And, but the
15 case did last a long time. That was in the spring of '03
16 and the case was tried in May of '04. But my recollection
17 was much better back then so if communication broke off
18 then, then it did.

19 Q. I believe that's all. I just want to make sure
20 Mr. Chesser had referenced a list of witnesses that he had
21 asked an investigator to look into. That was a summary of
22 what he wanted to say. I want to make sure we have a copy
23 of that in, and as well as the Savage statement that he
24 referenced in the line of --

25 MR. SUSSMAN: Is that the letter dated June 23rd,

MICHAEL CHESSER - REDIRECT

1 2003?

2 MS. WILLIAMS: It was a letter to his

3 MR. SUSSMAN: Investigator.

4 MS. WILLIAMS: -- investigator asking for some
5 stuff; yeah. And that was Savage's. This was the Aiken
6 Sheriff's Office summary. Two and Three.

7 (Thereupon, State's Exhibit No. 2, letter dated
8 June 23, 2003, and State's Exhibit No. 3, Aiken County
9 Sheriff's Office investigation summary, were received into
10 evidence.)

11 THE COURT: Do you anticipate any reply
12 testimony?

13 MR. SUSSMAN: I do have just a -- reply
14 testimony; no. Just a few follow-up questions based on
15 those last questions regarding communication with his
16 family.

17 THE COURT: All right.

18 BY MR. SUSSMAN:

19 Q. As a matter of fact, this was actually raised on one
20 of my amendments. I have three amendments. Sorry about
21 that, Judge.

22 But the issue regarding mitigation on a murder case.
23 Did you make any, you know, in the anticipation if the
24 case went south on you and it ended up in a conviction,
25 you did make a mention in the transcript at the same place

MICHAEL CHESSER - REDIRECT

1 where Ms. Williams was asking you to look at when you
2 said, I wonder, you know, when Thaddeus was younger --
3 this is on page 367 in the middle, when you asked these
4 questions. Do you have that in front of you, Mike?

5 A. Yes. Uh-huh.

6 Q. I wonder, you know, when Thaddeus was younger how much
7 support he had from his family. Maybe they weren't there
8 for him. I know he hasn't been able to call them for a
9 year. They haven't been accepting calls. But, you know,
10 Thaddeus has not had any advantage that somebody would
11 want to have a ninth grade education.

12 Was any attempt made by you or your investigator to
13 develop any mitigation evidence on his behalf at
14 sentencing?

15 A. No.

16 Q. Did you discuss with him the fact that he would serve
17 life without parole if he was convicted?

18 A. I had extensive discussions with Mr. Curry about the
19 sentencing options and negotiations. I'm looking for it.
20 There was another letter I wrote him where I spelled that
21 out in a little more detail and I recommended the 30 years
22 that was being offered.

23 But so, as far as him looking at 30 to life, yes, I
24 mean, I would have to say I explained that to him.

25 Q. But did you ever deliver or did the State ever deliver

1 any notice that he would serve life without parole if he
2 was convicted, that that was the potential sentence?

3 A. Well, the State does not have any, you know, I've
4 never seen them deliver any type of notice. So with
5 regard to them delivering it to them, no. With regard to
6 me telling him you're facing 30 to life, that may have
7 been all I said to him.

8 With no parole time though --

9 THE COURT: This wasn't an LWOP trial. This was
10 not a life without possibility. This was a regular murder
11 trial where he could receive minimum 30 up to life but
12 this was not an LWOP.

13 MR. SUSSMAN: Judge, all I know when I checked
14 with the parole board he got life without parole.

15 THE COURT: That's the way every murder case is
16 in South Carolina. That's nothing new.

17 MR. SUSSMAN: Absolutely correct, Judge. I'm
18 just raising that as an issue that maybe might be new.
19 That's all I ask. That's all I have. Thank you.

20 THE COURT: Thank you. I'll take this under
21 advisement. I'll give you my ruling when I make it. I
22 got a lot to read.

23 MR. SUSSMAN: Judge, if it may please the Court.
24 I don't know if I mentioned this last time but I'd like an
25 opportunity to give you just -- you know, since we had two

1 different hearings. Once this transcript's prepared, is
2 give you just a real brief, letter, brief, regarding the
3 issues.

4 (Pause.)

5 THE COURT: She can get the transcript out in 30
6 days. Y'all both do that.

7 MR. SUSSMAN: Of course.

8 END OF PROCEEDINGS: 6:05 P.M.

9 CERTIFICATE OF REPORTER

10 I, Cheri L. Young, Registered Professional
11 Reporter, and Official Court Reporter for the State of
12 South Carolina, do hereby certify that the foregoing
13 transcript of proceedings heard on Wednesday, July 14,
14 2010, in Aiken, South Carolina, was reported by me using
15 machine shorthand and realtime computer-aided translation
16 and is a true, accurate and complete transcript of the
17 proceedings had and evidence introduced in the hearing of
18 the matter.

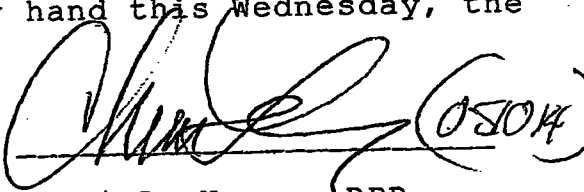
19 I do further certify that I am neither of kin,
20 counsel nor interest to any party hereto.

21 I have hereunto set my hand this Wednesday, the
22 28th day of July, 2010.

23

24

25


Cheri L. Young, RPR
Official Court Reporter

INTERVIEW

WITNESS: Margaret Elizabeth Darden
 SUBJECT: Thaddeus Curry
 ATTORNEY: Mr. Michael Chesser
 INVESTIGATOR: David Kuneman

STATE'S
EXHIBIT

DK: Ms. Darden?

MD: Yes.

DK: I'm sorry, I didn't mean to cut you off or anything, I had somebody in my office and I didn't really want to discuss that in front of them.

MD: Right, right.

DK: Uh, so you said he was not there that night at all?

MD: No, he wasn't.

DK: Who came up with that story that he was?

MD: He did and his sister and I was told pretty much, that it wasn't gonna go this far and I've worried about it and it has gone this far and I don't want to be subpoenaed into court and then, you know...

DK: Have to lie under oath?

MD: I'm not gonna lie and like I said, I don't even know him, I met him, you know, once from his sister and that was it.

FILED

7-14-10

200

Liz Garland
D.C.P. & G.S.
Anita Knoepfle 600
Deputy Clerk

DK: Now, did you actually talk with Thaddeus or did his sister, was she the one that told you the story.

MD: His sister.

DK: Well, Ms. Darden, I really do appreciate your honesty.

MD: I appreciate you understanding, I've been sitting here all day just, just literally sick with worry because I just, you know, I don't want to, I don't want this problem, I don't want it to become a very large problem for me.

DK: Exactly and you know, it could have very well turned out that way.

MD: Exactly.

DK: But like I said, I do appreciate your honesty.

MD: Is this going to get back to Thaddeus and his sister that I told the truth?

DK: Yes, it is going to get back to them because when we speak to Thaddeus, I'm going to have to get him to tell me the truth.

MD: Right.

DK: And in order to do that, I might have to tell him indirectly, we may be able to do it indirectly, so that I don't say that you came right out and told me the truth.

MD: I just want...

DK: I might be able to do it indirectly so that, the point of the matter is we have to know the truth so that we can prepare a defense for him.

MD: Right.

DK: Like I said earlier today, the good, the bad and the ugly, if he was involved, fine, if he wasn't involved, even better.

MD: But I'm just worried because they all know where I live, you know, I don't want it to get to an out of control situation.

DK: *I don't believe he has much contact with his sister.*

MD: Okay.

DK: And I spoke with his sister a little bit later this afternoon and she told me the same story that you told me...

MD: Okay.

DK: So that's where that stands, so as far as she knows you told me the story you told me this morning and that's it, nothing else...

MD: Okay.

DK: Okay, well thank you Ms. Darden.

MD: Thank you too.

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 Telefax: (803) 641-0766

June 23, 2003

STATE'S
 EXHIBIT

Staulcup & Assoc.
 Attn: Gene Staulcup
 404 5th St.
 AUGUSTA, GA 30901

Re: CURRY, Thaddeus
 Warrant: H 249435 Not indicted Murder
 H 249436 Not indicted Poss Weapon Violent Crime

Dear Gene:

As we discussed, I want to establish that Mr. Curry was not at Savannah West Apartments on Washington Road on the evening of Monday, March 17th, 2003 (St. Patrick's Day). Among others, we need to interview the following:

1. Alvain LNU – reference is made to "Alvain" in the statement of Henry Hamilton, as someone who saw Heath Hamilton (victim) at Savannah West the night of March 17th.
2. Co-worker of Henry Hamilton – This could be Alvain, but if it's not, we need to find out who it is and talk to him. Ronald Coursey in his statement makes reference to a guy who works with Henry Hamilton at Applebee's, and this co-worker spent a good bit of time with Ronald, Heath and the two black guys sitting on the Caprice.
3. Wife of Jeremy Simuel – Simuel lived at Savannah West. Simuel is a co-defendant, but he gave a statement favorable to Thaddeus Curry on March 18th. It looks like his apartment was where several of the guys met. From his statement his address looks like [REDACTED] which should be in Savanna West. First we need to verify his apartment. Basically, what he says is that he was in his apartment with his wife, and Tony (Antonio Savage) came to his door and told him some white guys wanted to buy dope. Simuel went to the balcony and spoke to Heath. Simuel says that he heard Tony speaking to his wife and Jevon. It's not clear to me whether Jevon was inside Simuel's apartment socializing with Simuel or his wife, or whether Jevon came up to the door with Tony.

[Signature]
 JUNE 23, 2003
[Signature]
 Deputy Clerk

4. Other people near the apartment – once we find out where Simuel lived, we may be able to locate other witnesses who know who was there the night of March 17th.
5. Robert Glenn – Glenn accompanied Heath Hamilton and Ronald Coursey to Savannah West Apartments. Glenn saw the two black males who Heath was dealing with. Glenn had a conversation with one of them, most likely, but not definitely, Tony. This second black male gave Heath a phone number, which number was written on Heath's hand and noted on the autopsy as "Tony 466-0385" (note that the correct number is supposed to be 65, not 85). Glenn has not made an ID of either black male as far as I know.
6. **Jeremy Simuel's wife, Javon Rushon's sister – She is Jeremy Simuel's wife and is a crucial witness who could be very helpful to us. She lives at Savannah West Apartments at [REDACTED]**
7. Other matters
 - A. I would like to find out from people at Savannah West if they are familiar with the blue and black jacket that Ronald Coursey says one of the guys was wearing.
 - B. Ronald Coursey states that Heath got a phone call from one of the guys. I don't know if that call was to his cell or home phone. Perhaps the first thing to do is subpoena the records for Tony's cell phone, which number I believe to be 706-466-0365.

Sincerely,



Michael Chesser



AIKEN COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION
INVESTIGATION SUMMARY

STATE'S EXHIBIT

3

Case No.:	Complainant:	Suspect:
Complainant's Address:	Complainant Phone No.:	Investigator:

DATE	TIME	ACTION TAKEN
		Entered CID Computer. Assigned to Investigator:
04/16/03	1025	advised Tony of rights & waived. stated was at Termy's outside sitting on TONY'S car. Aida & really talk to the boys didn't give cell number which belong to girlfriend. Let her to pickup girlfriend from work. pulled up to Termy's & guys pulled back into parking lot. Heath asked if Termy was in & if he had any weed & I said I don't know go up & see me. I had went to pick up hatana ever at work at 11:00 pm came back & they were still there. They 3 white dudes. I pulled around to my girlfriend's house, & me & I had walked back to Termy's.

Handwritten notes:
 7-11-03
 Sheriff's Office
 Aiken, SC
 29501
 803-733-1234
 803-733-1234
 803-733-1234



**AIKEN COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION
INVESTIGATION SUMMARY**

Case No.:	Complainant:	Suspect:
Complainant's Address:	Complainant Phone No.:	Investigator:

DATE	TIME	ACTION TAKEN
		<u>Entered CID Computer. Assigned to Investigator:</u>
		They stayed maybe ten mins talking to Jimmy in the kitchen. Then left. One of the guys called my cell phone later maybe a hour later. I answered he didn't say my name & I didn't know who it was & the said it's the dirty bunch & wanted Jimmy who we were involving with in the white shirt & we went to Beach Island. Jimmy was drinking & he made the decision to go. Thad said they don't even have any mags. Thad had the gun a 9mm rifle. Thad always had the gun. The gun came from Henry Norman "Nu Nu" in the Army. Thad traded a Tec 9



AIKEN COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION
INVESTIGATION SUMMARY

Case No.:	Complainant:	Suspect:
Complainant's Address:	Complainant Phone No.:	Investigator:

DATE	TIME	ACTION TAKEN
		Entered CID Computer. Assigned to Investigator:
		to him only as Thad's friend has the gun now!
		Jummy was driving I was in the passenger Thad in the back seat.
		got to Beach Island.
		Thad said we might as well talk the damn man Jummy said he had the gun.
		The cell phone rang & some one answered & the guy said they were at Bryants. Jummy parked at a trailer, beside the store. Jummy backed into the driver. Thad went & got the boys came back & was talking the guy had the scales & it happened so fast I saw Thad with the gun he had found it Jummy said fuck this & Thad said you said fuck



**AIKEN COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATION DIVISION
INVESTIGATION SUMMARY**

Case No.:	Complainant:	Suspect:
Complainant's Address:	Complainant Phone No.:	Investigator:

DATE	TIME	ACTION TAKEN
		<u>Entered CID Computer. Assigned to Investigator:</u>
		<p> <i>They started shooting he was up beside of the truck he kept shooting I ran back to the car we left. Fred was hollering Numb on this. I said "I damn caught him" he said he tried to pull off. He was hollering. Don't nobody say shit, we went back to Augusta as we were leaving I looked back & didn't see the truck moving. Took Fred to road at color where his friend works. on Washington Rd. toward Evans. He took the gun. At the scene the gun jammed & said It jammed up. The guy lived around 1100 Hill</i> </p>

Time 7:20 P.M. Date 3/18/05

Page 1 of 1 page

Location where statement was obtained Richmond S.O.

Name Jeremy Simuel DOB [REDACTED]

Address [REDACTED] City Augusta State GA Zip 30901

I completed the 10th grade in school, and CAN NOT read and write. (Circle one)

Last night I was home in bed with my wife + kids around 10:00 pm. I started hearing at the door. My wife went to the door, while I answered the phone. While I was on the phone I heard Tony's voice. He was talking to Jevone and my wife, ~~then~~ ~~to~~ ~~someone~~ ~~out~~ ~~side~~ ~~wanted~~ ~~to~~ ~~talk~~ ~~to~~ ~~me~~. I went on the balcony and Heath and some other white guy asked me where they could get some weed I told them no. ~~They went~~ ~~out~~ ~~and~~ ~~talked~~ ~~to~~ ~~them~~. Tony came back in, 30-40 minutes later. I took Tony to the store and we came right back. I did not see Heath there. I went back in for the night. ~~They~~ ~~asked~~ ~~me~~ ~~to~~ ~~take~~ ~~him~~ ~~to~~ ~~Tiffany's~~ ~~house~~. I took him home. Tony left around 12:00. He was walking. A few minutes later Jevone left with Tenisha. He left driving his blue Chevy Caprice. I did not see Jevone or Tony again until today. Tony came over around 3:00 p.m. Jevone came over about 4:30 p.m. Jevone left before Tony came over. Today when I got home around 2:30 p.m. Wendy + Russel told me Heath had been killed in a drug deal gone bad. I told them, you know what Heath had just come to my house and asked me about some weed. This statement was written for me by Agent Mike Perry J.T.S.

APPLICANT'S EXHIBIT

I have read or have had read to me this statement consisting of 1 page(s). 1 I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will without promise or reward, without fear or threat of physical harm, punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 7:45 P.M. on the 18 day of March, 2005.

Signature of person giving voluntary statement: Jeremy S. Simuel
Witness: H.M. Perry
Witness: SIA Walker

I have been given a copy of this statement consisting of 1 pages.

Initials of person making statement: J.S.

1-111111-11

INTERVIEW

APPLICANT'S
EXHIBIT

2

WITNESS: Winfred Javon Rushon
 SUBJECT: Thaddeus Curry
 ATTORNEY: Michael Chesser
 INVESTIGATOR: David Kuneman

7.14.10
 [Signature]
 D.C.P. & O.S.
 Anita Knoepfle
 Deputy Clerk

DK: Today's date is June 30, 2003, this is a recorded interview with David Kuneman of Gene Staulcup & Associates and Mr. Winfred Javon Rushon at [REDACTED] Javon, if you would, state your full name and date of birth.

JR: My name is Winfred Javon Rushon, I was born [REDACTED]

DK: Alright, you were here while I was talking to your sister about the incident on March 17, 2003, involving Heath Hamilton.

JR: Right.

DK: As I said before, I'm a private investigator with Gene Staulcup & Associates and we're working for Michael Chesser who represents Thaddeus Curry in this matter. If you could, please tell me in your own words what took place that evening, like what you did say from eight o'clock that evening on.

JR: Okay, like my sister said, we were sitting here playing cards, I had my lady friend with me, me Jeremy and my sister were sitting there playing cards. Heath came over and asked for marijuana, couldn't nobody give him no information on none, so Tony called him before he went out the door, they walked out or whatever, Jeremy did too or whatever, you know what I'm saying, I don't know what happened outside, but I stayed in the house with my girl, you know what I'm saying, what I did was, sat there and waited on Jeremy, you know what I'm saying,

he didn't come back right then, you know what I'm saying, so I stayed right here, I'm trying to remember, cause you know what I'm saying...

DK: Yes, I mean, that was several months ago.

JR: Jeremy came back upstairs or whatever, everybody came back upstairs, you know what I'm saying, Tony stayed gone, you know what I'm saying, I don't know who was outside, I don't know how many, I don't know how many boys, that was my first time seeing Heath, you know what I'm saying, I don't even know Heath, I didn't know him, that was the first time I've seen him when he walked in the door, you know what I'm saying, so I'm sitting in here and we're waiting and Jeremy came back up or whatever, so we started playing cards all over again, you know what I'm saying, Tony come back up, Tony come to the door, you know what I'm saying, actually I don't even remember, you know what I'm saying, all I know is Tony left, you know what I'm saying, and I didn't leave the house till about two thirty that night, you know what I'm saying, actually I left probably about one something, or something like that, you know what I'm saying, I got home like two thirty, my daddy opened the door for me or whatever, you know what I'm saying, and then the next day, Jeremy called me, something about somebody said they seen your car in Beech Island, you know what I'm saying, I'm talking about I'm new to the whole situation, I don't know what's going on, but he said somebody said they seen your car in Beech Island and I was like my car didn't even move last night except when I left from my sister's house to home. I took my girl home and then I went home, you know what I'm saying.

DK: Okay.

JR: But I was out late, I was out late, you know what I'm saying.

DK: You said you got home about one thirty?

JR: I got home at two thirty.

DK: Where do you live?

JR: My mother stay in Hephzibah, that's where I drove to. I'm new to the situation, like somebody said they seen a Chevy over there, cause that's what I

drive, that's what I had, I have a Chevy.

DK: What kind of car is it?

JR: A Chevy Caprice, and they was like somebody seen your car, somebody seen your car and I'm like, I know for a fact my car wasn't over there, that's the day they come over and tried to interrogate me with smiles and everything and get me out the door and try to interrogate me, like I know, I don't even Thad, I don't know Tony, I don't know anyone of them, you know what I'm saying, all I do is just heard them like my sister, we don't know them, you know what I'm saying.

DK: Right, you know Tony, I'm not saying you're friends with Tony, but you know who Tony is?

JR: Yeah, I know of him, yeah.

DK: You have met Thaddeus before, too, Thaddeus Curry?

JR: I know of him too, I know both of them.

DK: But you said you've never hung out with them?

JR: Don't foot with them, don't fool with them.

DK: Okay.

JR: I didn't know about this until the next day, until Jeremy told me, you know what I'm saying, I was shocked, totally shocked. I didn't really, you know what I'm saying, somebody got murdered, you know what I'm saying, okay, I'm worried, but all I'm worried about is who said my car was, I don't really care, you know what I'm saying, I don't even know this boy, and people died, my cousin got killed and ain't nobody worried about him, you know what I'm saying, but that didn't really, I was just worried about, my car didn't got nothing to do, I don't have anything to do with this, I'm here with my lady friend, I took her home, you know what I'm saying.

DK: Your lady friend's name is...

JR: She is my ex, Tanisha Donovan.

DK: Donovan?

JR: Yes.

DK: Can you tell me where she lives or how to get in touch with her?

JR: Uh, she stay in Hyde Park, I don't know exactly her address.

DK: Who does she stay with?

JR: Her mother.

DK: Is her last name Donovan as well?

JR: Her mother?

DK: Yes.

JR: I call her Miss Tina, that's all I know.

DK: Tina?

JR: Miss Tina.

DK: You don't remember what apartment building?

JR: It's a house.

DK: What house?

JR: I don't know the house number.

DK: Do you have a phone number?

JR: I did, but see her phone, her phone got cut off.

DK: That's fine, I mean, I can work with that.

JR: But, see, the only thing, I kind of messed up when I went up there, they got the whole thing confused on my part, you know what I'm saying, when I told them Jeremy was gone, Jeremy was back there asleep, you know what I'm saying, I didn't even know, I left, you know what I'm saying, thinking Jeremy wasn't even here, Jeremy done went back there and laid down and I done left.

DK: Okay.

JR: You know what I'm saying, and I misunderstood and I told the man the wrong thing, so the whole story done got twisted up, see for one, I know that Tony hang with Thad and I still got it messed up again and said that Tony, I mean, Thad was probably out there, you know what I'm saying, which I didn't even know, you know what I'm saying.

DK: I've got a copy of a voluntary statement that you filled out.

JR: That I wrote?

DK: Yes and this was written on March 24th.

JR: See a lot of that in the statement, I just assumed it, you know what I'm saying, I just assumed it.

DK: Okay.

JR: It ain't even facts.

DK: Let me ask you a question, you can tell me whether or not it's a fact or if it was an assumption.

JR: Okay.

DK: Right here is says, I believe, you're talking to somebody, it says, me, Tony and Jeremy picked up Thad on the side of the road and went to a car wash and they discussed the murder, now who are you talking about there?

JR: I was talking about Tony.

DK: Tony, alright.

JR: You know what I'm saying, I wasn't even in the conversation, I was not in the conversation, like I said, I was assuming what they were talking about, you know what I'm saying.

DK: Also it say, Thad mentioned the hammer coming off the gun, he also mentioned a starter jacket and that Thad told Tony to get rid of it, Tony said.

JR: They were talking to each other, you know what I'm saying.

DK: Thad and Tony were talking about it?

JR: They were talking to each other.

DK: Alright, when did that conversation take place?

JR: When?

DK: Yes, when did that conversation take place, do you know?

JR: Later that night.

DK: Later...

JR: See cause when I went home, Jeremy called me, cause it was the next day, you know what I'm saying, so it was later that night.

DK: So we're talking about March 18th, the day after?

JR: The day after, yeah.

DK: Well, let me get you to, if you would, just reach what you wrote and tell me and I'll stop you after we go through each sentence, you just tell me what you know to be fact, what you know to be fiction and what you think is inaccurate

about the statement that you wrote.

JR: Okay, on Thursday night, 3-17-03, I was at my sister's house, me, Tony, Tony, that's assumption, Tony wasn't even here, like she said, he came over while we were playing cards, first Heath came over, Heath showed up, you know what I'm saying, like a little bit before, so he wasn't over here playing cards with us, okay, my sister, Jeremy, my girl was playing cards, a white fellow came to the door...

DK: Assuming that's Heath, correct?

JR: Yeah.

DK: Okay.

JR: I mean I know that was Heath, you know what I'm saying, I know now, so he asked for some weed, which he did, we told no, you know what I'm saying, cause actually he asked everybody in the house, you know what I'm saying, and Jeremy told him no, he was trying to figure out if there was anybody else in the house, don't nobody no, okay, the white boy left, Tony went with him, you know what I'm saying, Tony caught him before he went out the door, fact, you know what I'm saying, see when I said Thad was outside, I don't even know, you know what I'm saying, I just know they hang together, I don't know.

DK: Well, what would make you...

JR: Cause they're always together.

DK: They're always together.

JR: Most of the time, most of the time when I see him, I see him, you know what I'm saying, I don't even know how many white boys was out there, I don't know what kind of car they was driving or nothing, I don't know.

DK: Tony and Thad always hang together, but you didn't see Thad in the house?

JR: I didn't see Thad, Thad wasn't in the house.

DK: Okay, go ahead.

JR: Thad was outside, okay, the white boy, Tony went with him, Thad was outside with the other white boy, Tony came back and got Jeremy, I stayed at the house with the females, Jeremy and Tony was gone for a couple of hours, they haven't come back, so me and my girl left at 2:00 a.m., I went with, I went with her, I went with her and spent the night, I didn't spend the night, I dropped her off, I stayed over and I watched T.V. for a minute and I went home, you know what I'm saying, I did stay over there, but I didn't spend the night, and the next day, I spoke to Jeremy on the phone and he told me my car was in a murder; okay, that was the next day, you know what I'm saying, that's when I left my girl, you know what I'm saying, that night and went over and he showed me the statement, this was the next day, you know what I'm saying, cause I went home that night.

DK: Well, let me stop you right there, you drove to your car to drop your girl off?

JR: Right.

DK: And you left your girlfriend's house after you stayed there and watched T.V. for just a little bit and went to your parent's house?

JR: I went home.

DK: And you're parents house is where in Hephzibah, what's the address?

JR: [REDACTED]

DK: [REDACTED]?

JR: [REDACTED].

DK: And your daddy's name is what?

JR: Eddie Darrisaw.

DK: How do you spell Darrisaw?

JR: D-a-r-r-I-s-a-w.

DK: Okay, then the following day, Jeremy gave you a call?

JR: Jeremy gave me a call, he already done spoke to the investigators and everything, you know what I'm saying, that's how he found out about it, I guess, you know what I'm saying, I don't even know nothing about it, until I get back over here.

DK: Go ahead, continue.

JR: I spoke to Jeremy on the phone and he told me my car was in a murder, that's when I left my girl that night, I was with her the next night, you know what I'm saying, so I was trying to get the nights mixed up, and I went over and he showed me the statement, he told me to stick to the statement, me, Tony and Jeremy picked up Thad on the side of the road and we went to a car wash, you know what I'm saying, cause when I came back over here, Jeremy was like, you know what I'm saying, they done got into something, you know what I'm saying, just what I wrote, you know what I'm saying, basically.

DK: Alright, while you're over here, before yall left in your car and went to a car wash?

JR: Right.

DK: Alright, and who was it that said stick to the statement?

JR: Actually, it was like Tony, the one that was all kind of shook up about it, you know what I'm saying, Jeremy, he didn't care, I'm telling the truth basically, he was like the investigators suppose to come over here and talk to you about and just tell them what you know, you know what I'm saying.

DK: And that's what Tony said, okay, continue.

JR: You know what I'm saying, so we picked up Thad on the side of the road or whatever.

DK: Where did yall pick up Thad?

JR: I don't even know, I couldn't even tell that other investigator, I don't even know.

DK: I mean was it like close to here or what car wash did yall go to?

JR: It was a little ways out, we hit the highway, you know what I'm saying.

DK: Could it have been off of Belair Road or...

JR: Well, see it's like, when I told them that we dropped, you know what I'm saying, Thad off, they was like, I guess they figured that's where the car wash was or something like that, you know what I'm saying, they were kind of or they kept asking me like was it Grovetown or near Grovetown, I don't know, I don't even know where I was, you know what I'm saying.

DK: But you were driving right?

JR: Yeah, I was driving, we were in my car, you know what I'm saying, I wouldn't even aware, if I had known all this was going on, they wouldn't nobody be jumping in my car, you know what I'm saying, I didn't even know, I didn't even know.

DK: Now, in the car...

JR: We picked Thad up, so everybody could know what's going on, I guess, you know what I'm saying.

DK: So all four of you were in the vehicle at that time?

JR: So we all go to the car wash, me and Jeremy sitting in the car, you know what I'm saying, while these two sitting there discussing, I ain't in the conversation, I'm just catching little word by word, all I heard was a starter jacket, you know what I'm saying, all I heard was about a pistol, all I heard about the hammer flew off, you know what I'm saying, I'm trying not to jump in this conversation, because it ain't my business, you know what I'm saying, I don't want like, he's heard what

we said, I don't got nothing to do with this, I'm just now finding out about this, I don't know, I didn't know, I'm sitting there finding out, you know what I'm saying.

DK: You were talking about...

JR: The hammer coming off.

DK: You actually heard Thaddeus say that the hammer came off?

JR: Now, I said they discussed, I didn't say Thaddeus said.

DK: Do you remember who was saying what?

JR: Tony and Thaddeus was doing all the discussing, you know what I'm saying, me and Jeremy was sitting here like, you know what I'm saying, well, I was sitting in the car the whole time smoking a cigarette just like I am now, telling about this whole thing, I don't believe, actually I'm like, okay, now, they sitting here discussing this and I'm here with them, now I'm innocent, you know what I'm saying.

DK: Considering your car was mentioned.

JR: So, I'm real nervous about the whole thing, you know what I'm saying, I'm real nervous about the whole thing, you know what I'm saying, when Jeremy told me my car was, I got nervous right then, cause he told me, man, your car was seen or something, I still didn't know, that's why I rushed over to my sister's house like that, alright, they discussed, a starter jacket, they mentioned a starter jacket, and they were saying that, you know what I'm saying, we're gonna keep this between the four of us that, the car wash, everything, you know what I'm saying, like this didn't never happened, which I can't make it like it never happened, because the next day I'm on a lie detector test and everything, I can't make it like this shit never happened, cause now, when I, when they asked me do you know more information about this, I failed it, you know what I'm saying, that's when, you know what I'm saying, I came back up there the next day and wrote this.

DK: So, that's not your original statement, your original statement...

JR: The original statement, you know what I'm saying, wasn't nothing, but me just lying on my own.

DK: Lying on your own?

JR: Like I don't know nothing, I don't know nothing, cause it wasn't my business, you know what I'm saying, and I'm trying not to get involved in it.

DK: The following day you came back up there and wrote that statement?

JR: Wrote this statement, basically trying to keep me and my family out of this, you know what I'm saying, that's the only reason.

DK: So, you're saying everything in this statement is true and accurate except for the fact you don't know for a fact that Thad was outside with Tony that night?

JR: I don't know that, right.

DK: And that...

JR: And I didn't know Jeremy, I said that Jeremy left with them, I didn't know Jeremy was in the house.

DK: Okay, how do you know sure?

JR: Because when I came back the next day when I left, my sister was like, Jeremy was in the house, I didn't even know that, I wouldn't planning to go no where that night, I left because we were waiting on Jeremy to play cards, we were sitting there drinking, you know what I'm saying, and Jeremy done went back there and laid down.

DK: Well, is there anything else you want to add about either your statement or what your knowledge is of the events that took place that evening that we haven't covered already?

JR: That's all I know, well as far as the murder, I don't know squat shit, I don't know nothing.

DK: Besides...

JR: The information from the care wash, you know what I'm saying, that's all I know.

DK: You don't recall what car wash it was whether it was anywhere close to here?

JR: It wasn't no where near here, it wasn't close to here.

DK: Do you know where Thad lives?

JR: I didn't even know where he stayed, we dropped him off, where we picked him up at, on the side of the road.

DK: Alright, this will conclude the interview with David Kuneman and Mr. Javon Rushon, thank you very much sir.

DK: This is a continuation of the interview with Javon and David Kuneman, Javon, when they took you in for the polygraph test, you said you willfully went?

JR: I willingly went the first time, I went in there and lied on my own, the first time, you know what I'm saying.

DK: You basically lied and said what?

JR: I didn't lie, I lied about telling them I didn't know nothing, you know what I'm saying, about anything, I told them like, who was you talking about, where was you talking about, I don't know nothing you're talking about, and the last question was, I mean, everything they asked me did I murder the boy, no, you know what I'm saying, was you there, no, your last name, I told them my last name, if you knew more about the murder, would you tell us, the lie detector went crazy, you know what I'm saying, so before I left, they were like, we going to see you again, you know what I'm saying, you only got like one more chance to come up there and talk to me and then they got me kind of shook, you know what I'm saying, so the next day, I go on back up there you know what I'm saying, so when I get up there, you know what I'm saying, I do the statement or whatever, you know what I'm saying, and they tell me about Tony, they were like Tony already...

DK: Now, did you take another polygraph test when you went back up there the second time after you wrote that statement?

JR: I didn't take no more.

DK: You didn't take another one?

JR: I didn't take another polygraph test.

DK: Okay.

JR: I only took one.

DK: Now, what about Tony?

JR: They said that Tony already had a warrant on him, you know what I'm saying, for like a armed robbery, you know what I'm saying, they were saying the boys that were at the store and custodian done pointed him out already, you know what I'm saying.

DK: Tony?

JR: Yeah, Tony, they were like, they done already pointed him out, you know what I'm saying, and all I was worried about, they said the whole time, we seen your car in Beech Island, we seen your car, we know your car was in Beech Island, but before I left..

DK: Who was it that was saying it?

JR: The detectives, but they in there playing with my mind, you know what I'm saying.

DK: Do you remember which detective that was?

JR: Bill Flurry.

DK: Bill Flurry.

JR: So, he was like, we know your car was in Beech Island, we know your car was in Beech Island, we know your car was in Beech Island, before I left, we knew your car wasn't in Beech Island, you know what I'm saying, they were playing with my mind, to try to get information out of me, you know what I'm saying, I'm a virgin to this whole situation, I ain't never been in like this.

DK: Alright, sir, did they say anything else to implement either Thaddeus or Jeremy when you were there giving your statement or taking the polygraph?

JR: They thought Jeremy had something to do with this, because the two words I said in that statement was Jeremy wasn't there, when I left, you know what I'm saying, and I didn't even know Jeremy was here, you know what I'm saying, that was the only thing that got their key words about Jeremy, as far as Thaddeus, I don't know what they were thinking about Thaddeus, you know what I'm saying, I don't know.

DK: Besides the fact that you had said he was outside.

JR: I was assuming through the whole thing, I'm sitting here trying to cooperate with these people, you know what I'm saying.

DK: So, you're basically telling me that you were under stress when you filled it out?

JR: They got me under the impression that I ain't going no where, you know what I'm saying, if we catch you lying, you're going to jail, you know what I'm saying, you know what I'm saying, they sitting here holding my brother-in-law, he didn't, they could have had me on the same thing, just for failing that lie detector test, you know what I'm saying, they could have came and got me held up in jail to go to court to prove that I ain't do nothing, you know what I'm saying.

DK: Alright, sir, thank you very much

JR: You're welcome.

DK: I appreciate it.

Time 1315 Date 03/24/03 Page 1 of 1 page
Location where statement was obtained [redacted] Hwy 501 29801
Name Wilverd Tavian Aushan DOB [redacted] SS# [redacted]
Address [redacted] City Augusta State GA Zip 30901

I completed the 11th grade in school, and I CAN CANNOT read and write. (Circle one)

ON Tuesday Night 3-17-03 I was at
my sister House. Me Tony my sister Jeremy my Girl
was playing cards. AND A white fellow came to the
door. He ASK for weed. We told him no. The white boy left
tony went with him. That was outside with the other white boy.
tony came back got Jeremy. I stayed at the House with the
friends Jeremy and tony was gone for a couple hours. They haven.
came back so me and my Girl left at 2:00 am I went there
and spent the night. The next day I spoke to Jeremy on the
phone and he told me my car was in a murder. Thats when I left
my girl that night and went over and he showed me the statement.
He told me to stick to the statement. Me Tony AND Jeremy
picked up that on the side of the Road we went to a car wash
and they discussed the murder that mentioned the Hammer coming
off the Gun He also mentioned a starter jacket and that told tony
to get rid of it Tony said He would And we said were going to keep
this between us and that said they will never find the weapons
then we talk that to some trailer park that Nigh tony said they
have the wrong Sell Phone number He said it was a 6 instead of a 8

I have read or have had read to me this statement consisting of 2 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 1:45 a.m. (p.m.) on the 24 day of March, 20 03.

Wilverd Tavian Aushan
Signature of person giving voluntary statement

[Signature]
Witness
[Signature]
Witness

I have been given a copy of this statement consisting of 1 pages.

Initials of person making statement: JR

Time 1:15 Date 03/24/03

Page 1 of 1 page

Location where statement was obtained [redacted] Hwy 501 29401

Name Winefred Tivan Alishan DO [redacted] SS# [redacted]

Address [redacted] City Augusta State GA Zip 30904

I completed the 11th grade in school, and I CAN CANNOT read and write. (Circle one)

ON Tuesday Night 3-17-03 I was at my sister House. My Tony my sister, Jeremy my Girl was playing Cards AND A white fellow came to the door. He ask for Weed. We told him no. The white boy left Tony went with him. That was outside with the other white boy. Tony came back got Jeremy. I stayed at the House with the females Jeremy and Tony was gone for a couple hours. They haven't come back so me and my Girl left at 2:00 am I went there and spent the night. The next day I spoke to Jeremy on the phone and he told me my Car was in a murder. That's when I left my Girl that night and went over and he showed me the statement. He told me to stick to the statement. Me JONT AND Jeremy picked up that on the side of the road we went to a car wash and they discussed the murder that mentioned the Hammer coming out the Gun He also mentioned a starter jacket and that told Tony to get rid of it Tony said He would And we said were going to keep this between us and that said they will never find the weapons then we talk that to some trailer park that Nigh Tony said they have the wrong Sell Phone number He said it was a 6 instead of a 8

I have read or have had read to me this statement consisting of 2 page (s). This statement is true. I have initialed all corrections and initialed the bottom of each page containing the statement. I declare that the voluntary statement is made of my own free will without promise or reward, without fear or threat of physical harm/punishment, without coercion, unlawful influence or unlawful inducement.

This statement was completed at 1:45 a.m. p.m. on the 24 day of March, 20 03

[Signature]
Signature of person giving voluntary statement

[Signature]
Witness
[Signature]
Witness

I have been given a copy of this statement consisting of 1 pages.

Initials of person making statement: JR



Aiken County Sheriff's Office

Miranda Warning

Case # 1331

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to talk to an attorney for advice before we ask you any questions and to have him/her present during questioning.

If you cannot afford an attorney, the court will appoint an attorney to represent you without cost, if you wish.

If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to an attorney.

I have read this statement of my rights and I understand what my rights are.

Signature: Loren Pughon

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signature	<u>Loren Pughon</u>	<u>Sgt. M. Pugh</u>
Witness	<u>Billy Pughon</u>	
Time	<u>1347</u>	

3-7-62 Flery Perry Alton S.O. 11:05 AM
Winfred Jaron Rushon
██████████ Hepzibah GA 30815
██████████ DL 054522993
796-3678 6' 160 lbs

Flery Read Wavier 11:00 AM

Monday went to sisters → with Girl Friend
9:00 - 9:15 cards
Tony was outside looking for Jeremy
Around 10:00 p.m. a white boy came over
talked to Jeremy wanting weed. Tony
was inside when white boy left. Tony left
about a hour later.
Tony - had on jump suit
left around 11:00 - did not see
Tee shirt. Went to Girl Friend's Hyde Park
1 hour: ^{more} Ting Girl Friend's mother.
No body drives my care but me.
Went home to Hepzibah. Did not stop.
Saw Tony next saw at Savannah West.

White boy talked to Tony about pot.
then Tony asked Jeremy if he had
any pot. Jeremy asked Jevone - did not see
white boy again.
Tony went back outside talking to
white boys.
I do not think I saw Tony that night
any more

INTERVIEW

WITNESS: Mrs. Quoletrice Rushon

SUBJECT: Thaddeus Curry

ATTORNEY: Mr. Michael Chesser

INVESTIGATOR: David Kuneman

APPLICANT'S
EXHIBIT

3

DK: Today's date is June 30, 2003, this is an interview with David Kuneman of Gene Staulcup & Associates and Mrs. Quoletrice Rushon. Mrs. Rushon will you please give me your address and date of birth please?

QR: [REDACTED], Augusta, Georgia, 30904.

DK: And your date of birth?

QR: [REDACTED].

DK: Okay, as I stated before I am a private investigator working for Attorney Michael Chesser who represents a young man by the name of Thaddeus Curry and Mr. Curry has been accused of a possible murder of a young man by the name of Heath Hamilton. Do you know who Mr. Hamilton is?

QR: Yes.

DK: You do?

QR: Yes.

DK: How do you know Mr. Hamilton?

QR: Him and my husband are friends. I only met him once when he came by here

7-14-10
D. Hedrick
A. Kinsey
Deputy Clerk

and him and my husband went to look for a job together. But that's actually the only time I ever met him personally, but you know I've seen him cause him and my neighbor downstairs, she's like a mother to him, so he would be over at her house, but personally I only met him that day when they came to look for a job together.

DK: Okay, so he would come downstairs to...

QR: Miss Wendy, I call her Miss Wendy, her first name is Wendy, I don't know her last name.

DK: Which apartment does she live in?

QR: C.

DK: And that's 1019, correct?

QR: Uh-huh.

DK: And has there been any other occasion you have been formally introduced to Mr. Hamilton?

QR: No, just that once.

DK: Do you know Thaddeus Curry?

QR: I know of him, but like personally know him, no I don't.

DK: I would like to direct your attention back to St. Patrick's Day of this year. If you could, please tell me what you or Jeremy and you know, roughly what took place that day, that was the day of the alleged shooting.

QR: That day...

DK: That was March 17th.

QR: March 17th, uh, that evening myself, Jeremy, my brother, and his female

friend...

DK: Your brother Jevon?

QR: Yes, uh, we were just all of us playing cards and Heath came over, well actually, my husband, he went to bed early that day and I told him, cause I had spoke to my brother and he told me he was coming over here, so I told him that my brother was suppose to have been coming or what not, so my brother came over here and me and my brother and his girlfriend, we were sitting up here for a good while playing cards and then Heath came over and my husband went out on the porch and he told him Heath wanted him and he went out and he asked him did he know where they could get some weed from, marijuana, and he told them, you know, that he didn't know or what not and from my understanding when they got ready to leave Tony just so happened, the other guy Tony, just so happened to come over here at the same time that Heath and them were here.


DK: What's Tony or Anthony...

QR: Anthony Savage.

DK: Anthony Savage.

QR: And from my understanding, he told them, you know, that he didn't have any and they left, from my understanding that I've been told is when they were leaving, Tony, which is Anthony, you know, stopped them and told them they he knew, you know, where to get it or from what not and after that is when they left or what not and the next day is when we found out, you know, that Heath had got killed from Miss Wendy, you know, she told us that he had got killed so that's how we found out.

DK: Okay, did you look outside when your husband went outside?

QR: Yeah. 

DK: Did you go outside?

QR: I didn't go outside there, I was just standing.

DK: Did you see anybody else with Heath or with Tony down there in the parking lot?

QR: No, I didn't see anyone else down there but Heath and the guy that was in the car with him, which was Ronald Corsey, and Anthony and my husband, that's it.

DK: Do you know Ronald Corsey?

QR: No, I don't know him.

DK: You don't?

QR: No, I don't know him at all.

DK: Alright, do you know what kind of car they were in?

QR: It was a truck, I know Heath had a Honda, that's the kind of car I'd seen him in, but the night they were over here I don't remember what kind of car they were in that night.

DK: Okay, you don't recall seeing anybody else downstairs?

QR: No, they were the only two people I seen that were here.

DK: Did anything else take place after Heath and the other fellow left after they asked your husband for some weed?

QR: No, they left and that's it and the next day we were coming back from the store, we were coming back from the store and Miss Wendy stopped us and she told them, she said you know Heath got killed last night and he just looked and I said was he shot and she said he got, somebody shot him or whatever and later on that afternoon, Anthony came over here and he didn't say, you know, anything about anything, he just came over here and they were talking and they went to the store, him and Anthony left and went to the store to get some beer and when they came back...

DK: Jeremy and Anthony left?

QR: Yes, the next day they went to go get some beer and he came back and the investigators started questioning him about, you know, what happened that night when Heath came over here and they told him that Heath had got killed and from that day on, you know, investigators constantly coming by and you know, asking questions and you know, he would cooperate with them, you know, cause he told them he didn't know anything about it, he told them that Heath came over here that night and asked them for some weed or what not, but he cooperated with them every time they asked him, you know, to come up there, come to Aiken, he went to Aiken, took a lie detector test, they called over here, come over here, everything for them.

DK: Do you know a man by the name of Alvin or Alvane that worked with Heath's brother at Applebee's?

QR: Huh-uh, no.

DK: Who may live around this area somewhere...

QR: That may know him?

DK: That may live around this area.

QR: No, Miss Wendy may know who you're talking about because she worked at Applebee's also.

DK: Which Applebee's was it that Heath's brother worked at?

QR: Henry?

DK: Yes.

QR: I think, if I'm not mistaken, I think he works at the same one Wendy works at and she works at, she did work at the one up here on Bobby Jones.

DK: Bobby Jones, okay.

QR: But she don't work there no more.

DK: So did Tony say anything else to Jeremy about what took place?

QR: No, cause I remember when they came from the store, I was sitting in the bed looking in the window and I seen, you know, all these cars pulling up, you know, I could tell you know everybody knows the unmarked cars or whatever, I was looking and I was thinking what in the hell is going on and so they were standing out there, you know, talking to him for a long time, I didn't want to, you know, just go out there, you know, so I was just standing in the house looking, so finally Jeremy came in or what not and he was like, they're questioning him, you know, they're questioning him about Heath being killed or whatever and he said, I told them I don't know, you know, anything about it and he said, I seen the officers walk him over to this side of the parking lot over there by where the dumpsters are and I asked him why did he walk them over there and he said they had the guy who was in the car with Heath the night he got killed over there in the police car and he said the investigator asked the guy in the car is this him and he said the guy in the car said no, that's not him, so he walked back over here and they were questioning him outside for a long time and then the officer asked Jeremy would he mind going down to 401, Jeremy would write a statement and Jeremy told them yes, you know, I'll go down there or whatever, so he rode with the officer down there and when he left is when I went outside and I was standing outside and Tony was still out there with the other investigator and he was like, the investigator was trying to get him to go down and he was like I ain't going there, I ain't going there and they trying to make me and I ain't going down there to the police station or whatever, I don't know nothing about the boy being killed and I ain't going down there, so you know he didn't go or what not, so his dad and them pulled up, I guess they were on there way to the house and he stopped them, cause they were going that way and he stopped them and they stood in the parking lot and he told his dad, you know, they're trying to, accusing me, some white guy got killed and they're trying to accuse me you know, asking me questions about this guy being killed and they want me to go down to the police station and I ain't going down to no damn police station or what not, so after that he left and I didn't see him no more, after that day, I didn't see him no more.

DK: You haven't seen Tony since then?

QR: Huh-uh, I haven't seen Tony no more since that day.

DK: Tony used to live here?

AR: Not...

DK: I mean, in an apartment?

AR: Yeah, him and his girlfriend stayed back there and then his girlfriend came over here...

DK: Do you know what apartment they were staying in?

AR: Uh, I know what building but what exact apartment, I don't know.

DK: What building was that?

AR: I don't know the number, but I can show it to you.

DK: Oh, okay.

AR: I don't know the number, but after that day you know, his girlfriend came over here a couple days later and told me and Jeremy, you know, that they locked Tony up for the murder of Heath or whatever. You know, the next day after that is when we were watching it, you know, Jeremy is on parole, so you know he has to let his parole officer know everything that's going on, so we were watching the news the next day after and we seen on the news that they had picked, you know, that they had done picked Thaddeus up and Jeremy was like, well let me call my parole officer, you know, and find out what's going on or what not, so he called his parole officer and they told him that he wasn't in and he left a message to tell him to call him or what not and not even like five minutes afterwards is when they came, you know, came here you know to pick him up and after that, after they picked him up, his girlfriend, Tony's girlfriend came over again, you know, she would come over here, she came over here like, I'd say like the next two days after that, she would come over here and you know talk to me, because she really didn't know, but she told me she really didn't know what was going on because Tony's family (inaudible) she knows they locked him up for murder, but she really didn't know what was going on, so I was telling her as far as what I knew was going on and what I was told, so after that, she came over here one day and she was like,

well I'm going to, cause she said people kept coming there looking for a purple car and cause they were in a purple car or whatever, the people that killed him was in a purple car and she said you know, he left in her car that night, but she works at night.

DK: Tony did?

QR: Yeah, she said he took her to work and he left in her car that night, she said cause her car is like a, it's like a dark color green, like a forest green, but at night it looks kind of...

DK: It could look purple?

QR: Yeah, it could look purple.

DK: Do you know what kind of car it was?

QR: It was a Galant.

DK: A Mitsubishi Galant, uh...

QR: So she told me it could be, you know, my car they're looking for or whatever, mistaken for a purple car, she was like, she said well he came home that night, the night Heath had supposedly got killed, she was like, he didn't act no different, you know like anything was wrong, like he had done did something or whatever, but after that day, she left, she told me she was going to visit her people for the weekend, I ain't seen her no more. So, I don't know what's going on. I gave her my phone number and told her if she heard anything, you know, to call me and let me know.

DK: What is your phone number?

QR: It's 706-733-2947.

DK: Okay, do you know if Tony ended up hooking up with Heath a little bit later that night to give him the weed or...

QR: This is, from my understanding, this is what Miss Wendy downstairs told me, she said Henry talks to her like family, she knows pretty much everything that's going on, but she told me that she was told, when they got ready to leave here, that Tony ran and stopped them and told him, you know, he knew where to get it from or what not and supposedly, I don't know for sure, how he hooked up with that or whatever, cause I didn't see that, how they hooked up or whatever, but she was told that they followed them to Beech Island and she said they stopped at a store or something and Ronald told Heath, you know, that he felt something wasn't right, that they should leave or whatever, so they went, one of the guys went to the bushes, I don't know who, but one of the guys went to the bushes and just came back out and shooting or whatever, and shoot him in the head and they said he fell over, you know, in Ronald's lap or whatever, so Ronald crawled over Heath, the dead body and jumped in the driver's seat, you know, that's what she said.

DK: That's what Miss Wendy said that Tony and them followed?

QR: Yeah, that's what she was told, I guess that's what Ronald told, you know, Henry or whatever.

DK: Okay, how did Ronald and Henry know each other?

QR: Ronald and Henry, cause Henry, you know, is his brother.

DK: Did Ronald know Thaddeus?

QR: Does he know Thaddeus?

DK: Uh-huh.

QR: I have no idea, unless he, you know, from the night it happened, but as far as personally knowing him, I don't know.

DK: Do you know if Tony and Thaddeus were friends?

QR: Uh, I've heard him talk about him, so I know, you know, that they know each other, but whether they hung out together or not, I don't know.

DK: Okay, how much do you know about Jeremy and Thaddeus hanging out, what do you know about their friendship other than...

QR: He never hung out with, you know, I try to keep him away from him.

DK: You were trying to keep Thaddeus away from him?

QR: No, I was trying to keep him from hanging around a lot of different, you know, people like that, you know, he didn't really hang out with people like that much, he would either be at home or if he went out, it was me and his kids, you know, me and him and somebody would have the kids or something like that, but as far as him and my brother and me go out, you know, as far as hanging out with a lot of different guys. He was trying to keep out of trouble, especially about him being on parole or what not.

DK: Well, is there anything else you can tell about that night that you haven't already told me about?

QR: Uh...

DK: When Heath came over that night, did he come to the door or did he come in when your husband was asleep, I know you said you went back out to the balcony?

QR: You mean, did he come back over here?

DK: You recall who came to the door?

QR: I don't know who came to the door, cause me and my husband was in the room, they told him that Heath wanted him, I don't know whether they came and knocked on the door and asked for him or if they just told my brother, my brother is the one who told them that they wanted him outside, so I don't know if they came up here and knocked on the door or if they just asked him and went back down the stairs.

DK: Alright, do you know, supposedly there was two guys that were outside downstairs, I believe one of them might have had a blue and white starter jacket on

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Thaddeus Curry, #301924,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS 2010

2008-CP-02-1271

BY:

ORDER OF DISMISSAL

10-8-10

Liz Gedard
C.P. & G.S.
Arita Knoebel
Deputy Clerk

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 24, 2008. The Respondent made its Return on or about February 17, 2009. An evidentiary hearing into the matter was convened on January 29, 2010, and reconvened on July 14, 2010, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by William J. Sussman, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf and presented testimony from Yvonne Fraraccio ("Mother"), Valerie Felicia Curry ("Sister"), and Charlette Broadwater ("Broadwater"). Also testifying was Michael Chesser, Esquire ("Counsel"). This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for

WJG

1 of 12

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Gedard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 08 2010

Liz Gedard
C.C.P. & G.S., Aiken County, S.C.
Arita Knoebel
Deputy Clerk

Aiken County. Applicant was indicted at the May 2004 term of the Aiken County Grand Jury for Murder (2004-GS-02-0839) and Possession of Firearm or Knife during Commission of or Attempt to Commit a Violent Crime (2004-GS-02-0838). Applicant was represented by Michael Chesser, Esquire. On May 10-13, 2004, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was found guilty and sentenced to life imprisonment for Murder and to a consecutive term of five (5) years for Possession of Firearm or Knife during Commission of or Attempt to Commit a Violent Crime.

A Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006). The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari, and the Remittitur was sent on April 4, 2008.

In his current application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:

- a. "A copy of my arrest warrant was delivered to me 4-17-03... I was indicted a year later, May 10, 2004. Rule 3(c) under criminal procedure in the South Carolina Rules of Court Handbook states (action on a warrant) within (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the Grand Jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court. Counsel[or] Michael Chesser did not timely move to quash my indictments, couns[elor] Michael Chesser did not challenge the legality and sufficiency of the process of State Grand Jury before the jury rendered a verdict in order to preserve the error for direct appellate review."
- b. "I went to trial the same day I was indicted..." in violation of Rule 40 (b). "...Couns[elor] Michael Chesser did not timely move to quash my indictments, couns[elor] Michael Chesser did not challenge the legality and sufficiency of the process of State Grand Jury before the Trial Jury rendered a verdict in order to

preserve the error for direct appellate review. Counsel Michael Chesser was ineffective."

2. After-discovered evidence.

- a. Affidavit of Anthony Savage that he was threatened by the police investigator and solicitor to lie in court in order to reduce his own sentence.

In his Recast Petition for Post Conviction Relief, Applicant set out the following claims:

1. Ineffective assistance of counsel.

- a. "...failing to act reasonably and competently by neglecting to give Petitioner all of the evidence in his case and failing to afford Petitioner an opportunity to evaluate and receive competent counsel's advice."
- b. "...the indictment against [Applicant] does not set forth the elements of the crime sufficiently to satisfy the statutes he was charged with and provide constitutional notice to the Defendant and therefore, a Motion to Quash said indictment should have been filed by his counsel who was ineffective for failing to do so. The facts alleged in the indictment are not supported by the evidence and do not sufficiently charge [Applicant] with a violation of law. Furthermore, Trial Counsel failed to Move to quash [Applicant's] indictment and failed to move for a continuance as he was indicted and tried on the same day."
- c. "Trial counsel failed to conduct an independent investigation of mitigating evidence."
i. Failed to retain a mitigation investigator as authorized by Ake v. Oklahoma and Wiggins v. Smith.
- d. "Counsel failed to interview and call obvious defense witnesses and investigate sources for impeachment."
- e. "Counsel failed to develop evidence that Petitioner's Co-Defendant was the one who committed the crime and failed to call his alibi witnesses."
- f. "Counsel failed to advise the Petitioner's of his right to appeal and that he was not properly advised under Boykin v. Alabama."
- g. "Trial Counsel failed to properly keep Petitioner informed as to the evidence against him and failed to provide him copies of his file."
- h. "Trial Counsel failed to object to the line-up/identification as impermissibly suggestive."
- i. "Trial Counsel failed to file for Speedy Trial."
- j. "Trial Counsel failed to raise the issue of inconsistent dates of his indictment. Defendant's indictment specifically shows that it was filed on May 6, 2004, however, the Grand Jury did not convene until May 10, 2004, and no Motion to Quash said Indictment was ever filed. Furthermore, Defendant shows that no copy of said Indictment was ever furnished to the Defendant prior to Trial and his Trial counsel never moved for a continuance in order to properly investigate whether or not a Motion to Quash said Indictment should have been filed."
- k. "Appellate counsel failed to raise these issues on appeal."
- l. "...failing to visit [Applicant] at the jail sufficiently to advise the [Applicant] of all of the evidence against him and provide the [Applicant] with an opportunity to make an

intelligent and knowing decision as to whether or not to enter a guilty plea in violation of Petitioner's constitutional and due process rights under the authority aforesaid."

- m. "Petitioner shows that Trial counsel knew that there was a motive for Co-Defendant Savage to lie on him in as much as Petitioner had been involved in an Attempted Armed Robbery earlier in the year and had given a full confession implicating Defendant Savage. This fact was known to Trial counsel and he failed to cross examine or impeach Savage on his testimony."
 - n. "Petitioner shows that the Solicitor's Office failed to act on his Arrest Warrant within ninety days of having received same from the Clerk of Court pursuant to South Carolina Rules of Procedure, Rule 3c and therefore, the Court lacked subject matter jurisdiction for trying the case."
 - o. "Petitioner shows that Trial counsel never argued the various inconsistencies between the testimony of the State's witnesses in his closing argument, specifically, the description of Petitioner, what clothes he was wearing that night, what car he was driving and who he was with."
 - p. "... Trial counsel failed to poll the jury."
 - q. "... never received notice of the possibility of being sentenced to Life Without Parole and this was not discussed with Petitioner prior to his trial nor was his potential sentence discussed."
 - r. "... Prosecutor violated Petitioner's due process rights by offering the testimony of Jeremy Simuels at trial which he knew or should have known would be perjured. Simuels made several different statements about what happened that night and yet the prosecution still had the witness take the stand and defense counsel failed to properly object."
 - s. "Prosecutor failed to disclose inconsistent statements of Jeremy Simuels in violation of Brady v. Maryland."
 - t. "On p. 3 of trial transcript, solicitor informed the trial court that Applicant was also charged with Attempted Armed Robbery (2004-GS-02-0037). The indictment did not exist and Applicant was not tried for the charge. Trial Counsel failed to object. This improperly prejudiced the court against Applicant. Also, Applicant was not given copies of indictments in advance, and Counsel should have moved for continuance."
 - u. "... Indictments against [Applicant] were invalid and failed to provide notice of the time or location to the Defendant so he could properly prepare his alibi defense. ..."
2. Ineffective assistance of appellate counsel.
 - a. "... Appellate counsel failed to thoroughly discuss all issues of his trial and Pre-trial Motions with Petitioner prior to perfecting the appeal and failed to raise all relevant issues previously discussed for the Appellate Court to review and determine whether or not Petitioner received a fair trial."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he 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). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Summary of Facts Adduced at Trial

Heath Hamilton ("Victim") and Ronald Coursey ("Coursey") encountered Applicant, Anthony Savage ("Savage"), and Jeremy Simuel ("Simuel") on March 17, 2003, at an apartment complex as Victim and Coursey sought to purchase marijuana. Javon Rushon ("Rushon") also saw Victim at the apartment complex looking to purchase marijuana, and some of the individuals had been sitting on Rushon's car outside the apartments. It was arranged that Victim and Coursey would await a phone call from Savage and Applicant. Victim and Coursey went to Victim's home to wait for the phone call. Though Savage, Simuel, and Applicant did not procure any marijuana, they arranged a meeting with Victim and Coursey at a gas station in Beech Island in the early morning hours of March 18, 2003.

Victim and Coursey arrived in Victim's truck. Applicant and Savage exited a vehicle driven by Simuel and approached the truck. Simuel testified that Applicant had a black bag with him when he entered the car and took the bag when he and Savage exited. Coursey testified that they demanded money and Victim began to try to leave. Thereafter, Victim was shot. Coursey stated that Applicant fired the shots and that Savage did not have a gun. Applicant and Savage fled in the car driven by Simuel. Coursey moved Victim in order to drive the vehicle away and immediately called 9-1-1.

Savage's phone number was written on Victim's hand. All casings from the scene were from the same gun. Coursey identified Applicant as the shooter. Savage also identified Applicant as the

shooter. Savage testified that as they fled in the car afterward, Applicant said he "dome capped him," meaning he shot Victim in the head. Simuel also testified that Applicant was boisterous about the shooting in the car. Simuel testified that when he spoke to Applicant the following day, Applicant said he had gotten rid of the gun. Rushon testified that the day after the shooting, Simuel had told him that his car was seen in association with the crime. According to Rushon, Savage and Simuel showed him a statement and told him to "stick to it." Rushon conceded that his initial statement to police was what he had been told to say. After meeting with police, Rushon, Savage, and Simuel picked Applicant up from an unspecified location alongside the road. Rushon testified that the four then went to a car wash. Rushon stated that he overheard Applicant tell Savage to get rid of a jacket, that the hammer on the gun had broken, and that Applicant had disposed of the gun. Simuel also testified that Savage and Applicant discussed disposal of the jacket and gun.

Failure to Present Alibi Witnesses

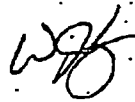
Applicant asserts that Counsel erred in failing to present alibi witnesses on his behalf. At PCR hearing, Applicant presented testimony from Mother, Sister, and Broadwater in support of his claim. Applicant testified at PCR hearing that he was at his mother's house until 8:00 or 9:00 pm on the evening of March 17, 2003. Applicant reported that a friend, Margie Darden ("Darden"), came by and asked him to go to the liquor store with her. Applicant and Darden purchased some beverages and proceeded to Food Lion where Sister was a cashier. After purchasing Coca-Cola and cigarettes, Applicant testified that he and Darden then proceeded to Darden's home. Sister joined them after she got off work around 11:00 or 11:30 pm. Applicant stated that he remained at Darden's home until about 2:00 am on March 18, 2003. Applicant testified that he then returned to Mother's house.

Mother testified that Applicant was living with her on March 17, 2003. Mother testified that

Applicant and his fiancée, Broadwater, had been at the home that afternoon watching movies and playing board games. Mother reported that Darden came over around 6:00 pm and wanted Applicant to come to her St. Patrick's Day party. According to Mother, Darden left so that Applicant could shower and dress, planning to return around 8:00 pm. Mother stated that Anthony Savage ("Savage") stopped by and spoke to Applicant; the two left for about ten (10) minutes. Darden then returned, and Applicant left with her. Mother stated that Darden and Applicant returned between 9:30 pm and 10:00 pm to bring her some food. Mother believed that they then went to Darden's house. Mother stated that Sister woke her up when she called around 1:00 am to report that she and Applicant would be home soon. Mother stated that when she woke up the next morning around 10:00 am that Sister and Applicant were home.

Sister testified at PCR hearing that she worked as a cashier at Food Lion on March 17, 2003. Sister stated that she got off work between 11:00 and 11:30 pm that evening and went to Darden's house. Sister stated that Darden, Applicant, and some of Darden's friends were there. Sister stated that Applicant was at Darden's house the entire time she was there. Sister reported that Applicant called Broadwater from her phone at some point during the night. Sister stated that she called Mother around 1:00 am. Sister testified that she and Applicant left Darden's house around 3:00 am. In speaking with Counsel's investigator David Kuneman ("Kuneman"), Sister stated that she had fallen asleep for a brief period sometime around 1:30 am.

Broadwater testified that Applicant was her fiancée in March 2003. Broadwater did not recall being with Applicant on March 17, 2003, and did not recall being at Mother's house on March 17, 2003. Broadwater stated that Applicant would always call her whenever the two were not together. Broadwater stated that Applicant would typically call around midnight if the two were not together.



because she stayed up late.

Counsel testified that Applicant did raise the issue of alibi from "day one." Counsel affirmed that he hired an experienced investigator to assist him in locating and interviewing potential witnesses. As part of the investigation, potential alibi witnesses were interviewed. Counsel testified that according to his investigator's interview, Darden had denied that Applicant was with her on the night in question and indicated that the story had been fabricated.¹ Counsel opined that Darden's testimony would be essential to presentation and substantiation of a credible alibi; when Darden denied the story and stated that the family had put her up to it Counsel felt that the alibi was not plausible. Counsel opined further that based on his experience, an alibi provided by a mother was not effective.

I find that Counsel's actions were reasonable based on the information he obtained from his investigation. Counsel reasonably believed that the alibi would fail absent corroboration, and it would certainly fail if an alibi witness contradicted the alibi. Moreover, I find that Applicant has failed to demonstrate prejudice in this regard. The alibi set forth by Applicant, Mother, Sister, and Broadwater lacks credibility. Further, the testimony of these three witnesses failed to establish an alibi defense. To establish an alibi defense, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime. State v. Diamond, 280 S.C. 296, 297, 312 S.E.2d 550 (1984), citing State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). The testimony of Mother, Sister, and Broadwater would not have constituted an alibi defense because none of them could definitely account for Petitioner's whereabouts during the time the crime was committed. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (finding no

¹ This court admitted the investigator's interview not for the truth of the matter asserted therein but for Counsel's

prejudice where witnesses' testimony did not establish an alibi because the petitioner could have traveled to the crime scene); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) (no prejudice where testimony of witness did not establish an alibi defense).

Brady Violation / Simuel Investigation

Applicant contends that the prosecution failed to inform the defense that Simuel's trial testimony would not be consistent with his written statement. Counsel testified that he became aware early on that Simuel's story had changed. Applicant argues that he was prejudiced in that he did not have the opportunity to effectively cross-examine Simuel or call additional witnesses. Simuel's testimony at trial was not exculpatory or favorable to Applicant. Therefore, there was no Brady violation.

Simuel's written statement was introduced at trial by Counsel during cross-examination. Counsel elicited Simuel's criminal record for impeachment. Counsel also elicited that Simuel was charged with the same crimes that Applicant was in order to inject the theory that he may have a reason to place blame on Applicant. Counsel's performance was well within reasonable professional norms in this regard. Applicant has failed to present testimony of any additional witness which could have been found had he known of Simuel's trial testimony. Moreover, Savage's testimony largely echoed Simuel's, but Savage was able to identify Applicant as the shooter. Therefore, additional impeachment of Simuel would not likely affect the outcome of the trial.

Notice of Life Without Parole

Applicant contends that Counsel should have objected to a sentence of life without parole absent written notice as required by S.C. Code §17-25-45. Applicant was convicted of Murder.

explanation regarding reasonableness.

Pursuant to S.C. Code §16-3-20(A), "A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years." Applicant was sentenced to life imprisonment pursuant to S.C. Code §16-3-20(A), not the provisions of S.C. Code §17-25-45. Counsel also testified that he had discussed the potential sentence with Applicant and had discussed with Applicant an offered plea for thirty (30) years. Therefore, I find no error in this regard.

Mitigation

Applicant further contends that Counsel failed to present an adequate mitigation case for him in sentencing. (Tr. pp. 360-369.) In support, Applicant cites to Wiggins v. Smith, 539 U.S. 510 (2003), a factually distinguishable case regarding an attorney's performance in the sentencing phase of a capital murder case wherein attorneys failed to pursue mitigating evidence. In the present case, Applicant has pointed to no information provided to Counsel upon which an investigation would be reasonably pursued. Moreover, Applicant has presented no additional evidence which such investigation would have yielded. See for example Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). Finding that no relief is warranted, a question of whether resentencing would be appropriate relief need not be reached.

Indictments

Applicant argues that Counsel should have moved to quash the indictments. Applicant asserts first that the indictment failed to provide adequate notice of the offense charged in that the location within Aiken County was not provided. The indictment is sufficient to provide notice of the charged offense. Moreover, Counsel and Applicant acknowledge preparing a defense, including investigation



of an alibi defense, based on the details provided in the warrants. Applicant further asserts that Counsel should have made motions based on the date of the Grand Jury signature. The indictment was true billed and filed on May 6, 2004, but bears the date of the May 10, 2004, term of court. An Aiken County solicitor explained that the Grand Jury meets on the Thursday before the term of court. Therefore, there appears to be no irregularity upon which to base and objection with regard to date.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1 day of Oct, 2010

Dumler, South Carolina.

W. Jeffrey Young
 W. JEFFREY YOUNG
 Presiding Judge
 Second Judicial Circuit

reserved.
 Applicant should have counsel appointed. Further grounds are
 attached is contrary to the evidence presented and the
 Grounds for the appeal are that the Order of Dismissal

(3)

Office of Appellate Defense.
 Appeal and requests an appointment of the South Carolina
 The Applicant, Thaddeus Curry, files this Notice of

(2)

Please Court of Aiken County, South Carolina.
 Defendant shows that this Appeal is taken from the Common

(1)

and shows as follows:
 Appeal to the South Carolina Supreme Court in the above case
 NOW COMES Appellant and herein files this Notice of

NOTICE OF APPEAL

FILED
 10-29-10
 W. J. Rodman
 JCCP AGS
 Clerk
 Deputy Clerk

CASE NO: 2008-CF-02-1271

SECOND JUDICIAL CIRCUIT

IN THE COURT OF COMMON
 PLEAS

STATE OF SOUTH CAROLINA,

VS.

Applicant,

THADDEUS LORENZO CURRY,

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

(4)

The Order of Dismissal was signed by the Honorable W. Jeffrey Young on October 1, 2010 and filed with the Court on October 8, 2010. Applicant's counsel received written notice of entry of this Order on October 12, 2010.

(5)

The South Carolina Supreme Court has jurisdiction over this matter pursuant to Rule 243 of the South Carolina Appellate Court Rules.

This 25 day of October, 2010.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 25 DAY OF October

2010
Judrea Bryant
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES May 26, 2020

Thaddeus L. Curry #301924
Thaddeus L. Curry #301924, Pro Se
Lieber Correctional Institute
P O Box 205
Ridgeville, SC 29472

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been served upon the following person by placing a copy of the same into the United States mail with the appropriate postage affixed thereto and addressed as follows:

SC Attorney General's Office
Attn: Mary Williams
Post Office Box 11549
Columbia, SC 29211

This 25 day of October, 2010.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 25th DAY OF October

2010

Judith Bryant

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 26, 2020

Thaddeus L. Curry #301924
Thaddeus L. Curry #301924, Pro Se
Lieber Correctional Institute
P O Box 205
Ridgeville, SC 29472

The Supreme Court of South Carolina

Thaddeus Curry, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable Jeffrey Young
Aiken County
Trial Court Case No. 2008-CP-02-01271

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of petitioner to request the transcript within the prescribed time in the above matter, as provided for in Rule 207 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Aiken County after fifteen (15) days, exclusive of the date of filing this Order.

FILED 1-11-2009
L. J. Hadland 11:00 AM
C.C.P. & C.S.
Deputy Clerk

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

December 22, 2010

cc: Appellate Defense
Thaddeus Curry #301924
Assistant Attorney General Mary S. Williams



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1089

FAX (803) 734-1492

January 7, 2011

REMITTITUR


The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: Curry, Thaddeus v. The State – 2008-CP-02-01271

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,


CLERK

DES/tj

cc: Appellate Defense
Thaddeus Curry #301924
Assistant Attorney General Mary S. Williams

1-11 2011
D. Shearouse
D.E.S.
Amelia Knack
Deputy Clerk

STATE OF SOUTH CAROLINA

County of Aiken

Thaddeus L. Curry 301924

Full name and prison number (if any) of Applicant

vs.

State of South Carolina

Name of Respondent

H 249436

H 249435

In the Court of Common Pleas

2011 SEP 20 04:17
 2004-65-02-839 69
 2011
 Clerk of Court
 Brenda Simwald
 Solicitor
 Appointed Atty.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Aiken County Detention Center

2. Name and location of Court which imposed sentence Aiken County Court

3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) MURDER 2004-65-02-839
 - (b) Possession of A Firearm during the commission of A

(c) Violet Crime 2004-GS-02-838

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

(a) MAY-13-04

(b) Life Imprisonment For Murder

(c) Five Years consecutive For Posseslon For A FireArm

5. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgement of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to question (6), list:

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

i. The South Carolina Court of Appeals

ii. _____

iii. _____

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

i. AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. Heard June 15, 2006, Filed October 9, 2006

ii. _____

iii. _____

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

i. SC. Judicial Department - Opinion 4/59

ii. _____

iii. _____

8. If you answered "no" to (6), state your reason for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) This PCR Application is a request for a "belated appeal" pursuant
 (b) to Austin vs. state, 409 S.E.2d 395, 396 (1991).
 (c) See Reverse Side for Answer "Denial of the Right to An"

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Reverse Side for Answer
 (b) _____
 (c) _____

11. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief?
N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
 (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Post-conviction-Relief hearing case # 2008-CP-02-1271
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. Aiken County Court house
 ii. _____
 iii. _____
 iv. _____

772 Question for #9 State Concisely The Grounds on which you
base Your Allegation That you are being held in custody
UNLAWFULL

Answer for Question #9

Denial of The Right to An Appellate
Counsel's Assistance in Seeking Review of The dismissal
of his Application for Post-Conviction Relief (APCR) ~~At the Court~~
NO. 2008-CP-02-01271. Resulting in the denial of The Right
To Appellate Review of The Judge's dismissal of his APCR due
to the Failure to Request the transcript within the Prescribed time
As Provided by Rule 207 of The S.C. Appellate Court Rules.

Question for #10 State Concisely And in The Same order
The Facts Which Supports Each OF The Grounds Set out
in (9).

Answer For Question #10

In October 29, 2010, Applicant Filed Pro se, A Timely Notice of
Appeal of The Judge's dismissal of his APCR with The Clerk of
The S.C. Supreme Court And The Aiken County Clerk of Court. As
A Pro se Petitioner, Applicant was never Appointed Appellate
Counsel to Assist with Seeking Review of The dismissal
of his APCR, And As The Result No Request For The Transcript
was Made within the Prescribed time, Resulting in the dismissal
of Applicant's Appeal of The dismissal of his APCR. Applicant
Never Received A Complete "bite At the Apple" because As The
Result of Not being Appointed Appellate Counsel to Assist in Seeking
Review of The dismissal of his APCR, NO Request For The Transcript
was Made within the Prescribed time, and As The direct Result
the Court dismissed Applicant's Appeal. Odom v. state, 337 SC,
256, 523 S.E.2d 753 (1999) (An Applicant has A Right to An
Appellate Counsel's Assistance in Seeking Review of The denial
of PCR.) As in Odom, Applicant, who Also Filed Pro se, never
Received the benefit of An Attorney's Advice in Seeking Review
of The denial of his APCR. Applicant Never Waived his
Right to Appeal The denial of his APCR. Applicant was denied
The Right to An Appellate Counsel's Assistance, Resulting in the
dismissal of his Appeal for Failure to Request the Transcript
within the Prescribed time As Provided by Rule 207 of The
S.C. Appellate Court Rules

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Post-conviction-Relief hearing case #2008-CP-02-1271
- ii. January Term of 2010 And May Term of 2010
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered yes to (13) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Please see Reverse side And Also Attached
- (b) Page
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgement of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. Michael chesser Attorney At Law
Po Box 1018 104 Park Avenue, SW Aiken SC 29802
- ii. Robert M. Dudek, South Carolina Commission
on Indigent Defense P.O. Box 1159 Columbia, SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Michael chesser - At My Trial
- ii. Robert M. Dudek - on my Appeal
- iii. _____

Question # 15 IF ANY Grounds Set Forth in (9),
has Not Previously been Presented to ANY Court,
State or Federal, Set Forth The Grounds, And State
Concisely The Reasons why Such Ground has not
Previously been Presented

Answer For Question # 15 Applicant Presents the
Grounds set Forth in (9) Pursuant to the Court's
holding in Austin v. State, 305 S.C. 453, 409
S.E.2d 395 (1991) And Adam v. State, 337 S.C
256, 523 S.E.2d 753 (1999) Petitioner will be
entitled to An Austin Appeal if it is determined that
he did not knowingly And intelligently Waive his
to Appellate Counsel.

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

Entitled To An Austin Appeal and Appointed An
Appellate Counsel's Assistance In Seeking Review of The
denial of PCR A Complete Full bite At The Apple

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

No

STATE OF SOUTH CAROLINA)
)
County of Aiken)

VERIFICATION

I, Thaddeus L. Curry, 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 know 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.

Thaddeus L. Curry

SWORN to and subscribed before me this 30th day of November, 2011.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

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

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

Thaddeus L. Curry
Applicant

SWORN or affirmed to and subscribed before me this 30th day of Nov, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Thaddeus Curry, 301924,)
Applicant,)

2011-CP-02-2719

v.)

RETURN AND MOTION TO
DISMISS ALL CLAIMS EXCEPT
AUSTIN REVIEW

State of South Carolina,)
Respondent.)

(Appointment of Counsel Requested)

In response to the post-conviction relief application filed December 5, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. Applicant was indicted at the May 2004 term of the Aiken County Grand Jury for murder (2004-GS-02-0839) and possession of firearm or knife during commission of or attempt to commit a violent crime (2004-GS-02-0838). Applicant was represented by Michael Chesser, Esquire. On May 10-13, 2004, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was found guilty and sentenced to life imprisonment for murder and a consecutive term of five years incarceration for possession of firearm or knife during commission of or attempt to commit a violent crime.

A Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Curry, 370 S.C. 674, 636

FILED 7-31 2012
Liz Godard
C.C.P.&G.S. 12:30pm
Deputy Clerk

S.E.2d 649 (Ct. App. 2006). The South Carolina Supreme Court denied Applicant's petition for writ of certiorari, and the remittitur was sent on April 4, 2008.

Applicant filed his first application for post-conviction relief on July 24, 2008 (C.A. No. 2008-CP-02-1271), alleging ineffective assistance of counsel and after-discovered evidence. The State made its Return on or about February 17, 2009. An evidentiary hearing was convened into the matter on January 29, 2010, and reconvened on July 14, 2010, at which Applicant was present and represented by William J. Sussman, Esquire. The application was denied and dismissed with prejudice by the Honorable W. Jeffrey Young by order dated October 1, 2010, and entered October 8, 2010. A timely Notice of Appeal was filed by the Applicant. By Order dated December 22, 2010, the South Carolina Supreme Court dismissed Applicant's appeal for failure to request the transcript within the prescribed time. The remittitur was sent on January 7, 2011.

II.

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

1. "This PCR Application is a request for a "belated appeal" pursuant to Austin v. State, 409 S.E. 2d 395, 396 (1991).":
 - a. "...As a Pro Se Petitioner, Applicant was never appointed appellate counsel to assist with seeking review of the dismissal of his APCR, and as the result no request for the transcript was made with the prescribed time, resulting the dismissal of Applicant's Appeal of the dismissal of his APCR."
2. "Denial of right to an Appellate counsel's assistance in seeking review of the dismissal of his application for Post-Conviction Relief (A PCR) No. 2008-CP-02-01271, Resulting in the denial of the right to appellate review of the Judge's dismissal of his APCR due to the failure to request the transcript within the prescribed time as provided by Rule 207 of the S.C. Appellate Court Rules."

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

from the South Carolina Department of Corrections, and the relevant records from the Applicant's prior PCR proceeding. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss any additional allegations brought forth herein or at an evidentiary hearing because they would be successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised the allegations in a previous application, then the Applicant may not raise

those grounds in successive applications. *Id.* The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980). Accordingly, Respondent will move for a summary dismissal of any additional grounds brought forth by Applicant at an evidentiary hearing because they would be successive in nature.

VI.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. *Id.* Austin "is limited to its particular factual situation . . ." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VIII.

WHEREFORE, Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:

Megan E. Harrigan
Attorneys for the Respondents

Columbia, South Carolina

July 25, 2012.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2011-CP-02-2719

THADDEUS CURRY, 301924,)
)
Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)
)
Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss All Claims Except Austin Review** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Thaddeus Curry, #301924
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472**

DATED this 30th day of July, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

FILED 7.31 2012
Liz Godard
C.C.P.&G.S. 12:30pm
Maureen Dowd
Deputy Clerk

1 STATE OF SOUTH CAROLINA
2 COUNTY OF AIKEN

CIRCUIT COURT
2011-CP-02-02179

4 THADDEUS CURRY,
Applicant,

5 -VS-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Wednesday, January 22, 2014

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Lance Boozer, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
Daniel Gourley, Esq.

21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232

25

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON WEDNESDAY, JANUARY 22, 2014 AT 10:29 A.M.:

2 THE COURT: All right. Mr. Gourley.

3 MR. GOURLEY: Yes, sir. May it please the Court.

4 THE COURT: Yes, sir.

5 MR. GOURLEY: Your Honor, this is Thaddeus Curry
6 versus the State of South Carolina, Docket Number 2011-CP-
7 02-2719.

8 He's presently confined in the South Carolina
9 Department of Corrections pursuant to orders of commitment
10 from the clerk of court for Aiken County. He was indicted
11 at the May 2004 term of the Aiken County Grand Jury for
12 murder and possession of a firearm and knife during the
13 commission or attempt to commit a violent crime. He was
14 represented by Michael Chesser. On May 10th through 13th,
15 2004, proceeded to a jury trial before the Honorable
16 Reginald Lloyd.

17 Applicant was found guilty and was sentenced to life
18 imprisonment for murder and a consecutive term of five
19 years incarceration for possession of a firearm or knife
20 during the commission of or attempt to commit a violent
21 crime.

22 A notice of appeal was filed on his behalf and the
23 South Carolina Court of Appeals affirmed the Applicant's
24 conviction and sentence. A remittitur was issued on April
25 4th, 2008. Subsequently filed a first application for

1 post-conviction relief on July 24th, 2008. The State made
2 its return on February 17th, 2009.

3 An evidentiary hearing was convened into the matter on
4 January 29, 2010, and reconvened on July 14th, 2010, at
5 which Applicant was present and represented by William
6 J. Sussman. The application was denied and dismissed with
7 prejudice by the Honorable W. W. Young (sic) by order
8 dated October 1st, 2010, and entered October 8th, 2010,

9 Timely notice of appeal was filed by the Applicant.
10 By order dated December 22nd, 2010, South Carolina Supreme
11 Court dismissed Applicant's appeal, failure to request a
12 transcript within the prescribed time.

13 He subsequently filed an application for post-
14 conviction relief on December 5th, 2011, alleging appeal
15 pursuant to Austin V State and a denial of right to an
16 appellate counsel's assistance in seeking review of the
17 dismissal of his application for post-conviction relief.

18 Your Honor, I've been in discussion with Mr. Sussman.
19 What occurred in the case in talking with him, he's
20 explained that he helped the Applicant file his notice of
21 appeal. However, he did not actually move to be relieved
22 of counsel at that stage.

23 Therefore he was still considered record of counsel
24 (verbatim) at that time and did not order the transcript
25 in a timely fashion. He was unaware that he needed to

1 make a motion to be relieved as counsel after the notice
2 of appeal was filed. So it never actually got to
3 appellate defense.

4 I've spoken with him and Mr. Boozer on this case and
5 the State certainly believes that Mr. Curry is entitled to
6 his appeal pursuant to Austin V State. And we therefore
7 would consent to the granting of his --

8 THE COURT: Consent to a belated appeal?

9 MR. GOURLEY: Yes, sir.

10 THE COURT: All right. Mr. Boozer, the State's
11 consenting to a belated appeal. Is that what Mr. Curry
12 wants?

13 MR. BOOZER: Your Honor, that is correct. That's the
14 only relief that he seeks with regard to this PCR
15 application.

16 THE COURT: Okay. All right. And who's going to do
17 the order?

18 MR. GOURLEY: I can type up it, Your Honor, and I'll
19 send it, CC to you.

20 THE COURT: If you would prepare it and run it by
21 Mr. Boozer so he can review it.

22 MR. GOURLEY: Yes, sir.

23 THE COURT: Since he's familiar with how to do it.
24 Okay.

25 MR. GOURLEY: Yes, sir. Most definitely.

1 THE COURT: Thank you.

2 END OF PROCEEDINGS: 10:32 A.M.

3 ***

4 CERTIFICATE OF REPORTER

5
6 STATE OF SOUTH CAROLINA)

7 COUNTY OF AIKEN)

8 I, Cheri L. Young, Registered Professional Reporter
9 and Official Court Reporter for the State of South
10 Carolina, Second Circuit-At Large, do hereby certify that
11 the foregoing proceedings were written stenographically by
12 me using computer-aided translation; further, that the
13 foregoing is a true, accurate and complete record, to the
14 best of my skill and ability, of all the proceedings had
15 and evidence introduced in the hearing of the captioned
16 case, relative to appeal, in the Court of Common Pleas for
17 Aiken County, on the 22nd day of January, 2014.

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

20 I have hereunder set my hand this Monday, the 7th day
21 of July, 2014.

22
23
24 
25 Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
 Thaddeus Curry, #301924,)
 Applicant,)
 vs.)
 State of South Carolina,)
 Respondent.)

H 249436, H 249435,
 IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

2011-CP-02-2719

**ORDER GRANTING AN APPEAL
 PURSUANT TO AUSTIN V. STATE**

4.14.14
Edgar W. Dickson
William Susman
Daniel Gourley
Lance Boozer
 Deputy Clerk

Presiding Judge:
 Applicant's Attorney:
 Respondent's Attorney:
 PCR Counsel:
 Date of Hearing:

The Honorable Edgar W. Dickson
 William Susman, Esquire
 Daniel Gourley, Esquire
 Lance Boozer, Esquire
 January 22, 2014

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 5, 2011. The Respondent made its Return and Motion to Dismiss all claims except Austin review on July 30, 2012. An evidentiary hearing on the matter was convened on January 22, 2014, at the Aiken County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Daniel Gourley, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. Applicant was indicted at the May 2004 term of the Aiken County Grand Jury for murder (2004-GS-02-0839) and possession of firearm or knife during commission of or attempt to commit a violent crime (2004-GS-02-0835). Applicant was represented by Michael Chesser, Esquire. On May 10-13, 2004, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was

1/4 *Edgar*

found guilty and sentenced to life imprisonment for murder and a consecutive term of five years incarceration for possession of firearm or knife during commission of or attempt to commit a violent crime.

A Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Cl. App. 2006). The South Carolina Supreme Court denied Applicant's petition for writ of certiorari, and the remittitur was sent on April 4, 2008.

Applicant subsequently filed an application for post-conviction relief (PCR) on July 24, 2008 (C.A. No. 2008-CP-02-1271), alleging ineffective assistance of counsel and after discovered evidence. The State made its Return on or about February 17, 2009. An evidentiary hearing was convened into the matter on January 29, 2010, and reconvened on July 14, 2010, at which Applicant was presented and represented by William J. Sussman, Esquire. The Application was denied and dismissed with prejudice by the Honorable W. Jeffrey Young by order dated October 1, 2010, and entered October 8, 2010. A timely Notice of Appeal was filed by the Applicant. By Order dated December 22, 2010, the South Carolina Supreme Court dismissed Applicant's appeal for failure to request the transcript within the prescribed time. The remittitur was issued on January 7, 2011.

ALLEGATIONS

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

1. "This PCR application is a request for a "Belated appeal" pursuant to Austin v. State, 409 S.E.2d 395, 396 (1991)";
2. "Denial of right to an Appellate Counsel's assistance in seeking review of the dismissal of his application for Post-Conviction (A PCR) No., 2008-CP-02-01271, Resulting in the denial of the right to appellate review of the Judge's dismissal

2/4-ES


of his A PCR due to the failure to request the transcript within the prescribed time as provided by Rule 207 of the S.C. Appellate Court Rules.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application (2008-CP-02-1271). The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Counsel for the Applicant has indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that he failed to file a motion to be relieved as counsel. Counsel indicated he was unaware that he was counsel of record for Applicant's appeal and therefore did not know he was required to order the PCR transcript.


Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first PCR (2008-CP-02-1271) pursuant to Austin v. State is warranted. It is appearing the below listed individuals all consent to the granting of a PCR appeal in this matter. This Court also finds that all other allegations raised in this application will be addressed in a separate order.


3/4 

IT IS THEREFORE ORDERED:

1. That the Applicant remain in the custody of the South Carolina Department of Corrections; and
2. That the Applicant be granted an appeal of case 2008-CP-02-1271 pursuant to Austin v. State.

AND IT IS SO ORDERED this 8th day of April, 2014.


Edgar W. Dickson
Presiding Judge
2nd Judicial Circuit


Orangelina
South Carolina

WITNESSES

Billy D. Fleury, A.C.S.O.

FILED *May 6* 2004

Liz Hodard
R.C.P. & C.S.

Spencer Thimmon
Deputy Clerk

ARREST WARRANT NUMBER

H249436

ACTION OF GRAND JURY

True Bill
True Taylor
Foreperson of Grand Jury
Date: May 6, 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-02-836

The State of South Carolina

County of Alken

COURT OF GENERAL SESSIONS

MAY 10, TERM 2004

THE STATE

vs.

THADDEUS LORENZO CURRY

**Indictment for
POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT
CRIME**

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

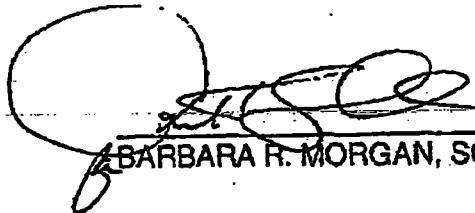
INDICTMENT

At a Court of General Sessions, convened on May 10, 2004, the Grand Jurors of Aiken County present upon their oath:

POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT CRIME

That THADDEUS LORENZO CURRY did in Aiken County on or about March 18, 2003, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS.
Thaddeus Lorenzo Curry
AKA:
Race: Black Sex: Male Age: 25
DOB: [REDACTED] SS#: [REDACTED]
Address:
City, State, Zip Augusta GA 30907
DL# [REDACTED] SID# GA 295938214

INDICTMENT/CASE#: 2004 -GS- 02 - 838
AW#: 11-249431
Date of Offense: 3/18/03
S.C. Code §: 16-23-490
CDR Code #: 01 51 4 19
 CASE RESTORED
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Loss of Firearm During Comm of Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 01 51 4 19
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
[Signature]
Solicitor
Everette Chandler

Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 5/13/04
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____
Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation

[Signature]
Clerk of Court Deputy Clerk
Court Reporter: Branda Sigwald

PRESIDING JUDGE [Signature]
Judge Code: 2-1-13-13-13
Sentence Date: 5/13/04

WITNESSES

Billy D. Fleury, A.C.S.O.

FILED *May 6* 2004

[Signature]
C.C.P. & G.S.

[Signature]
Deputy Clerk

ARREST WARRANT NUMBER

H249435

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: May 6, 2004

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-02- 839

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

May 10, Term 2004

THE STATE

vs.

THADDEUS LORENZO CURRY

Indictment for

MURDER

SC Code 16-3-10

CDR Code 116

Class FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)


INDICTMENT

At a Court of General Sessions, convened on May 10, 2004, the Grand Jurors of Aiken County present upon their oath:

MURDER

That THADDEUS LORENZO CURRY did in Aiken County on or about March 18, 2003, with malice aforethought, kill one Heath A. Hamilton by means of by shooting Heath A. Hamilton in the head with a firearm and said victim died as a proximate result thereof. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF STATE

Aiken

INDICTMENT/CASE#:

2004 GS- 02 839

AKA:

Thaddeus Lorene Curry

AW#: 4249435

Race: Black Sex: Male Age: 25

Date of Offense: March 18, 2003

DOB: [Redacted] SS#: [Redacted]

S.C. Code §: 16.3.10

Address: [Redacted]

CDR Code #: 0 1 1 1 1 1 6

City, State, Zip: Augusta GA 30904

DL#

SID# GA 29593884

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Murder

in violation of § 16.3.10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 1 6

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Everette Chandler Solicitor

Defendant

Michael Chaddler Attorney for Defendant

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

CONCURRENT or CONSECUTIVE to sentence on:

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

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

Total \$ plus 20% fee: \$

Payment Terms:

set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like \$14-1-206 (Assessments 107.5%), \$14-1-211(A)(1) (Conv. Surcharge) \$100, \$14-1-211(A)(2) (DUI Surcharge) \$100, \$56-5-2995 (DUI Assessment) \$12, \$35.13 (Public Def/Prob) \$500, \$73.3, 1B TP (Law Enforce. Funding) \$25, \$33.7, 1B TP (Drug Court Surcharge) \$100, \$50-21-114(BUI Breath Test Fee) \$50, \$56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$3.75, TOTAL \$128.25

PTUP

days/hours Public Service Employment

- Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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

PRESIDING JUDGE

Judge Code: 2 1 2 1 3 1 3

Sentence Date: 5/13/04

Clerk of Court/ Deputy Clerk

Court Reporter: Brenda Sigwald

White - Clerk

Green Corrections

Canary Probation

Pink - Defendant

SCCA/217 (7/2003)