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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

S.C. Supreme Court

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

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MONTEZ N. BARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001313

---

APPENDIX

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LARA M. CAUDY  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

J. CROOM HUNTER  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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violence and bodily harm, adult and juvenile crimes and sentences and other unlawful conduct, prior and subsequent adult and juvenile violation of laws, rules, regulations, and/or ordinances, prior and subsequent criminal adult and juvenile records and sentences, the nature and circumstances of said crimes, propensity to commit or attempt to commit crimes and acts of violent bodily harm as an adult and a juvenile, propensity for violence and unlawful conduct as an adult and a juvenile, disregard for peace and good order as an adult and a juvenile, and other similar characteristics of MONTEZ M. BARKER, as an adult and a juvenile, by the testimony of victims, witnesses, police officers, statements by the Defendant, and other relevant testimony, photographs, and exhibits. Lockett v. Ohio, 438 U.S. 586 (1978); State v. Shaw, 255 S.E.2d 799 (1979). The State will further present as evidence in the sentencing trial all items of evidence, testimony, and exhibits that were admitted during the guilt phase.

The State will further present evidence of circumstances surrounding the above-indicted crimes. Evidence will also be presented relating to the character and characteristics of MONTEZ M. BARKER before, during, and after the crimes. The State will also present evidence as to any prior act of violence or injury committed upon the victim. Evidence will also be presented to show the cause and/or manner in which the murder and crimes were committed, including, but not limited to, photographs, video tapes, other tapes, and diagrams of the crime scene and victim, statements by the defendant, and other testimony related thereto. State v. Goolsby, 268 S.E.2d 31 (1980); State v. Shaw, *supra*.


The State will further present evidence, testimony, and exhibits as to the Defendant's crimes, character, characteristics and conduct while incarcerated in jails and/or prisons as an adult and a juvenile and disciplinary actions before and after the indicted crimes were committed; disregard and violation of rules, regulations, laws and/or ordinances as an adult and a juvenile and disciplinary actions; disrespectful, disruptive and uncooperative actions and conduct as an adult and a juvenile; and all other such acts and conduct while incarcerated as an adult and juvenile and disciplinary actions, before and after the indicted crimes.

The State will further present evidence, testimony, and exhibits as to the Defendant's character, statements and conduct relating to his release or parole from jails and/or prisons as an

adult and a juvenile and probationary status; mental or physical evaluations of the Defendant as an adult and a juvenile; testimony and opinions as to the Defendant's character, propensity for violence and unlawful conduct, disregard for peace and good order, and to commit such acts in the future.

The State will further present detailed evidence of circumstances surrounding the arrest and apprehension of MONTEZ M. BARKER, including but not limited to weapons, photographs, recordings, diagrams, exhibits, threats, and statements by the Defendant and testimony related thereto.

The State will further present evidence as to "Victim Impact" evidence, the victim, evidence of the emotional impact of the crimes on the families and friends of the victim, the consequences of the crimes on the families and friends of the victim, the victim's personal characteristics, and arguments relating thereto pursuant to Payne v. Tennessee, 111 S.Ct. 2597 (1991); State v. Byram, 485 S.E.2d 360 (1997); State v. Ivey, 481 S.E.2d 125 (1997); State v. Humphries, 479 S.E.2d 52 (1996); Riddle v. State, 443 S.E.2d 557 (1994); State v. Rocheville, 425 S.E.2d 32 (1993); Lucas v. Evatt, 416 S.E.2d 646 (1992); State v. Johnson, 410 S.E.2d 547 (1991).

  
E.L. CLEMENTS, III  
SOLICITOR  
TWELFTH JUDICIAL CIRCUIT

FLORENCE, SOUTH CAROLINA  
SEPTEMBER 20th, 2010

COPY

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE ) COURT OF GENERAL SESSIONS

State of South Carolina, )  
 )  
 ) Guilty Plea  
 )  
 ) PLAINTIFF, )  
 ) 2012-GS-21-00896  
 )  
 ) -VS- )  
 )  
 )  
 ) Montez Barker, )  
 )  
 )  
 ) DEFENDANT. )  
 )

BEFORE THE HONORABLE THOMAS A. RUSSO, JUDGE

MAY 8, 2013

FLORENCE, SOUTH CAROLINA

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

Edgar Lewis Clements III, Esq.  
For the State

William Vickery Meetze, Esq.  
Marshall Solomon Weaver, Esq.  
For the Defendant

REMA K. GANTT THOMAS  
CIRCUIT COURT REPORTER

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1 (The defendant, together  
2 with counsel, was personally present in the  
3 courtroom.)

4 MR. CLEMENTS: If it please the Court, we  
5 are here on Indictment 2012-GS-21-896, State of  
6 South Carolina versus Montez M. Barker.

7 Your Honor, this is a multiple-count  
8 indictment. Mr. Barker was seeing the death  
9 penalty, Your Honor. The State has removed the  
10 death penalty off the table in exchange for him  
11 pleading guilty here today, Your Honor.

12 THE COURT: All right.

13 MR. CLEMENTS: Your Honor, he is charged  
14 and pleading to two counts of murder, one count of  
15 arson in the third degree, which involves the  
16 burning of a 2004 Ford Explorer that belonged to  
17 Talya Poston. Talya Poston and Billy Hall II are  
18 the victims of the two murders.

19 There is a grand larceny charge value  
20 \$5,000 or more which carries zero to 10. Your  
21 Honor, that is for the theft of the 2004 Ford  
22 Explorer.

23 And there is a charge, Your Honor, for  
24 criminal conspiracy, common-law conspiracy, which is  
25 the general conspiracy statute, Your Honor, where

1 Mr. Barker is alleged to have conspired with Mr.  
2 Laross Graham and Mr. Laross Graham conspiring with  
3 others. So that was the connection there for Mr.  
4 Barker, and here are the sentencing sheets, Your  
5 Honor.

6 THE COURT: All right.

7 MR. CLEMENTS: Back then, Your Honor, Mr.  
8 Meetze -- and I defer to his legal knowledge -- he  
9 thinks it was one to ten.

10 THE COURT: Okay. Now, correct me if I'm  
11 wrong, this is a plea of guilty under North Carolina  
12 for Alford, is that correct?

13 MR. CLEMENTS: Your Honor, Mr. Meetze came  
14 to me this morning, and I do not have any concern  
15 about that, Your Honor. As I stated to him, I don't  
16 care if he pleads under Alford or pleads under the  
17 oak tree. Our theory, Your Honor, and I think we  
18 could substantiate it at trial, is that Mr. Barker  
19 was the shooter.

20 However, Your Honor, when I read his  
21 report from the Department of Mental Health, he  
22 never said he was the shooter. I think he claimed  
23 that Mr. Graham was the shooter.

24 However, Your Honor, under the accomplice  
25 liability hand of one being the hand of all, it

1 doesn't matter whether he was the shooter or not.  
2 He was involved in it. He participated in it. And  
3 we believe he's guilty of murder.

4 THE COURT: Okay, all right.

5 MR. CLEMENTS: So, Your Honor, however he  
6 pleads, as long as he pleads guilty, we don't  
7 object.

8 THE COURT: Mr. Meetze, am I correct,  
9 though --

10 MR. MEETZE: Yes, sir.

11 THE COURT: -- that you're proceeding  
12 under Alford, is that correct?

13 MR. MEETZE: That is correct. I've been  
14 over that with Mr. Barker. He understands --

15 THE COURT: Okay.

16 MR. MEETZE: -- what an Alford plea is and  
17 what qualifies a plea as an Alford plea. And he  
18 agrees --

19 THE COURT: All right.

20 MR. MEETZE: -- to go through, follow  
21 through in that fashion.

22 THE COURT: Okay.

23 Sir, you're Montez Barker, correct?

24 MR. BARKER: Yes, sir.

25 THE COURT: All right, Mr. Barker,

1 Indictment 2012-GS-21-896 is an indictment that has  
2 several counts or charges, and I'm going to go over  
3 those with you. But before I do anything, Mr.  
4 Barker, let me first say that if at any time during  
5 my conversation with you, if you have any questions  
6 about anything that I ask you and you need to talk  
7 with Mr. Meetze or-- let's see, I think you've got  
8 Mr. Weaver as well, correct?

9 MR. BARKER: Yes, sir.

10 THE COURT: That's two lawyers. If you  
11 need to talk with either one of those gentlemen  
12 about anything that I ask you, you let me know and  
13 I'll stop and give you whatever time you need, okay?

14 MR. BARKER: Yes, sir.

15 THE COURT: Now, count one of the  
16 indictment charges you with the offense of murder,  
17 and count two charges you with the offense of  
18 murder. Those two charges carry a penalty of not  
19 less than 30 years up to life in prison. Do you  
20 understand that, sir?

21 MR. BARKER: Yes, sir.

22 THE COURT: They are also classified as a  
23 most serious offense and a violent offense. Do you  
24 understand that?

25 MR. BARKER: Yes, sir.

1 THE COURT: Okay. Count three on the  
2 indictment, Mr. Barker, charges you with conspiracy  
3 under the general conspiracy statute. That carries  
4 a penalty of up to five years. Do you understand  
5 that, sir?

6 MR. BARKER: Yes, sir.

7 THE COURT: Grand larceny under count four  
8 carries a maximum penalty of up to 10 years. Do you  
9 understand that, sir?

10 MR. BARKER: Yes, sir.

11 THE COURT: And then the arson third  
12 degree charge, Mr. Barker, carries a penalty of not  
13 less than one and not more than 10 years. Do you  
14 understand that?

15 MR. BARKER: Yes, sir.

16 THE COURT: Okay, sir. Now, understanding  
17 the nature of the charges against you and the  
18 possible punishment, it is my understanding that you  
19 are pleading guilty to those charges under North  
20 Carolina versus Alford. Is that correct?

21 MR. BARKER: Yes, sir.

22 THE COURT: All right, sir. And I'll ask  
23 you something about that in just a little bit.

24 But let me first ask, Mr. Meetze, you and  
25 Mr. Weaver represent Mr. Barker on these matters?

1 MR. MEETZE: We do, Your Honor.

2 THE COURT: Have you reviewed with him all  
3 of these charges that he is before the Court on, and  
4 his constitutional rights to a trial, and the effect  
5 and what it means to enter a plea under North  
6 Carolina versus Alford?

7 MR. MEETZE: We have, Your Honor.

8 THE COURT: Okay.

9 Mr. Barker, sir, am I correct that you're  
10 28 years of age?

11 MR. BARKER: Yes, sir.

12 THE COURT: Before you got locked up on  
13 these charges, were you working anywhere, or what  
14 type of work have you done?

15 MR. BARKER: No, sir. I just had been  
16 released from the Department of Corrections.

17 THE COURT: Okay. Are you married or  
18 single?

19 MR. BARKER: Single.

20 THE COURT: And do you have any children,  
21 sir?

22 MR. BARKER: No, sir.

23 THE COURT: Okay. And, now, do you recall  
24 when you were locked up on these charges?

25 Do you know what the date was?

10

1 MR. CLEMENTS: It was September 11, 2009,  
2 Your Honor.

3 THE COURT: Okay. September 11, 2009,  
4 does that sound right, Mr. Barker?

5 MR. BARKER: Yes, sir.

6 THE COURT: All right. And I believe that  
7 turns out to be 1,335 days.

8 Mr. Barker, let me mention this to you,  
9 just for purposes of your plea before I go any  
10 further. As I told you earlier, the murder charges  
11 are classified as a most serious offense under our  
12 code of laws.

13 For purposes of your plea here today, even  
14 though you are pleading to two counts of murder, you  
15 understand that for purposes of your plea they count  
16 just as one strike. You understand that?

17 In other words, under South Carolina law,  
18 anyone who pleads guilty to a most serious offense,  
19 whether it be a straight-up plea or a plea under  
20 Alford, that's considered a strike on their record.  
21 And what it means is down the road if you were to  
22 get a second most serious offense, then that would  
23 allow the State, if they chose to, on that second  
24 time they could seek life without parole if they  
25 chose to do that. You understand?

1 MR. BARKER: Yes, sir.

2 THE COURT: That's called the strike rule  
3 under South Carolina law. But for your purposes on  
4 your plea here today, even though you're pleading to  
5 two charges of murder, you understand that for  
6 purposes of the strike rule, they only count as one.  
7 You understand that?

8 MR. BARKER: Yes, sir.

9 THE COURT: Okay. Now, I tell you what,  
10 let me do this. I think the easiest way is I'm  
11 going to explain to you what my understanding of an  
12 Alford plea is and let's see if your understanding  
13 matches mine, okay?

14 MR. BARKER: Okay.

15 THE COURT: When someone pleads guilty  
16 under North Carolina versus Alford, Mr. Barker,  
17 basically what that says is this. When a person  
18 pleads under Alford, they're basically saying this:  
19 Judge, I am going to plead guilty to these charges,  
20 although I'm not admitting to any wrongdoing. The  
21 reason I'm going to plead guilty is because the  
22 State has made me an offer.

23 They have made me a plea offer. And I  
24 know the facts that the State has that if the case  
25 went before a jury, my concern is that I would

12

1       likely be convicted. So in an effort to take  
2       advantage of the State's offer, I am willing to  
3       plead guilty to the charge in an effort for me to  
4       accept the State's offer.

5                       Is that your understanding of an Alford  
6       plea?

7                       MR. BARKER: Yes, sir.

8                       THE COURT: Okay. Now, you understand  
9       that when someone pleads guilty under Alford that  
10      whatever sentence the Court imposes, you would serve  
11      that sentence just the same as if you pled guilty  
12      straight-up. You understand that?

13                      MR. BARKER: Yes, sir.

14                      THE COURT: Okay. Now, I'm going to go  
15      over with you, Mr. Barker, your constitutional  
16      rights. And I know that you've talked with Mr.  
17      Meetze and with Mr. Weaver about these rights, but  
18      I'm going to review them with you. And like I said  
19      earlier, if you have any questions about anything I  
20      go over and you need to talk with them, you just let  
21      me know.

22                      You have the right to remain silent, and  
23      you have the right to a jury trial. But when you  
24      plead guilty under North Carolina versus Alford,  
25      then for purposes of your Alford plea, you give up

1 or you waive those rights. You understand that?

2 MR. BARKER: Yes, sir.

3 THE COURT: When you waive your rights to  
4 a jury trial, you also waive the rights that are  
5 connected to it. In other words, let me just go  
6 through those rights with you. If you had a jury  
7 trial, you would be considered innocent of these  
8 charges, and you'd be presumed innocent.

9 That presumption of innocence would be  
10 with you throughout the trial. That presumption of  
11 innocence places the burden of proof on the State.  
12 Because you're presumed innocent, the State now must  
13 try to prove your guilt.

14 And the way they would try to do that is  
15 through a jury trial. They would call witnesses,  
16 and those witnesses would take the witness stand,  
17 and they would testify. And more than likely, they  
18 would be testifying against you.

19 Well, the Constitution of the United  
20 States say that every person that's charged with a  
21 criminal offense has the right to face their  
22 accusers or to confront their accusers. In other  
23 words, what that means is that if you had a jury  
24 trial, through your lawyers, Mr. Weaver and Mr.  
25 Meetze, you could cross-examine or question the

1 State's witnesses. That's your right of  
2 confrontation under the Constitution. You  
3 understand that?

4 MR. BARKER: Yes, sir.

5 THE COURT: But when you enter a plea  
6 under North Carolina versus Alford, then for  
7 purposes of your plea, you waive or give up that  
8 presumption of innocence, and you relieve the State  
9 of their burden of proof. And since they don't have  
10 to prove your guilt, they're not required to bring  
11 their witnesses into court. And since they don't  
12 bring their witnesses into court, you give up the  
13 right to confront those witnesses. Do you  
14 understand that?

15 MR. BARKER: Yes, sir.

16 THE COURT: Okay. Now, the State's not  
17 the only one that can call witnesses at a trial, Mr.  
18 Barker. If you had a jury trial, you could call  
19 witnesses in your defense. You, yourself, could  
20 take the witness stand, and you could testify in  
21 your own defense.

22 You could do either one of those things,  
23 or you could do both of those things if you chose  
24 to. But you don't have to do anything. In this  
25 country, a person does not have to prove their

1 innocence. The State has to prove guilt.

2 You don't have to prove anything. And so  
3 if you had a jury trial and if you chose to exercise  
4 your right to remain silent, I would tell the  
5 members of the jury that they could not hold that  
6 against you. As a matter of fact, I would tell them  
7 that the State has the burden of proof and that you  
8 don't have to prove anything.

9 And the fact that you chose to exercise  
10 your right to remain silent, that that could not be  
11 held against you in any way, and they could not  
12 consider that in their deliberations on your guilt  
13 or innocence. You understand that?

14 MR. BARKER: Yes, sir.

15 THE COURT: Now, as I told you, the State  
16 has the burden of proof, and they have to prove your  
17 guilt to a unanimous decision. And they would have  
18 to prove your guilt beyond a reasonable doubt. In  
19 other words, they'd have to convince all 12 members  
20 of the jury that you are guilty, or they could not  
21 convict you. You understand?

22 MR. BARKER: Yes, sir.

23 THE COURT: If you did have a jury trial,  
24 Mr. Barker, and if you were convicted, you could  
25 appeal that conviction to a higher court if you felt

1 that was appropriate. You understand, sir?

2 MR. BARKER: Yes, sir.

3 THE COURT: And you also have an appellate  
4 right with regards to this proceeding here today.  
5 If at the end of this proceeding you wish to appeal  
6 what goes on here today, you may do so. But you  
7 must file that notice of intent to appeal within 10  
8 days of today's date. You understand that?

9 MR. BARKER: Yes, sir.

10 THE COURT: Now, Mr. Barker, all of these  
11 rights you have. But when you plead guilty under  
12 North Carolina versus Alford, for purposes of your  
13 plea, you waive or you give up these rights, and you  
14 will not have a jury trial. Do you understand that?

15 MR. BARKER: Yes, sir.

16 THE COURT: Okay. Now, it's my  
17 understanding that initially the State had noticed  
18 you that they were going to seek the death penalty  
19 on these charges, is that correct?

20 MR. BARKER: Yes, sir.

21 THE COURT: Now, it is my understanding  
22 that they are no longer doing that, is that correct?

23 MR. BARKER: Yes, sir.

24 THE COURT: So that whatever sentence the  
25 Court imposes here that you are not facing the death

1 penalty. You understand that?

2 MR. BARKER: Yes, sir.

3 THE COURT: Other than them removing the  
4 death penalty notice, has anybody promised you  
5 anything, held out any hope of reward, or threatened  
6 you in any way to get you to enter the plea under  
7 North Carolina versus Alford?

8 MR. BARKER: No, sir.

9 THE COURT: Are you satisfied with the  
10 representation and the advice that Mr. Weaver and  
11 Mr. Meetze have provided?

12 MR. BARKER: Yes, sir.

13 THE COURT: Do you have any complaints  
14 against them or any member of their offices?

15 MR. BARKER: No, sir.

16 THE COURT: Mr. Barker, have you told Mr.  
17 Weaver and Mr. Meetze everything you know about the  
18 case so that they could look into these matters and  
19 work on these matters for you?

20 MR. BARKER: Yes, sir.

21 THE COURT: Okay. As you stand before the  
22 Court here today, are you under the influence of any  
23 substance that would affect your ability to  
24 understand what you're doing?

25 MR. BARKER: No, sir.

1 THE COURT: All right. Are you entering  
2 your plea under North Carolina versus Alford of your  
3 own free will, Mr. Barker?

4 MR. BARKER: Yes, sir.

5 THE COURT: All right, sir. I'm going to  
6 look to the Solicitor to go over the facts of the  
7 case. I'd ask you if you would to listen carefully,  
8 and then I'll get back with you in just a few  
9 minutes, okay?

10 MR. BARKER: Yes, sir.

11 THE COURT: While he's doing that, you and  
12 Mr. Meetze are welcome to have a seat while he goes  
13 over that.

14 All right, Mr. Clements.

15 MR. CLEMENTS: If it please the Court,  
16 also, Your Honor, Mr. Barker has a warrant, Warrant  
17 M270488, for resisting arrest. Pursuant to that  
18 plea, we're going to dismiss that warrant.

19 THE COURT: All right.

20 They're going to dismiss that charge of  
21 resisting arrest. Do you understand that?

22 MR. BARKER: Yes, sir.

23 THE COURT: All right.

24 MR. CLEMENTS: Now, Your Honor, in regards  
25 to Mr. Barker's prior criminal history, back in 2001

1 he had a conviction for receiving stolen goods; a  
2 conviction for two counts of grand larceny more than  
3 \$1,000 but less than \$5,000; and a conviction for  
4 burglary second degree; also a conviction for  
5 malicious injury to personal property, which he got  
6 a Youthful Offender Sentence not to exceed five  
7 years on those convictions.

8 Back in 2005, he got a conviction for  
9 taking of a hostage by an inmate, which he got five  
10 years on that. He also got a conviction for escape  
11 attempt, possession of tools, which he got a  
12 five-year sentence. He got a conviction on  
13 5/23/2005 for kidnapping, which he got five years;  
14 and also on that same day, a conviction for lynching  
15 second degree, which he got five years.

16 Your Honor, when this event occurred on  
17 the first of September, 2009, Mr. Barker was wearing  
18 an electronic monitor, an ankle bracelet, because he  
19 was on parole, which made it very easy to track him.  
20 We tracked where he was on 9/1/2009, which is he was  
21 at the scene where Billy Hall and Talya Poston was  
22 killed, where their vehicle rode.

23 He was tracked riding in the vehicle with  
24 them. He was tracked riding in the vehicle leaving  
25 the scene of their death, where their bodies were

1 left and where the car was ditched in east Florence.

2 And then also he was tracked later in the  
3 car and where the car was burned, he was tracked  
4 there, to be there present where that car was  
5 burned. And at that time, it was set on fire.

6 Your Honor, as we have stated in prior  
7 hearings on other co-defendants, Your Honor, this  
8 whole thing was initiated by Travis Fonnelle  
9 Delaine, who is a rapper, a drug dealer, ran a sound  
10 studio. I'm not sure what else he did. But he was  
11 facing drug charges, drug distribution charges.

12 And Billy Hall was going to be a witness  
13 against him, and perhaps Ms. Poston as well. And he  
14 decided to take them out. So he reached an  
15 agreement with Mr. Ross Graham.

16 And my understanding -- and correct me if  
17 I'm wrong, Mr. Meetze, Mr. Weaver -- Mr. Barker  
18 never had any direct or indirect contact with Mr.  
19 Delaine.

20 MR. MEETZE: That certainly would appear  
21 to be the case from everything I've been privy to  
22 with regard to this case.

23 THE COURT: All right.

24 MR. CLEMENTS: So Mr. Barker didn't have a  
25 relationship with Mr. Delaine or didn't contact or

1 have communication with Mr. Delaine. That was all  
2 by Mr. Graham. But Mr. Graham recruited Mr. Barker  
3 to take part in this.

4 And our theory of the case, Your Honor, we  
5 think all the evidence points to Mr. Barker being  
6 the shooter. I think probably his main impetus, if  
7 I were to guess, for wanting to plead under Alford  
8 is he says Mr. Graham is the shooter. He has not  
9 spoken to us, but that's my assumption.

10 But, nevertheless, even if he was not the  
11 shooter, he was there present with it, part of it,  
12 under the hand of one being the hand of all. So we  
13 think that substantiates this plea, even taking the  
14 view we believe he takes.

15 But, Your Honor, they got Hall and Poston,  
16 picked them up. And they rode out off the Pamplico  
17 Highway, turned down some roads, went back down the  
18 road. And Mr. Hall was in the front seat passenger  
19 side. Ms. Poston was driving.

20 Our theory of the case is Mr. Barker was  
21 in the right-side back seat, Mr. Graham in the  
22 left-side back seat, shot Mr. Hall in the head. Ms.  
23 Poston immediately tried to get away, get out of her  
24 car, and shot her as she was getting out of her car  
25 -- jumped out, shot her several times, according to

1 the evidence that was gathered.

2 She was running down the road trying to  
3 talk to 911 on her cell phone. And then, according  
4 to what Mr. Graham has stated, Mr. Barker gave him  
5 the gun and said, "Go finish her off."

6 Mr. Graham says he went down and shot, but  
7 he claims he shot in the ground, in the dirt, then  
8 Ms. Poston was already fatally wounded at that time.

9 Then they took the vehicle. Mr. Graham  
10 drove away from the scene, Mr. Barker with him. And  
11 they got on Pamplico Highway and then went back,  
12 ended back up in east Florence, very close to where  
13 Mr. Barker lived with his mother, at a dead-end  
14 road.

15 If you cut through the woods there, you  
16 come out on another road. Just a few feet is where  
17 Mr. Barker lived. Later, Mr. Barker goes back and  
18 takes the car, takes it and burns it.

19 When they ditched the car and Mr. Barker  
20 left the scene and Mr. Graham left the scene, Mr.  
21 Wingate came and picked Mr. Graham up, took him to  
22 Delaine's studio, where he turned over the weapon  
23 that Mr. Wingate ultimately went and hid and told  
24 him that he was done.

25 They had constant communication back and

1       forth between Mr. Graham and Mr. Delaine while these  
2       events were going on that we matched up also to the  
3       times these texts and calls were made where the  
4       ankle bracelet showed Mr. Barker was right there on  
5       the scene the entire time as well.

6               And amazing technology, we were able to  
7       track where they were, where Mr. Barker was, when  
8       these messages were made through phone records.

9               Mr. Graham waited for Mr. O'Neill to come  
10      back. He got money, and he went, according to him,  
11      and he gave Mr. Barker his share of the money.

12              However, he said that he kind of hoodooed  
13      Mr. Barker and didn't really let him know how much  
14      money he got and how much drugs. And so Mr. Graham  
15      took a larger share of it, and he gave Mr. Barker a  
16      lesser share. And from that point, the  
17      investigation ensued, and that's basically the  
18      facts, Your Honor.

19              THE COURT: All right.

20              MR. CLEMENTS: Your Honor, at the  
21      appropriate time, we would ask that you hear from  
22      the victims' family. I think some of them wish to  
23      speak.

24              THE COURT: Sure.

25              MR. CLEMENTS: Also, Your Honor, I believe

1 Mr. Collins and Mr. McFadden would like to say  
2 something to the Court regarding sentencing in this  
3 case, and I'll defer to you all at this time.

4 THE COURT: All right. Now, is this  
5 regarding sentencing?

6 MR. CLEMENTS: Yes, sir, and then any  
7 facts that I might have left out.

8 THE COURT: Let me right now just deal  
9 with facts, and then I'll hear from you again  
10 regarding sentencing.

11 MR. McFADDEN: I'm Investigator Thomas  
12 McFadden, Your Honor.

13 THE COURT: Yes, sir.

14 MR. McFADDEN: And on the basis of all the  
15 facts and evidence and Mr. Graham actually  
16 implicated him the same day when we picked him up on  
17 these charges, that's why Barker was arrested so  
18 quick. When we was coming back to the scene, he was  
19 actually walking on the street when we came back,  
20 and Graham had said --

21 THE COURT: So Mr. Graham implicated Mr.  
22 Barker on that same day?

23 MR. McFADDEN: The same day when he was  
24 arrested, Mr. Barker was actually walking. So  
25 that's why the tracking began of him, because he

1       said the other guy involved was the shooter wearing  
2       a monitor. And he stated that he wasn't going to  
3       stay right there with him, so we began to track him.

4               Investigator Collins and the other officer  
5       that was out there, and his probation officer as  
6       well began to track him that day so they could catch  
7       him and also the story where they drove to the scene  
8       and once we verified that he was actually at the  
9       scene and showed what he was doing -- well, not what  
10      he was doing, but he was at the scene.

11              And we followed up by all the statements  
12      from Mr. Graham. And also what was significant with  
13      the victim in the case, when she was on the phone  
14      with 911, dispatch asked her several times where the  
15      location was, which was Isaiah Flowers Road. So she  
16      repeated her location several times and GPS showed  
17      the same location.

18              She actually helped out with the crime.  
19      She said, "I was at Isaiah and Flowers Road." She  
20      said it several times, and she said, "I'm shot, and  
21      I'm on Isaiah Flowers Road" several times. She did  
22      say Isaiah Flowers Road, the exact location of where  
23      she was. The victim herself said that, where she  
24      was.

25              THE COURT: Okay. All right. Thank you

1 very much, sir.

2 All right, Mr. Barker, listen carefully to  
3 my question, okay? You heard the facts that the  
4 Solicitor gave. Is it your understanding that if  
5 this case had gone to a jury trial that those are  
6 the facts that the State would have told to a jury?

7 You understand that that's the State's  
8 rendition of the facts. That's their story. That's  
9 what they would have told to the jury. And your  
10 concern in entering your plea here is that a jury  
11 would likely have believed those facts and convicted  
12 you.

13 And so you're entering your plea under  
14 Alford to take advantage of the offer that the State  
15 has made. Is that correct?

16 MR. BARKER: Yes, sir.

17 THE COURT: All right, sir. I find that  
18 the State has established a substantial factual  
19 basis to support each of the charges that Mr. Barker  
20 has pled guilty to under North Carolina versus  
21 Alford. I find that his decision to enter this plea  
22 has been done freely, voluntarily, and  
23 intelligently.

24 I've already found earlier regarding his  
25 competence to stand trial and made that judgment and

1       assessment that he is in fact competent to stand  
2       trial and was at the time criminally responsible.  
3       He has the counsel of two outstanding lawyers, both  
4       in Mr. Meetze and Mr. Weaver.

5                 Mr. Barker has indicated to the Court that  
6       he is satisfied with the representation and the  
7       advice that both Mr. Weaver and Mr. Meetze have  
8       provided. He is entering his plea under North  
9       Carolina versus Alford.

10                He has discussed that with his attorneys,  
11       and Mr. Barker indicates he understands the  
12       ramifications of that. I've also discussed that  
13       with him, and I think he does understand the  
14       ramifications of pleading under North Carolina  
15       versus Alford. And I think, again, that that's a  
16       knowing and intelligent plea, and I'm going to  
17       accept his pleas.

18                Mr. Meetze, I'll be happy to hear from you  
19       and or Mr. Weaver, or you may speak for both, but  
20       then anyone else that would like to address the  
21       Court.

22                MR. MEETZE: Thank you, Your Honor, may it  
23       please the Court?

24                THE COURT: Yes, sir.

25                MR. MEETZE: Your Honor, I've represented

1 -- along with Mr. Weaver, we've represented Mr.  
2 Barker. Actually, Mr. Weaver has represented him  
3 longer than I have. I've been on the case since the  
4 fall of 2011.

5 THE COURT: Mr. Lawson was originally, is  
6 that correct?

7 MR. MEETZE: Yes, sir, Your Honor. I've  
8 been on since that time and have had a number of  
9 opportunities to speak with Mr. Barker. Let me say,  
10 first, that I don't purport to be nor am I in any  
11 way any kind of a mental health professional or  
12 anything like that.

13 But my feelings in talking with Mr. Barker  
14 are that certainly I don't disagree with the  
15 findings of the mental health professionals that  
16 evaluated him. I do feel like he would be and is  
17 competent to stand trial had he gone forward to a  
18 trial.

19 I also feel the same, obviously, that he  
20 is competent to stand here and enter his plea. With  
21 that said, I also do believe that he certainly has  
22 some disability when it comes to mental health.

23 I think that he does -- you know, trying  
24 to figure out a delicate way to put different things  
25 is not always easy. But I do feel like he is at a

1       disadvantage when it comes to learning and overall  
2       mental health from that standpoint.

3                Like I said, I don't disagree with the  
4       findings, and I don't object to the Court's finding  
5       as it pertains to his competency. But I do think  
6       that he is someone that for whatever reason --

7                THE COURT: Has limitations.

8                MR. MEETZE: -- has limitations. And I  
9       think the Solicitor sort of alluded to it when he  
10      was giving the facts. I do think that it sort of  
11      does make him someone who can be easily led, and I  
12      think Mr. Clements referred to it as him being  
13      hoodooed.

14               And I think that it does make him  
15      susceptible to that kind of thing. I certainly  
16      think that everyone would agree with regard to who  
17      did what in this case that Mr. Barker was not the  
18      mastermind by any stretch of the imagination. He  
19      was not the planner by any stretch of the  
20      imagination. I think everybody would agree with  
21      that.

22               Your Honor, just going back just to let  
23      you know a little bit about Mr. Barker and his  
24      upbringing, when he was born, he was delivered  
25      through a C-section. And that was because the

1 doctors did find that the umbilical cord was wrapped  
2 around his neck. They didn't know for how long or  
3 whether or not that caused any kind of damage or  
4 anything like that. But that is something that was  
5 actually the case.

6 But that's certainly something that could  
7 if at any time he was deprived of oxygen or anything  
8 like that could have led to difficulties from that  
9 standpoint.

10 He does have siblings, particularly his  
11 sister. His mother was never married to his father,  
12 and his father was never a major part of his life.  
13 I think he knew most of his life who his father was.  
14 I think his father -- his biological father, I'll  
15 refer to him -- was never a father in actions. I  
16 think his biological father is someone who was in  
17 and out of jail as well. In his younger years -- in  
18 Montez's formative years -- his biological father  
19 was not involved.

20 His mother, Georgiana Hammond, when Montez  
21 was younger, did begin to date a gentleman who is  
22 white. That is not Montez's biological father  
23 obviously, but they did have a child together. They  
24 are now married. They do have a child together  
25 that's a younger sister to Montez.

1                    Obviously, that was a biracial child.  
2                    That's somebody that Montez is very protective of.  
3                    And, unfortunately, in their neighborhood, and  
4                    schools, and different things like that, she was  
5                    picked on a lot, which is terrible and certainly  
6                    nothing that she had anything to do with or could  
7                    help at all.

8                    So Montez did act and serve as the older  
9                    protective brother in that regard. He loves his  
10                   family and his sister very much and has a particular  
11                   affection for his sister because he could see what  
12                   she would go through with bullying and being picked  
13                   on about that kind of thing.

14                   And, again, those things can all have an  
15                   effect on you. And he was picked on for the same  
16                   thing. Even though he was not a biracial child, he  
17                   was seen as that way, as having a white daddy. And  
18                   in his neighborhood, that was something that he was  
19                   ridiculed about and picked on about, and at times  
20                   found himself defending himself in regards to it.

21                   So those are just the sort of things that  
22                   have been present in his life that he's dealt with  
23                   and things that are not anything that he had any  
24                   control over whatsoever.

25                   Your Honor, with regards to the case

1       itself, obviously this is just a terrible set of  
2       circumstances, and everybody feels genuinely for the  
3       families of these two individuals.

4               From the evidence and just reading the  
5       evidence and looking at the case, it's hard to  
6       discern exactly who did what exactly. Obviously,  
7       everybody's going to have theories and what they  
8       present either in a plea setting or a trial setting  
9       or whatever. But it is hard to glean exactly what  
10      happened.

11             I haven't seen anything that would be with  
12      regards to trajectories of bullets and where bullets  
13      entered or exited or anything like that to determine  
14      whether it would have been more factually believable  
15      that the bullets came from behind the driver's side  
16      or behind the passenger's side or whatever. And  
17      even still -- even who's sitting where is still  
18      based on statements given by Mr. Graham, who, in my  
19      opinion, he gave two different statements.

20             I think the first statement was, in my  
21      opinion, a very, very self-serving statement that  
22      did implicate Mr. Barker and pretty much tried to  
23      absolve himself of any knowledge or wrongdoing at  
24      all, and later made another statement that was not  
25      as self-serving that, again, implicated Mr. Barker

1 and more implicated himself than the first statement  
2 did.

3 But it did indicate that he report back to  
4 Mr. Delaine, and he did get the money, and, again,  
5 he did, as Mr. Clements indicated, hoodooed Mr.  
6 Barker. And certainly it wouldn't be a stretch.  
7 And nobody knows, but it wouldn't be a stretch to  
8 think that the plan was to hoodoo Mr. Barker all  
9 along with regards to everything, have him along.

10 You know, obviously, Mr. Graham knew that  
11 Mr. Barker had an electronic monitoring ankle  
12 bracelet, and he told law enforcement that. And  
13 that's how they tracked him. And, you know, that's  
14 not a far-fetched thought in my mind. Now, based on  
15 all the facts of the case, I certainly agree with  
16 Mr. Barker's decision to enter this plea.

17 I think that certainly it's in his best  
18 interest to do so. I advised him of that. I also  
19 advised him all along that the decision of whether  
20 or not to enter a guilty plea in this case was his  
21 and his alone. That is a decision that he did make,  
22 I believe, on his own, although obviously with the  
23 advice of me. I advised him to do so. But I do  
24 think that it's a decision he came to on his own.

25 Your Honor, I'll say that during the time

1       that I have represented him -- and I will say that I  
2       haven't tracked where he has been housed in the  
3       Department of Corrections since that time to know  
4       exactly where he has been at all times.

5                But I can tell the Court that every time  
6       that I've gone down there to see him, I've never had  
7       to go and visit him in what's known as the S pod or  
8       max seg, which is where they house folks that have  
9       been disruptive in some way.

10              And I think there's probably different  
11       reasons why the detention center would find it  
12       appropriate to move somebody to that pod for a  
13       period of time. But I think it's normally because  
14       they've been acting up, for lack of a better word.  
15       And since he's been there over a thousand days, I  
16       can't say that he's never been there.

17              But I can say that since I've been  
18       representing him, I haven't ever -- when I've gone  
19       down there to see him, I've never had to visit him  
20       in that pod. And I would tell the Court that.

21              Your Honor, I do believe also -- I don't  
22       know what his religious convictions were prior to  
23       now. I do feel like, though, now since he's been  
24       there, I do feel like he has really turned to and  
25       adopted deep religious beliefs. I think that's

1 something that has also helped him in making this  
2 decision.

3           There's been times when I've gone down  
4 there to see him, and he was in the midst of a  
5 prayer session, and certainly didn't interrupt that  
6 but waited for him to finish that period before we  
7 talked. And, of course, that's not something that's  
8 unusual for people to come to court and say, Oh,  
9 since this happened, since I've been locked up, I've  
10 found religion, and I've done this, or what not.

11           But, you know, I believe it's genuine. I  
12 think that, you know, and guards that I've talked to  
13 about that certainly don't feel like that --  
14 certainly, they're aware that's the thing, that he  
15 was doing those kind of things as far as expressing  
16 his religious beliefs and his faith. And they  
17 certainly never indicated to me that they felt like  
18 it was in any way a put-on or anything like that.

19           And I really don't know that he would be  
20 capable of putting on that kind of an act, so to  
21 speak. I do think it is genuine, and we would ask  
22 the Court to take that into consideration as well.

23           You know, Your Honor, at the scene of this  
24 incident, there was a foot impression that was  
25 located that's certainly evidence in the case.

1 And directly touching that shoe impression was  
2 blood.

3 There were shoes recovered from both Mr.  
4 Barker's house and Mr. Graham's house, both with the  
5 same tread or tread that matched the foot impression  
6 that was outside the car. The shoes recovered from  
7 Mr. Barker's house, however, did not match in size.  
8 They did not match in size.

9 The shoes recovered from Mr. Graham's  
10 house did match in size and also did have blood on  
11 them. Mr. Barker's did not. So certainly -- and I  
12 understand that when Mr. Clements in his recitation  
13 in fact did indicate that Mr. Graham's statement  
14 indicated that he got out of the car.

15 So we certainly say that the facts  
16 certainly back that up. But to what extent he was  
17 out of the car and did, he was certainly somewhere  
18 standing next to where there would be blood and  
19 close enough for it to transfer to his shoes or his  
20 shoe.

21 Your Honor, I've spoken to both Mr. Barker  
22 and his mother, who is here, Georgiana Hammond, with  
23 regards to whether they wish to address the Court.  
24 And unless they've changed their mind, I don't think  
25 either one of them do, and we don't want -- they

1       were satisfied with me basically speaking for the  
2       both of them with regards to that.

3                   And I don't think it amounts to anything  
4       more than it's just not something they're  
5       comfortable doing, speaking in public generally.  
6       And even though they both I think have things they  
7       would love to be able to say, they just don't feel  
8       like they'd be able to convey it in a way that  
9       they're comfortable doing that. So we wouldn't want  
10      and wouldn't think that the Court would read  
11      anything into that if they did not speak.

12                   THE COURT: Sure.

13                   MR. MEETZE: I do know from talking to him  
14      that Mr. Barker is so profoundly sorry for this, and  
15      he expresses that obviously here to the family and  
16      of course his mother certainly feels the same way,  
17      certainly does not support what he did and why he's  
18      here.

19                   However, she does very much love her son  
20      and is here from a supporting standpoint in that  
21      regard. She's just nervous and emotional and  
22      doesn't feel like she would be able to convey those  
23      sentiments as well as she would like to be able to  
24      but certainly wants the court to know that she is  
25      here in support and standing to support him.

1           Your Honor, that's really all I have to  
2 say. We would ask the Court to take that into  
3 consideration. And certainly he understands that  
4 the sentencing function of the Court and that he  
5 could be sentenced anywhere from 30 years to life in  
6 this matter. And we would ask the Court to consider  
7 some sentence for Montez other than a life sentence.

8           And I don't know if Mr. Weaver wishes to  
9 address the Court or not, but if he does or if  
10 anyone else would like, we'd ask that Your Honor  
11 hear from them.

12           THE COURT: Sure. I'm happy to hear from  
13 anyone, and I also want to make it clear, though --  
14 and I appreciate your comments -- no one is required  
15 to address the Court. And I don't consider that a  
16 negative. I fully respect and understand some  
17 folks' reluctance to speak in public because they're  
18 not used to doing it. So that's not a problem.

19           MR. MEETZE: Thank you.

20           THE COURT: But if anyone would like to,  
21 I'll be happy to hear from you.

22           MR. MEETZE: I don't believe she does.

23           THE COURT: All right, thank you very  
24 much.

25           And I want to hear now, Mr. Clements, from

1 anyone that would like to address the Court.

2 You all may have a seat while I'm doing  
3 that. Whoever addresses the Court, though, I'd just  
4 ask if they would just please state their name for  
5 the record, and then I'll hear from them.

6 All right, Mr. McFadden.

7 MR. McFADDEN: I'm Investigator Thomas  
8 McFadden. Your Honor, all my concern -- my biggest  
9 concern -- is he was out already. They had him on  
10 bond. Evidently, he had served some time, and they  
11 put on the bond to keep an eye on him. But he still  
12 got involved in something like this.

13 And that's bad to me when he was out and  
14 they put you on a monitor to keep an eye on you to  
15 make sure you didn't get involved in anything else.  
16 And this one here got involved in a bad crime. It  
17 was bad, and I don't want to go into all kinds of  
18 details how bad it was.

19 But he and a co-defendant claimed when  
20 somebody was shot in the head, there was smoke  
21 coming from the person's head. Another individual  
22 was shot several times after that running for her  
23 life. I guess it didn't go as they planned. She  
24 was running and screaming for her life, and you  
25 could hear her on a 911 call.

1                   She was dying on the phone, you know,  
2                   trying to explain where she was at. So might have  
3                   been present while somebody shot an animal but not a  
4                   human being that would actually do something like  
5                   that. So that kind of concerns me with him already  
6                   being out on a monitor and y'all getting involved in  
7                   a situation like this and taking somebody else's  
8                   family member or somebody else's child.

9                   And now they've got to relive this  
10                  probably for the rest of their lives. So that just  
11                  concerns me about him being out on bond and him  
12                  getting involved. Whether he pulled the trigger or  
13                  not, all of you all was there. He said he didn't  
14                  pull the trigger. So that just concerns me.

15                 THE COURT: Sure. Thank you very much. I  
16                 appreciate that.

17                 MS. ROSS: Your Honor, I'm Debbie Ross.  
18                 I'm Talya's aunt.

19                 THE COURT: All right, Ms. Ross.

20                 MS. ROSS: And it's not just two families  
21                 that have tremendous loss. It's the other five men  
22                 who made the choices they made.

23                 Now, I understand Barker, but I understand  
24                 his mother is here. It's Mother's Day coming up.  
25                 My sister, who lost her only daughter, was so

1 broken-hearted she could not come today.

2 My mother, who's Talya's grandmother,  
3 who's 88, still cries every day looking at a picture  
4 of beautiful Talya. But I composed a poem about  
5 Talya. I've been doing this ever since the first  
6 week that this happened.

7 Talya, Tuesday, September 1, 2009, was  
8 just an ordinary, beautiful, sunny day. I talked to  
9 Talya by phone, and her voice was full of light and  
10 sunshine rays, plans to be together with her mom,  
11 grandma, and I later for our need. Talya was going  
12 to help us with the Yorkies, but killers left her to  
13 bleed.

14 Her mom and I were at the country club at  
15 11:30 with peace, not realizing Talya and Billy were  
16 dying on Isaiah Street and would no longer cease.  
17 Talya's Yorkies whined in grief. Our hearts are  
18 broken in disbelief. No longer will Talya be a  
19 mother. No longer will Talya see her brothers.

20 No longer will Talya see her son grow up  
21 secure, but he is. Bless his heart, he's 17 now.  
22 Today changed him to a distraught 14-year-old boy to  
23 endure. God has given our families His spirit of  
24 comfort and peace, ever understanding the full  
25 release.

1                   Justice for Talya and Billy is what we  
2 seek from the Court today. The people responsible  
3 for this senseless killing must pay. Now as we get  
4 adjusted to life without Talya and Billy to talk to,  
5 the ones responsible for this horrific crime must  
6 get their due.

7                   We forgive those for snuffing their lives  
8 out so soon and fast. Hopefully, you three -- you  
9 five -- are sorry for your plans of the past.  
10 Knowing that God is the fury, it frees us completely  
11 from the fury. God keeps a score. That's why we  
12 choose to worry no more.

13                   The night Talya was killed, her mother and  
14 me went and got some things to ponder and see.  
15 Twittering wings of a hummingbird stopped our  
16 thoughts of death and sorrow. God sent you hope for  
17 a brighter tomorrow. Talya cried out, "Mom, I'm  
18 free and safe in Jesus' arms against any sicknes,  
19 problems and this entire world and any harm."

20                   Talya has soared above her life's time of  
21 trials on earth. Her parents chose her meaningful  
22 name on [REDACTED], at birth. Talya's name  
23 means Heaven's due, and this beautiful name is in  
24 Hebrew. We will not spend our lives in despair. We  
25 have placed Talya in Jesus' loving care.

1                   Talya ran from the killer, losing a flip-  
2 flop from her feet. But now she's with Jesus in  
3 glory and complete.

4                   We seek justice for Billy and Talya today.  
5 They had a choice. They kept on making choices.  
6 The one that whether he did it or the other one, in  
7 cahoots or whatever that word was, they made  
8 decisions.

9                   My niece called. She was a hero. She  
10 fought for her life. But the killer, whichever one  
11 was the killer, decided Blow her away, keep on  
12 blowing her away. Let her bleed and blow her away.  
13 He had a choice, and he made his choice. And we ask  
14 you to make your choice.

15                   THE COURT: Thank you, ma'am.

16                   MR. POSTON: Your Honor, I'm Denver  
17 Poston. I'm Talya's son. And she was not only my  
18 mother but my best friend as well. And I did look  
19 forward for my mom to see me graduate from high  
20 school. And for them to tell us that he has a  
21 mental disorder because he still knew right from  
22 wrong and shouldn't be doing this. That's all I  
23 have to say.

24                   THE COURT: Thank you, sir.

25                   MR. CLEMENTS: And, Your Honor, that's all

1 from the victims. This is a horrible crime, Your  
2 Honor. Someone was targeted because they're a  
3 witness in another crime. And then get somebody  
4 else to do it and be a coward and not do it, and  
5 hire somebody else, pay somebody else to do it.

6 And then somebody to go and, like  
7 Investigator McFadden said, to be on a ankle monitor  
8 and still get involved in something like that, I  
9 cannot fathom that. But for the sake of the  
10 investigation and the sake of prosecution and  
11 justice, I am so glad he did have that ankle monitor  
12 on so that we could track what happened and show  
13 what happened.

14 And we'll be able to show what happened  
15 when we bring Mr. Delaine to trial. Your Honor, to  
16 take two people's lives like that, whether you pull  
17 the trigger or help somebody else and they pull the  
18 trigger, I think, Your Honor, that he's gotten mercy  
19 and grace by us taking the death penalty off the  
20 table and accepting his plea. So please consider  
21 that, Your Honor, when you sentence. He's gotten a  
22 real break.

23 MS. SINGLETARY: Your Honor --

24 THE COURT: Yes, ma'am.

25 MS. SINGLETARY: I'm Vickie Singletary

1 victim advocate with the Solicitor's Office. I've  
2 been with these two families since the murder, since  
3 the day it happened. They are too emotional today  
4 to speak but they do want to ask for the maximum  
5 sentence.

6 THE COURT: Thank you very much, ma'am.

7 MR. MEETZE: Your Honor, if I may --

8 THE COURT: Yes.

9 MR. MEETZE: -- I forgot earlier. I meant  
10 to say this. Also during my conversation with Mr.  
11 Barker and in preparation for this plea today, I did  
12 go over with him a plea affidavit that I filled out  
13 as I asked him the questions.

14 But these are his answers on the questions  
15 -- to the questions -- with regards to his plea and  
16 the voluntariness of the plea as well as the  
17 collateral consequences of that plea, such as the  
18 two strikes law, the three strikes law, that you  
19 went over with him as well, plus all the sentencing  
20 options for the Court and all of that, and just the  
21 overall voluntariness of the plea. And I meant to  
22 mention that earlier, and I would like to hand this  
23 up and make this a part of the record as well.

24 THE COURT: All right.

25 And, Mr. Barker, you recall going over

1 that with Mr. Meetze and Mr. Weaver?

2 MR. BARKER: Yes, sir.

3 THE COURT: And are those answers that  
4 appear on that document, are those your answers,  
5 sir?

6 MR. BARKER: Yes, sir.

7 THE COURT: And are they truthful and  
8 honest?

9 MR. BARKER: Yes, sir.

10 THE COURT: Okay. All right, I'll receive  
11 that then. We'll let her mark that as a defense  
12 exhibit, and we'll add it to the file.

13 MR. MEETZE: Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Meetze.

15 (Defendant's Exhibit Number  
16 One, Affidavit of Defendant, was entered in  
17 evidence.)

18 THE COURT: This is always the hardest  
19 part of my job as a Circuit Judge.

20 Ma'am, I think you said it well. This  
21 isn't just about the loss that two families  
22 suffered, but five families, because there are  
23 innocent people on all sides here other than those  
24 that have been found guilty.

25 And it's just a tragedy all over, such

1 tragedy. It was very difficult for me to hear the  
2 situation regarding Mr. Barker's sister and how he  
3 had no control over those who picked on her and on  
4 him. It's so disturbing.

5           You know, we want to believe that we've  
6 grown as a nation and gotten past racial bias and  
7 things of that nature. And it's so sad to hear  
8 that that's not the case in certain areas.

9           One thing you did mention, ma'am, and  
10 you're correct a hundred percent, and that is that  
11 although he had no control over those situations, at  
12 all times he had control over his actions and,  
13 unfortunately, expressed no control or at least not  
14 wisdom in his control.

15           Investigator McFadden, it weighs on me as  
16 well what you mentioned, and that is that Mr. Barker  
17 had been punished in the past with incarceration.  
18 And you would hope that incarceration would act as a  
19 deterrent to folks committing criminal acts. That's  
20 one of the purposes of incarceration. We hope that  
21 that's one of the purposes.

22           And it's disturbing to see that not only  
23 did it not act as a deterrent, it didn't seem to  
24 even be a consideration, because in this scenario,  
25 he's actually wearing a bracelet that would alert

1 law enforcement as to his conduct, or at least where  
2 he is while this conduct is occurring.

3 And so that was all disregarded. There's  
4 the obvious disregard for human life here. But  
5 there's also just the disregard for authority in  
6 general. It's just all in all disturbing. There's  
7 nothing that I can do to ease these families' grief,  
8 and I wish there was something I could do.

9 But all I can do, what I think the  
10 legislature who entrusted me with this position, do  
11 what I think is appropriate under the facts and  
12 scenario before the Court as well as the laws of the  
13 State of South Carolina.

14 RULING OF THE COURT

15 On Indictment 2012-GS-21-896, that's a  
16 five-count indictment. As to count five, the arson  
17 in the third degree, the sentence of the Court is  
18 that you be committed to the State Department of  
19 Corrections for a period of 10 years.

20 Under that same indictment, on count four,  
21 grand larceny, the sentence of the Court is that you  
22 be committed to the State Department of Corrections  
23 for a period of 10 years.

24 Count three under that same indictment,  
25 the criminal conspiracy, the sentence of the Court

1 is that you be committed to the State Department of  
2 Corrections for a period of five years.

3 As to counts one and two of that same  
4 indictment, each of those are the charge of murder.  
5 As to each count of murder, the sentence of the  
6 Court is that you be committed to the South Carolina  
7 Department of Corrections for the remainder of your  
8 natural life without the possibility of parole.

9 All of these sentences are to run  
10 consecutive with each other.

11 Good luck to you, sir.

12 MR. CLEMENTS: Thank you, Your Honor.

13 MR. MEETZE: Thank you, Your Honor.

14 THE COURT: I want to thank everybody here  
15 today. I can't imagine what you all are having to  
16 go through as well as Mr. Barker's family. But you  
17 all controlled your emotions respectfully and I  
18 thank you for that.

19 And to the State, and the attorneys, and  
20 the investigators, to defense, Mr. Weaver and Mr.  
21 Meetze, to everyone here, it's just one of the most  
22 difficult scenarios I've seen in a long time, and  
23 everyone has controlled themselves so respectfully  
24 and properly.

25 And I just want to thank everybody your

1 presence here today. I'm sorry for it, but I'm  
2 thankful to everybody for the way you've conducted  
3 yourself.

4 Solicitor, anything further?

5 MR. CLEMENTS: That's all, Your Honor.

6 THE COURT: All right. Well, Court is  
7 adjourned then for this purpose.

8 --End of Transcript of Record--


STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

**COURT REPORTER'S CERTIFICATION**

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON MAY 8, 2013, IN FLORENCE, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE FIFTH DAY OF OCTOBER, 2013.

  
\_\_\_\_\_  
REMA K. GANTT THOMAS  
OFFICIAL COURT REPORTER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 11/21/2013



7:13:53 AM 2/5

State of South Carolina  
Department of Mental Health

Division of Inpatient Services  
G. Werber Bryan Psychiatric Hospital  
Forensic Evaluation and Treatment Services  
7901 Farrow Road, Building #6  
Columbia, SC 29203  
Information: (803) 935-6566

MENTAL HEALTH COMMISSION:

Allison Y. Evans, PsyD, Chair  
Joan Moore, Vice Chair  
Jane B. Jones  
Everard Rutledge, PhD  
J. Buxton Terry

February 5, 2013

STATE DIRECTOR

John H. Magill  
E.L. Clements, III  
Solicitor  
180 N. Irby Street, Box-Q  
Florence, SC 29501

Re: The State of South Carolina vs. Baker, Montez  
DMH Case #: 1025-0717  
Florence County, Court of General Sessions

Dear Solicitor Clements:

In accordance with the court order issued by the Honorable Thomas Russo, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

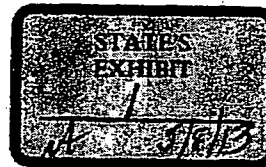
This 9 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

02/05/13  
Date

Marla L. Domino, PhD for:  
Jeffrey E. Musick, Ph.D., ABPP  
Chief Psychologist  
Forensic Evaluation Services  
Department of Mental Health

cc: W. Vickery Meetze, Attorney at Law, 180 N. Irby Street, Box-N,  
Florence, SC 29501

JM/tl



MISSION STATEMENT  
To support the recovery of people with mental illnesses.



PHD



examiners could be called to court to testify at a hearing about his competency. He agreed to participate in the evaluation.

#### SOURCES OF INFORMATION:

1. Florence County Court of General Sessions Order requesting the competency evaluation dated August 17, 2012.
2. Indictments for Murder (two counts), Conspiracy, Grand Larceny and Arson.
3. Arrest Warrants M-280053 and M-280054 for Murder dated September 1, 2009.
4. Arrest Warrant M-280061 for Arson, Third Degree dated September 4, 2009.
5. Florence County Sheriff's Office Report Summary dated September 12, 2009 and printed June 8, 2010.
6. Florence County Sheriff's Office Homicide Supplemental Report by Investigator T. McFadden which is undated.
7. National Crime Information Center (NCIC) report for the defendant,
8. Florence County Sheriff's Office transcribed interview of LaRoss Graham.
9. Medical University of South Carolina Autopsy Reports for the alleged victims, Billy Hall and Talia Poston dated September 2, 2009.
10. Florence County Public School District One records for the defendant dated December 15, 1995 and January 12, 1996.
11. Florence County Public School District One Psychoeducational Evaluation dated July 10, 1996.
12. Florence County Public School District One placement form dated August 16, 1996.
13. Florence County Public School District One letters to the defendant's mother dated November 11, 1996, December 11, 1996 and January 5, 1998.
14. Greenwood Elementary School Behavior Contract for the defendant dated November 12, 1997.
15. Florence County Public School records for the defendant dated February 26, 1998 and October 21, 1998, and March 17, 2000.
16. South Carolina Department of Corrections medical records for the defendant dated May 23, 2005 through May 20, 2009.
17. South Carolina Department of Juvenile Justice (DJJ) Midlands Evaluation Center Psychological Evaluation for Mr. Barker dated April 1, 1998.
18. South Carolina Department of Juvenile Justice records for the defendant.
19. A DJJ psychological evaluation of the defendant dated August 31, 2000.
20. A psychological evaluation performed by Sandra Stader, Ph.D. of the Forensic Evaluation Service dated October 4, 2012.
21. A social work assessment obtained from the defendant's mother by Elizabeth Whetstone, LISW-CP, dated September 19, 2012.
22. A one hour and thirty minute clinical forensic interview with the defendant on September 27, 2012.
23. A one hour clinical forensic interview with the defendant dated January 7, 2013.

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BARKER, MONTEZ M.

1025-0717

OUTPATIENT EVALUATION

MLD

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH  
FORENSIC EVALUATION SERVICES 2 57057

**CLINICAL INFORMATION:** Mr. Montez Barker is a 28-year-old African American male who denied significant psychiatric complaints. Mr. Barker was interviewed on separate dates, September 27, 2012 and January 7, 2013. On both occasions, he denied knowledge of significant past psychiatric history. However, Mr. Barker stated that in the past he has experienced auditory hallucinations. He stated, "I hear things like people. I can't understand what they're saying." He denied other symptoms of psychosis such as visual hallucinations, delusions, or disorganized thinking. He endorsed a fair mood and adequate appetite. He stated that he has not been sleeping well in the jail, but claimed that is secondary to noises that cause him to wake in the night.

Mr. Barker stated that there was a time in the past when he attempted suicide. He stated that he once attempted to hang himself. He stated he was not able to recall how old he was at the time or the particular location of that suicide attempt. He denied current thoughts of suicide and homicide.

On initial presentation on September 27, 2012 Mr. Barker appeared to be malingering (faking) certain deficits. He claimed he did not remember his year of birth. After telling officers he wrote with his right hand, he scribbled his signature with his left hand. When asked to read, he left out words in a haphazard fashion not typical of persons with reading limitations. When asked the purpose of the evaluation, he claimed he was "coming to get time". Despite being able to register questions asked and respond to them, it took him four attempts to immediately register and repeat four words. He claimed not to know the year, day, or month. He claimed not to know the days of the week. He stated he did not know the colors of the American flag and could not perform incredibly simple calculations ( $2+2=6$ ). When asked, he could not spell his first name aloud. He also stated he had been hospitalized for psychiatric treatment while in the Department of Corrections but their records do not support this assertion.

Because of this presentation we spoke to Nancy Truluck at the detention center. She informed us that Mr. Barker had no mental health concerns in the jail. He interacts well with others. He plays numerous card games with other inmates.

Given overt evidence of malingering, Mr. Barker was referred for psychological evaluation to formally assess potential feigning. The results, as reported below, indicate feigning of cognitive deficits, feigning of mental illness symptoms, and feigning of knowledge deficits as it relates to competency.

**PAST PSYCHIATRIC HISTORY:** Mr. Barker initially denied knowledge of past psychiatric treatment. His records indicate that he received a psychological assessment after he was placed in DJJ in 1998. His records also indicate that he was placed on probation because of truancy in 1998 and subsequently sent to The Department of Juvenile Justice (DJJ) due to violating probation-specifically leaving his mother's home without permission. He was also noted to fail to adhere to curfews and received disciplinary notices at school. He was diagnosed at that time with Oppositional Defiant Disorder and Borderline Intellectual Functioning. Mr. Barker's records also indicate that he participated in a psychological assessment at DJJ in 2000. He was recommitted to DJJ at that time after his parole was revoked due to running away from a group home placement. His records indicate that he was diagnosed with Conduct Disorder, Adolescent Onset, Moderate; Rule Out Alcohol Abuse; Rule Out Cannabis Abuse; Parent Child Relational Problem and Reading Disorder, By History. Mr.

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Barker stated that he did not recall treatment for counseling during his childhood although his records indicate that his mother stated he participated in outpatient therapy for several months (this was reportedly required by the Department of Juvenile Justice). DJJ records also indicate that Mr. Barker has admitting to feigning mental illness symptoms in the past to gain attention.

Mr. Barker states he was sent to "a place in Columbia" after attempting to hang himself. He could not recall the name of that facility. He stated he stayed overnight. Department of Corrections records indicate that on admission screening he denied a history of mental health treatment or problems. He also alleges hospitalizations in the Department of Corrections but SCDC records contradict his report. He once went on a hunger strike in the Department of Corrections because he wanted his dorm taken off of lock down.

**SUBSTANCE USE HISTORY:** Mr. Barker denied drinking alcohol on a regular basis. He stated that he had tried it in the past, but that he did not care for it. He also stated that he had started smoking marijuana when he was a boy, about age 10. He stated that he has smoked multiple times a week since that time. When Mr. Barker was interviewed by the Forensic Evaluation Service, he initially denied significant history of using illicit drugs in his past, other than recreational marijuana use. However his records indicate he stated during his psychological evaluation on October 4, 2012 that he has a past history of huffing gasoline, car exhaust fumes and air fresheners. Mr. Barker denied illicit use of prescription medications and denied the use of club drugs such as ecstasy, PCP and mushrooms. He stated that of the illicit substances available, he preferred to smoke marijuana. He added that his friends have often given him marijuana to smoke in the past, "...as much as I can (obtain) and it's free." He denied that the use of marijuana interfered with daily activities, caused interpersonal conflicts or led to his incurring legal charges.

**FAMILY AND MEDICAL HISTORY:** Mr. Barker said he was unaware of past psychiatric illness in his family. He stated he was not sure about the medical health of his parents. Mr. Barker also denied any medical issues of his own. He denied a history of major accidents, surgeries or allergies to medication. Mr. Barker's records indicate that his mother at one time reported his sister was diagnosed with depression and his father was described as an alcoholic.

In our obtained social history, his mother reported that she has a history of taking medication for anxiety. She also reports his father was an alcoholic.

**SOCIAL HISTORY:** Mr. Barker relayed that he was born in the state of South Carolina, but was unsure of the city where he was born. His mother reports that he was C-sectioned because the umbilical cord was wrapped around his neck. His mother also reports she consumed beer during the first trimester of her pregnancy. He was unable to recall much about his childhood. His records also indicate that he was raised primarily by his mother and he has a younger half sister. Regarding his mother, he stated, "I used to get beatings. She used to beat me but not bad." He recalled that he completed the 6th grade and was diagnosed with a learning disorder, but was unsure of the nature of that disorder. According to school records, he had a measured Full Scale IQ of 77 on July 10, 1996 which is in the range of Borderline Intellectual Functioning.

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BARKER, MONTEZ M.

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OUTPATIENT EVALUATION *MUD*

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH  
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His mother reports that he ran away several times around age 10 or 11. He was also truant from school. Mr. Barker's records indicate that he was sent to the Department of Juvenile Justice (DJJ) at about the time that he would have been in the 6th grade. Records reveal that he was sent to DJJ due to running away from home and was placed in a group home for approximately two to three years. Mr. Barker's records also indicate that he has had multiple problems with delinquent behavior including getting into fights, bullying others, using sticks and knives as weapons, stealing, breaking into a home, destroying property, staying out all night and leaving home without permission. During his clinical forensic interviews, he denied knowledge of these events. Mr. Barker's records indicate that he had been released from prison for less than six months at the time that he was arrested for his current charges.

According to Mr. Barker's social records, his parents were never married; he first met his father when he was about 12 years old and did not spend much time with him. Mr. Barker's stepfather married his mother when he was a child and he was active in Montez's childhood. Records indicate that there was conflict between them. Mr. Barker denies a history of being married or having children. According to his records, he was living with his mother in Florence, South Carolina prior to his most recent arrest.

**MENTAL STATUS EXAM:** On September 27, 2012, Mr. Barker appeared as an average build African America male who appeared his stated age. His grooming and hygiene were unkempt. He had a visible tattoo which reads *freedom*. He displayed good eye contact. His speech was clear, coherent and he was slow to respond when questioned. He was calm, but minimally cooperative. He displayed no abnormal psychomotor activity. He stated he was unaware of the reason for his interview. He reported his mood as "alright." His affect was full range. He denied current auditory and visual hallucinations and did not endorse delusional beliefs. He denied current suicidal and homicidal ideation. His insight and judgment were poor. Mr. Barker was unable to state the colors of the American Flag. He stated that one of the colors in the flag is burgundy. He denied ability to name the days of the week and stated that the holiday which occurs in December is "the beginning of the year." He could not name the seasons of the year. Mr. Barker was asked to add simple calculations such as  $2 + 2$  and  $4 - 2$ . He stated that  $2 + 2$  is equal to 6 and  $4 - 2$  equals 1. However he was able to verbally spell his name forwards, but he could spell it backwards. He was able to abstractly interpret similarities and simple proverbs. He was unable to identify current events even with prompting and clues. For example, he was asked who the current president is and he stated, "I don't keep up with that." Mr. Barker's judgment was not intact to a hypothetical situation. Overall, his efforts appeared poor.

On January 7, 2013 Mr. Barker was confronted about his prior performance and the fact that we had concluded that he was faking symptoms of mental illness and cognitive impairment. He was informed that we were concerned that our opinion could be detrimental to him in court. We had also called his defense attorney and informed him of the psychological evaluation results prior to the January interview. His performance after this confrontation only marginally improved. He stated the month was January but he did not know the day, date, or year. He stated the season was fall. He correctly performed the following calculations:  $2+2$ ,  $5+5$ , and  $20-10$ . However, he stated that  $30 - 7$  was 24. He claimed not to know the number of nickels or pennies in a dollar. He did not know the colors of

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BARKER, MONTEZ M.

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the American flag. He was able to identify the celebrities Oprah and Michael Jackson, and could not identify the current President. He also stated Benjamin Franklin was a former President. He described his mood as okay. He denied a sleep or appetite disturbance. He reported he played a card game called "cut throat" in jail. He also reported that he watches television and draws pictures of people.

**RESULTS OF PSYCHOLOGICAL EVALUATION:** Mr. Barker was evaluated by Dr. Sandra Stader on October 4, 2012. She performed a battery of psychological tests which indicated that Mr. Barker was exhibiting feigning on a cognitive measure of memory functioning. In other words, his results indicated that he was not putting forth his best effort with his examiners. Dr. Stader's evaluation results indicate, "His low level of performance on this test is highly unlikely even among clinical populations with severe memory impairment." Dr. Stader's report states that Mr. Barker also obtained elevated scores on six primary scales which measure different ways in which respondents may feign psychiatric symptoms, "His pattern results is characteristic of respondents who are feigning or exaggerating symptoms and is rarely found in individuals responding truthfully." Dr. Stader administered a test to Mr. Barker that measures the extent of his legal and courtroom knowledge. The defendant's score on this test was indicative of an attempt to feign deficits in courtroom and legal knowledge. Dr. Stader's report reads, "Thus his understating and ability to participate in the legal process is likely much better than what he portrayed during the evaluation." Dr. Stader concluded, "A diagnosis of Malingering does not mean the defendant is free of mental health issues, but it does make it more difficult to determine the presence of any actual problems. However, based on his current assessment and clinical presentation, his primary difficulties appear associated with a chronic history of antisocial behaviors and substance abuse."

**DIAGNOSTIC IMPRESSION:** Based on the available data, it appears that Mr. Barker's symptoms are best characterized by the diagnosis of Malingering of Psychotic Symptoms, Cognitive Deficits and Legal Knowledge Deficits. He was minimally cooperative with examiners even though he was given the opportunity to cooperate on two occasions. During his January 7, 2013 interview, Mr. Barker was confronted with the results of his psychological evaluation with Dr. Stader which indicated feigning of legal knowledge and malingering of psychotic symptoms. Mr. Barker continued to deny understanding of the current legal system after the results of that examination were shared with him. The symptoms that Mr. Barker described are not consistent with genuine mental illness. His inability to answer simple questions during both of his examinations, in conjunction with his recent psychological test results; lead us to opine that he meets the criteria at this time for Malingering of Psychotic Symptoms. As his scores are also indicative of feigning of legal knowledge Deficits, we are including that opinion at this time. Of note, he has admitted to malingering in the past.

Mr. Barker has exhibited a pervasive pattern of disregard for and violation of the rights of others since he was a child. He has failed to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest. He has exhibited impulsivity and failure to plan ahead as indicated by DJJ and criminal records. He has a history of irritability and aggressiveness as indicated by repeated physical fights and assaults. He has indicated consistent irresponsibility by repeated failure to sustain consistent employment. He has indicated a lack of remorse or indifference for his behavior. Mr. Barker was diagnosed with Conduct Disorder before the

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BARKER, MONTEZ M.

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OUTPATIENT EVALUATION

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age of 15 years. We therefore opine that he meets the diagnostic criteria for Antisocial Personality Disorder.

**CONCLUSION REGARDING COMPETENCY TO STAND TRIAL:** During Mr. Barker's September 27, 2012 interview, he stated that he was unaware of his current charges and was unable to adequately describe the nature of his charges. He stated that the role of most court officers is "to hang me." He specifically stated that is the job of the judge. He stated he was unaware of various pleas or what court proceedings would follow if these pleas were entered. He stated the job of his attorney was "...supposed to be helping me – and helping the other person". He stated the other person was his codefendant. He stated he wants his attorney to let the court know he did not know "Delaine". He stated he was charged with Lynching First Degree and "burning up a car". He was told his charges and he responded "I never heard of them charges, where do they come from?" He stated he could be incarcerated. He was not able to name the potential pleas. He claimed not to know what a plea bargain was. He claimed the lawyer decides his sentence. He stated that the solicitor works "with my lawyer – they tell me I have to work with him." He claimed not to know the purpose of a jury. He claimed not to know what evidence was.

In January of 2013, when asked about his charges he told one of these examiners that "you lied – my lawyer told me I wasn't charged with conspiracy. He stated the job of his attorney was "supposed to help me" He stated he wanted his lawyer to "prove I didn't do that." He alleged that "gangbangers" in the jail are telling his codefendants to write statements implicating him. He stated that one codefendant (Graham) changed his statements many different times. (This demonstrates his ability to rationally look at challenging evidence). He stated the job of the solicitor was "to talk bad about me." He also stated the solicitor is "putting bad things in people's heads by calling me a murderer in the newspaper". He wanted his lawyer to force his codefendants to take polygraph tests. He stated when the solicitor says bad things about him to the judge, the judge goes along with him. He implied that the judge does not want to hear his side of the story. He stated the jury "goes along with the judge and solicitor." He estimated there were 13 to 14 persons on a jury. He repeatedly stated he wanted his attorney to show the judge the statements of Mr. Graham, implicating they are lies. He alleged the police took his shoes and "they didn't match the shoe print." This further reveals some understanding about one type of evidence. He recalls his attorney telling him the hands of one are the hands of all.

Although Mr. Barker reported only very limited understanding of the legal system, we opine that he is feigning knowledge deficits in relation to the legal system in order to avoid consequences were he to go to trial. His past behaviors indicate that his knowledge is much greater than that which he has exhibited to his examiners. He has extensive experience with the legal system as evidenced by his past incarcerations. We do not find symptoms of genuine mental illness present which would prevent him from working with his attorney or interacting with court officers if he so chooses. We therefore at this time opine that he is currently competent to stand trial.

BARKER, MONTEZ M.

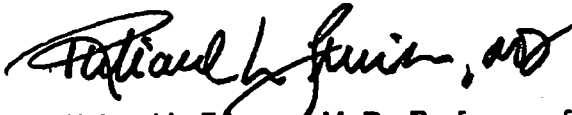
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OUTPATIENT EVALUATION <sup>TRW</sup>

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Shannon L. Hansen, M.D., Forensic Psychiatry Fellow,  
University of South Carolina School of Medicine



Richard L. Frerson, M. D., Professor of Clinical Psychiatry,  
University of South Carolina School of Medicine

SLH/cj  
D: 01/16/12  
RT/EM: 01/17/12  
F/EM: 01/24/13

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BARKER, MONTEZ M.  
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SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH  
FORENSIC EVALUATION SERVICES 8 57057

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 State of South Carolina )  
 )  
 -vs- )  
 )  
Montez M. Barker )  
 )  
 Defendant )

IN THE COURT OF GENERAL SESSIONS

AFFIDAVIT OF DEFENDANT FOR  
GUILTY PLEA

Under N.C. v. Alford

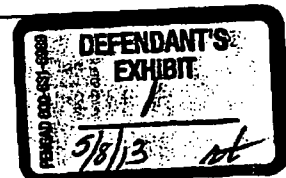
The Defendant states to the Court that the Defendant wants to plead guilty to the following charge(s): Murder (2 counts) Arson 3rd Degree  
Grand Larceny, Conspiracy

N.C. v. Alford

In connection with the plea, I certify that the answers to the following questions are true:

BACKGROUND OF DEFENDANT

- 1) How old are you? 28
- 2) How far did you go in school? 7th
- 3) (a) Can you read and write the English language?  YES  NO  
 (b) Are you able to read and understand this form?  YES  NO  
 (c) If not, who is explaining it to you and filling out your answers?  
 Name of person: \_\_\_\_\_
- 4) What kind of work do you do? N/A
- 5) Have you ever been treated for abuse of alcohol or drugs or for mental illness?  
 YES  NO  
 If so, when? 2003 while in SCDL  
 For How long? 2-3 months  
 Did you successfully complete the program?  YES  NO
- 6) Have you taken any medication, drugs or alcohol in the last 24 hours?  
 YES  NO  
 If yes, What? \_\_\_\_\_  
 How much? \_\_\_\_\_



When? \_\_\_\_\_

Does this affect your ability to know and understand what you are doing here today? \_\_\_\_\_ YES \_\_\_\_\_ NO

7) Are you today under the influence of any medications, drugs or alcohol? \_\_\_\_\_ YES  NO

8) Are you today aware of any physical, emotional or nervous problem that might keep you from understanding what you are doing? \_\_\_\_\_ YES  NO

9) Have you ever been ordered by a Judge to submit to a mental evaluation to determine your competency to stand trial?  YES \_\_\_\_\_ NO

WAIVER OF CONSTITUTIONAL RIGHTS

1) Do you understand that you have a right to remain silent, that is your rights against self incrimination? You cannot be compelled or forced to testify or give evidence against yourself. Do you understand this right?  YES \_\_\_\_\_ NO

Do you wish to give up this right and plead guilty?  YES \_\_\_\_\_ NO

2) Do you understand that you have right to a jury trial; you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt? They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you would be presumed innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right?  YES \_\_\_\_\_ NO

Do you wish to give up your right to a jury trial and plead guilty?  YES \_\_\_\_\_ NO

3) Do you understand that you have the right to confront and be confronted by the witnesses against you, that is, the right to see, hear and cross examine any witness that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf? Do you understand these rights?  YES \_\_\_\_\_ NO

Do you wish to give up these rights and plead guilty?  YES \_\_\_\_\_ NO

N/A 4) If your case has not been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge(s) against you could be reported out as a True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge(s) would be dismissed. Do you understand this right? \_\_\_\_\_ YES \_\_\_\_\_ NO

Do you wish to give up your right to have the grand jury examine your case?  
 YES  NO

5) Do you understand that when you plead guilty you give up these constitutional rights?  
 YES  NO

Is that what you want to do?  YES  NO

Do you understand that you will not get a jury trial if you plead guilty?  
 YES  NO

NATURE OF THE CHARGE(S) AND CONSEQUENCES OF PLEADING GUILTY

1) Has your attorney discussed with you the charge(s) and possible punishment for the charge(s)?  
 YES  NO

2) What acts did you do which causes you to think that you are guilty of the charge(s) to which you now want to plead guilty? *Involved in a Conspiracy to kill 2 people. Their vehicle was stolen and burned after they were killed.*

3) Are you pleading guilty for any reason other than the fact that you are guilty?  
 YES  NO

If so, what is the other reason? \_\_\_\_\_

4) As you understand, the maximum possible punishment for this charge is: *Life in Prison*

*WIA*

5) If an offense with graduated penalties: Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime, the punishment will be higher the next time?  
 YES  NO

6) Do you have any questions about the nature of the charge(s) against you and the possible punishment?  
 YES  NO

If so, please write your question(s) here: \_\_\_\_\_

7) Do you understand that when you plead guilty you admit the truth of the charge(s) against you?  
 YES  NO

- 8) You may have defenses to the charge(s) against you. The Judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defense to the charge(s)?  
 YES  NO
- 9) You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge whether such a statement was freely and voluntarily given in accordance with your constitutional rights?  
 YES  NO
- 10) Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty?  
 YES  NO

**TWO AND THREE STRIKES RULE AND NO PAROLE OFFENSES**

- 1) Do you understand that the charge(s) you are pleading to is/are considered a serious most serious offenses under South Carolina's laws?  
 YES  NO
- 2) Do you understand that that means they are considered strikes in South Carolina's two and three strikes laws?  
 YES  NO
- 3) Do you understand that under the two strikes law, if you were to be convicted of two most serious offenses in your lifetime then you would face a mandatory sentence of life in prison without parole?  
 YES  NO
- 4) Do you understand that under the three strikes law that if you were convicted of three serious offenses or a combination of three serious and most serious offenses, that you would then face a mandatory sentence of life in prison without parole?  
 YES  NO
- 5) Do you understand that the charge(s) you are pleading guilty to is/are considered no parole offense(s) under South Carolina law?  
 YES  NO
- 6) Do you understand that means that any sentence you receive in this case you would have to serve at least 85% of that sentence before you would be eligible for release and that you may have to do every day of the sentence day for day?  
 YES  NO
- 8) Do you understand that if you are pleading guilty to murder, then any sentence you get will have to be done day for day. In other words if you receive a thirty

(V/A)

(30) year sentence then you will be required to do all thirty years before you can be released.

YES  NO

N/A

7) Do you understand that upon your release from that sentence you would be required to serve a two year period under community supervision and if you violated the conditions of that program you could have that supervision revoked and be required to serve up to one year in prison as a result?

YES  NO

8) Do you understand the charge(s) you are pleading guilty to are also considered violent offenses under South Carolina law?

YES  NO

9) Do you understand that the violent distinction affects parole eligibility?

YES  NO

N/A

10) Do you understand that a second conviction for a violent offense would render you ineligible for parole?

YES  NO

11) Understanding all of that, do you still wish to plead guilty?

YES  NO

PLEA NEGOTIATIONS

1) Has any plea agreement been made by you with the Solicitor's Office?

YES  NO

If so, exactly what do you understand the agreement to be? State will not seek the death penalty if he pleads

2) Do you understand that the recommendation of the attorneys is not binding on the court and that the Judge could still sentence you up to the maximum if he/she felt it appropriate?

YES  NO

3) Do you still wish to plead guilty?  YES  NO

VOLUNTARINESS OF PLEA

1) Has anyone promised you anything or held out any hope of reward to get you to plead guilty?  YES  NO

If yes, explain: \_\_\_\_\_

---

- 2) Has anyone threatened you or used force to get you to plead guilty?  
       \_\_\_\_\_ YES         NO
- 3) Has anyone used any pressure or intimidation to cause you to plead guilty?  
       \_\_\_\_\_ YES         NO
- 4) Have you had enough time to make up your mind as to whether or not you want to plead guilty?  
        YES        \_\_\_\_\_ NO
- 5) Are you pleading guilty of your own free will and accord?  
        YES        \_\_\_\_\_ NO

SATISFACTION WITH ATTORNEY

- 1) Has your attorney reviewed this form with you and answered any questions you have about it?  
        YES        \_\_\_\_\_ NO
- 2) Are you satisfied with the manner in which your attorney has advised and represented you?  
        YES        \_\_\_\_\_ NO
- 3) Have you talked with your attorney as often and for as long as you feel necessary for him/her to properly represent you?  
        YES        \_\_\_\_\_ NO
- 4) Do you need more time to talk with your attorney?  
       \_\_\_\_\_ YES         NO
- 5) Have you understood your talks with your attorney?  
        YES        \_\_\_\_\_ NO
- 6) Has your attorney done everything for you that you feel he/she could have done or should have done?  
        YES        \_\_\_\_\_ NO
- 7) Has your attorney done anything in this case that you feel he/she should not have done?  
       \_\_\_\_\_ YES         NO

If yes, explain: \_\_\_\_\_

---

- 8) Are you completely satisfied with your attorneys services?  
        YES        \_\_\_\_\_ NO

9) Do you have any complaints you want to make about your attorney, the solicitor or any of the police officers?  YES  NO

10) Do you understand that you have a right to appeal your guilty plea and the sentence of the court and you must do so within 10 days of the sentence?  YES  NO

CONCLUDING QUESTIONS

1) Do you understand all of these questions?  YES  NO

If not, which ones do you not understand? \_\_\_\_\_  
\_\_\_\_\_

2) Do you now want to plead guilty?  YES  NO

SIGNED BY ME IN THE PRESENCE OF MY ATTORNEY, this 2nd

Day of May, 2013.

  
DEFENDANT

CERTIFICATE OF COUNSEL

- 1) Print your name and telephone number. Vick Meetze  
843-665-3055
- 2) I represent the Defendant in this case.
- 3) I have read and fully explained to the Defendant the allegations contained in the indictment(s) in this case.
- 4) To the best of my knowledge and belief the statements, representations and declarations made by the Defendant in the foregoing petition are in all respects accurate and true.
- 5) I have explained to the Defendant the charge(s) contained in the indictment(s), the possible punishment and his/her constitutional rights including his/her right to a jury trial.
- 6) I have explained to the Defendant the right to have this case submitted to the grand jury for its consideration.
- 7) In my opinion, the Defendant understands the charge, the punishment and the constitutional rights in this case.
- 8) The defendant has indicated to me that he/she wishes to plead guilty.
- 9) The plea of guilty offered by the Defendant to count(s) Murder (2 counts)  
GL, Arson 3rd and Co. Conv. accords with my understanding of the facts that the Defendant has related to me, is consistent with my advice to the Defendant, and, in my opinion, is voluntarily and understandingly made.

SIGNERD BY ME IN PRESENCE of the Defendant and after full discussion of the contents of this certificate with the Defendant, this 2nd day of May, 2013.

Vick Meetze  
ATTORNEY FOR THE DEFENDANT

NOTICE OF INTENT TO APPEAL  
 THE STATE OF SOUTH CAROLINA  
 IN THE COURT OF APPEALS  
 APPEAL FROM FLORENCE COUNTY

THE HONORABLE THOMAS A. RUSSO, PRESIDING JUDGE

NO. 2012-GS-21-00896

The State of South Carolina,

Respondent.

against

Montez Myiharell Barker,

Appellant.

FILED  
 2013 MAY 16 PM 3:30  
 CLERK OF COURT  
 CCCP & GS  
 FLORENCE COUNTY, SC

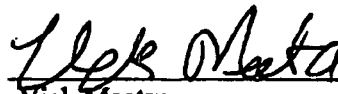
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NOTICE OF INTENT TO APPEAL

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Montez Myiharell Barker appeals from his pleas of guilty to Murder Counts 1 & 2, Conspiracy, Grand Larceny, and Arson Third Degree, the sentences imposed on May 8, 2013 in the Court of General Sessions for Florence County, South Carolina.

This appeal is filed at the Request of the Appellant. There is no issue under Rule 203 (B) (IV), SCACR which counsel can identify as a basis for the appeal.




---

Vick Meetze  
 Assistant Public Defender  
 Box N, City-County Complex  
 Florence, South Carolina 29501  
 (843) 665-3055

Attorney for Appellant

May 14, 2013

Other Counsel of Record

E. L. Clements, III  
 Solicitor  
 Twelfth Judicial Circuit  
 Box Q, City-County Complex  
 Florence, South Carolina 29501  
 (843) 665-3091

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 The State of South Carolina, )  
 )  
 Versus )  
 )  
 Montez Myiharell Barker, )  
 )  
 Appellant. )

---

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT NO.: 2012-GS-21-00896

PROOF OF SERVICE

FILED  
 MAY 23 PM 2:48  
 CLERK OF COURT  
 FLORENCE COUNTY, SC

Due and legal service of the attached Notice of Intent to Appeal is hereby  
 acknowledged and a copy retained for our file this 17 day of May, 2013.



\_\_\_\_\_  
 E. L. Clements, III  
 Solicitor  
 Twelfth Judicial Circuit

# The South Carolina Court of Appeals

The State, Respondent,

v.

Montez Myiharrell Barker, Appellant.

Appellate Case No. 2013-001125

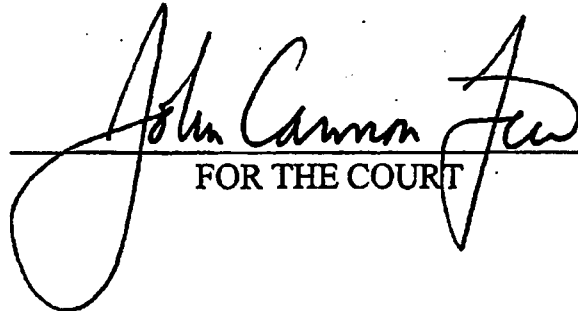
**FILED**  
2013 OCT -9 PM 2:07  
CONNIE REEL-SHEARIN  
CLERK  
FLORENCE COUNTY, SC

---

## ORDER

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Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

  
FOR THE COURT

Columbia, South Carolina

cc:  
William Vickery Meetze  
Robert Michael Dudek  
Salley W. Elliott

---

**FILED**  
9/5/13 AT



ATTORNEY GENERAL'S OFFICE 75  
 RECEIVED 10-7-13  
 ADMINISTRATIVE INSTRUCTIONS  
 FILE OPENED AND  
 HAVE COPIES  
 ROUTE TO \_\_\_\_\_  
 ORDER: \_\_\_\_\_  
 PEN POST OFFICE BOX 1624 RECORDS  
 COLUMBIA, SOUTH CAROLINA 29211  
 107 S. BENTLEY STREET  
 COLUMBIA, SOUTH CAROLINA 29201  
 TELEPHONE: (803) 734-1888  
 FAX: (803) 734-1839  
 www.sccourts.org

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
 CLERK  
 V. CLAIRE ALLEN  
 DEPUTY CLERK

October 04, 2013

The Honorable Connie Reel-Shearin  
 180 N Irby St MSC-E Rm B11  
 Florence SC 29501-3456

FILED  
 2013 OCT -9 PM 2:06  
 CONNIE REEL-SHEARIN  
 CCJP & GS  
 FLORENCE COUNTY, SC

REMITTITUR

Re: The State v. Montez Barker  
 Lower Court Case No. 2012GS2100896  
 Appellate Case No. 2013-001125

Dear Clerk of Court:

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

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure  
 cc: Montez Barker, 277819  
 William Vickery Meetze  
 Robert Michael Dudek  
 Donald J. Zelenka

FILED FORM 5

STATE OF SOUTH CAROLINA

2014 FEB 21 PM 4:31

IN THE COURT OF COMMON PLEAS

COUNTY OF: Florence

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

2014 CP 21 436

Full name and prison number (if any) of Applicant

MONTEZ Myinarell Barker 277819

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Florence city/co complex
3. Name(s) of co-defendant(s) (if any) FONNELEE DELANEY, LAROSS GRAHAM
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: "2012-GS-21-00896"
  - (a) Co:#1 m: 16-03-0010,0020, 16-01-0060: Co:#4: 16-13-0030(B)(1)
  - (b) Co:#2 m: 16-03-0010,0020, 16-01-0060: Co:#5: 16-11-0110(C)
  - (c) Co:#30: 16-17-0410:
5. The date upon which sentence was imposed and the terms of the sentence: May 8, 2013
  - (a) Life
  - (b) Life

CERTIFIED: A TRUE COPY  
*Connie Reel-Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Revised 3/2003

- (c) 25 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere ✓
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. September 5, 2013
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/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) ~~Involuntarily and unintelligently plea~~
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Involuntarily and unintelligently plea
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. \_\_\_\_\_
- 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. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. N/A

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. N/A

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) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Vick Meetze 180 N. Irby St. Florence, SC. 29501
- ii. Marshall Weaver
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Sentencing
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
Vacated of sentence
20. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA )  
 )  
County of )

VERIFICATION

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

Montef Barker

SWORN to and subscribed before me this 20th  
day of February, 2014.

Mischa Michel (L.S.)  
Notary Public

My Commission Expires: 9/3/2014

**FILED**  
2014 FEB 21 PM 4:31  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

**CERTIFIED: A TRUE COPY**  
Connie Reel-Shearin  
CLERK OF COURT, C.P. & G.S.  
FLORENCE COUNTY, S.C.

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

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

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

Montez Barker  
Applicant

SWORN or affirmed to and subscribed before me this  
20<sup>th</sup> day of February, 2014.

Yuscha Michel  
Notary Public

My Commission Expires: 9/3/2014

FILED  
2014 FEB 21 PM 4:31  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

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Connie Reel-Shearin  
CLERK OF COURT C.P. & O.S.  
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

*Cornie K. Spearis*

CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

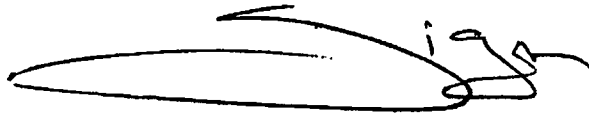
February 19, 2014 83

FILED  
2014 FEB 21 PM 1:51  
CONNIE REELES  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

To Whom this may concern that's  
appointed as my P.C.R. Counsel;

I'm writing this letter to inform  
you of this matters that's before  
me. These are the issues that I  
would like to be raise, and checked  
into. Also it's impossible for me to  
know and prove the issues that I'm  
striving to raise without having a  
full transcript of my pre-trial hearing  
and the transcript of my pleading  
proceeds. The issues are however  
it may seem two of the main issues  
that's been recognize and referred  
to you: 1.) Ineffective assistance of  
counsel. 2.) Unintelligent plea of Guilt  
3.) Transcripts of any pre-trial hearing  
and any other discovery that's

pertaining to my case that may be of any relevance to me. I thank you for taking the time to look into these matters and assist me with these issues and I appreciate your assistance as my counsel. With the dearest regards I remain.



Montez Barker  
2/19/14

Montez Barker Feb. 19, 2014

2014 FEB 21 PM 4:31  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

P.D. I would appreciate it if you could get back with me in a timely matter. Thanks! I will address other issues at a later time concerning this matter.

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Connie Reel-Shearin  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
Montez M. Barker, #277819,	)	Case No. 2014-CP-21-436
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed February 21, 2014, would respectfully show this Court:

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2012, the Florence County Grand Jury indicted Applicant for conspiracy, grand larceny, third degree arson, and two (2) counts of murder (2012-GS-21-896). William V. Meetze, Esquire, and Marshall S. Weaver, Esquire, represented Applicant.

On September 20, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. The State alleged the aggravating factors warranting the death penalty were that the murders were committed by Applicant's as another person's agent or employee, that the murders were of two people pursuant to one scheme or course of conduct, and that the murders were of witnesses for the purpose of impeding or deterring the prosecution of a crime. The Honorable Thomas A. Russo was appointed to preside over Applicant's case.

On May 8, 2013, the State withdrew its notice of intent to seek the death penalty in exchange for Applicant entering a plea of guilty to all charges as indicted. Applicant entered his plea without negotiations or recommendations as to sentencing, and Judge Russo sentenced Applicant to consecutive terms of life without the possibility of parole on each count of murder, ten (10) years for murder, and ten (10) years for third degree arson.

Applicant filed a timely appeal from his plea, but the South Carolina Court of Appeals dismissed the order pursuant to Rule 203(d)(1)(B)(iv), SCACR, on September 5, 2013. The Court of Appeals returned the remittitur to the circuit court on October 4, 2013.

## II.

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

1. "Ineffective assistance of counsel"
2. "Involuntarily and unintelligently plea"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCF.

Attached to this return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

### III.

Respondent moves pursuant to Rule 12(e), SCRCPP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel and an involuntary guilty plea. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to those questions, Applicant fails to set forth any specific facts to explain his allegation. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

### IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

V.

Without waiving its motion for a more definite statement in Part III, supra, Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of

Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

June 24, 2014



State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-CP-21-00436
	)	
Montez M. Barker,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

---

April 15, 2015  
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire  
Attorney for the Plaintiff

Josh Thomas, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 APRIL 15, 2015

2 (WHEREAS this matter was scheduled for a post-conviction  
3 relief hearing, the applicant appeared along with his  
4 counsel of record. The State of South Carolina appeared  
5 through counsel of record. The hearing began at 2:58  
6 p.m.)

7 THE COURT: Yes, sir?

8 MR. THOMAS: Your Honor, the last case of the day is  
9 Montez Barker versus the State of South Carolina, Case Number  
10 2014-CP-21-436. This was a July 2012 indictment for two  
11 counts of murder, one count of conspiracy, one count of grand  
12 larceny, and one count of third degree arson. Mr. Barker was  
13 represented on those charges by Vick Meetze and Marshall  
14 Weaver.

15 This was initially notified as a death penalty case, Your  
16 Honor. He eventually pled guilty under *Alford* on May 8<sup>th</sup>,  
17 2013, to all five of those charges as indicted. Judge Russo  
18 sentenced him on the murder charges to life without parole,  
19 and then consecutive with all the other charges, there were  
20 five years for conspiracy, ten years for grand larceny, and  
21 ten years for arson.

22 He did -- Mr. Meetze did file a Notice of Appeal on Mr.  
23 Barker's behalf, but that was dismissed by the Court of  
24 Appeals for failure to comply with Rule 203, Appeals from  
25 Guilty Pleas.

1 He did file his PCR in February 2014. The State filed  
2 its return. We initially had in that return a Motion for a  
3 More Definite Statement. I've talked to Mr. Waller. He's  
4 sort of explained to me what the claims are. So at this  
5 point, we'll just -- we will go forward. He's got some  
6 ineffective assistance of counsel claims.

7 THE COURT: All right.

8 MR. THOMAS: The State is prepared to go forward.

9 THE COURT: Mr. Waller?

10 MR. WALLER: Thank you, Your Honor. May it please the  
11 Court?

12 THE COURT: Yes, sir.

13 MR. WALLER: I would call Montez Barker.

14 THE COURT: All right.

15 THE CLERK: Please place your left hand on the Bible and  
16 raise your right hand.

17 THE BAILIFF: Right here.

18 THE CLERK: Your left hand on the Bible and raise your  
19 right hand as much as possible. Do you promise -- do you --  
20 do you swear to tell the truth, the whole truth, and nothing  
21 but the truth, so help you God?

22 THE APPLICANT: I do.

23 THE CLERK: Okay. Please take a seat and state your name  
24 for the record.

25 THE APPLICANT: Montez Barker.

MONTEZ BARKER - DIRECT BY MR. WALLER

1 MONTEZ BARKER, being first duly  
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q: Good afternoon, Mr. Barker. How are you?

6 A: All right.

7 Q: Okay. How did Vick Meetze come to be your lawyer in this  
8 case?

9 A: Well, from starters, Jack Lawson was my lawyer from the  
10 beginning, but he passed, you know, and -- and they assigned  
11 me with Vick Meetze in -- in the case, you know.

12 Q: Okay. Was Vick your only lawyer?

13 A: No. I had another one, Marshall Weaver.

14 Q: Okay. At the same -- were they representing you --  
15 representing you at the same time?

16 A: Mm-hmm.

17 Q: Okay. Now, you were served with a Notice of Intent to  
18 Seek the Death Penalty against you; is that right?

19 A: Right.

20 Q: Okay. Do you know if Vick and Marshall were certified to  
21 try a death penalty case?

22 A: No, sir.

23 Q: Okay. How many times did you meet with -- with either  
24 Mr. Meetze or Mr. Marshall?

25 A: Well, I met with Mr. -- Mr. Meetze probably about --

MONTEZ BARKER - DIRECT BY MR. WALLER

1 about six or seven times because half -- half of the time I  
2 was in there, Jack was on my case. So I never -- I ain't met  
3 him until he had passed; so that was -- like, I already did,  
4 like -- like, two-and-a-half years already. So, you know, he  
5 became -- he came through about six or seven times that I can  
6 recall. I mean I could be wrong. It could be a little less,  
7 you know, but that I can recall.

8 Q: Okay. So you'd had Mr. Lawson for two-and-a-half years  
9 prior to Vick being appointed to represent you?

10 A: Mm-hmm.

11 Q: Okay. And had you met with Mr. Lawson before?

12 A: Mm-hmm.

13 Q: Okay. Did you meet with --

14 THE COURT: Give me a -- hold on a minute.

15 THE APPLICANT: Yes.

16 THE COURT: If it's a yes or no answer --

17 THE APPLICANT: Yes, sir.

18 THE COURT: -- give me a yes or no, please.

19 THE APPLICANT: Yes.

20 BY MR. WALLER:

21 Q: Had you met with Mr. Lawson enough times that you  
22 understood what was going on with your case?

23 A: At some point, like, I know I had -- like, I know that it  
24 was a -- like, a serious -- like, I knew it was serious, but  
25 at the point I didn't know that it was -- I didn't -- I didn't

MONTEZ BARKER - DIRECT BY MR. WALLER

1 realize it was actual death penalty then, you know, until they  
2 served me at the point -- served me the paper saying that they  
3 was seeking the death penalty on me, you know, because he was  
4 -- Jack Lawson was -- he -- he came, like, saying it was being  
5 from 30 years -- no less than 30 years.

6 So that's the only number that I actually had in my mind.  
7 I was perceiving that number. I didn't know it was going to  
8 be anything outrageous or nothing like that, but from that  
9 point that's all I knew.

10 Q: Okay. Was Jack Lawson or Vick Meetze your lawyer when  
11 you got served with the notice of the death penalty?

12 A: I think -- I think Jack -- I think Jack was my lawyer  
13 then.

14 Q: Okay. When you -- I only want to talk about Mr. Meetze  
15 for a few minutes. When -- when Mr. Meetze was representing  
16 you, did you have a chance to meet and discuss the charges  
17 against you?

18 A: Yes.

19 Q: Okay. Did y'all discuss the evidence that the State had?

20 A: Yes. At -- at -- to an extent, like, because I felt like  
21 -- like certain issues was in my -- was in, like -- like --  
22 like -- like the -- like the little statements that was said  
23 against me. It was -- it was -- it was two different -- like,  
24 he changed his statements over and referred to another -- it  
25 was -- it was referred different on another statement and

MONTEZ BARKER - DIRECT BY MR. WALLER

1 whatnot, and I was -- I was trying to get that more clarified,  
2 but it never took -- it never -- it never been brought up --  
3 like, brought to the -- to the attention like it was something  
4 important. But I thought it was something important. So --  
5 but he never actually brought that up, you know, like -- like  
6 it was some kind of importance, but he said he would -- like,  
7 he said it was, like, he were questioning the testimony and  
8 all this, but it never happened, you know. It never --

9 Q: Okay. Now, did y'all talk about what's known as the hand  
10 of one, hand of all?

11 A: I can't recall. Like, I can't -- I can't -- I know I  
12 heard of it before, but I can't recall the actual --

13 Q: Okay. Did you provide Mr. Meetze with any information  
14 regarding your case?

15 A: No. Because I didn't -- because, like I said, I was in  
16 -- I was totally in the blind of my case, you know, like I  
17 only know -- I only know actually what actually happened from  
18 -- but I didn't know -- I didn't have no further knowledge on  
19 it other than the time episode that it happened in. So that's  
20 the only thing I could have given him was what was in my  
21 motion, you know.

22 Like, I didn't -- like, before -- like, I couldn't -- I  
23 couldn't -- before I had my motion, I wouldn't have known my  
24 co-defendant that -- my third co-defendant -- I wouldn't have  
25 known his name, you know. I wouldn't -- I only know the co-

MONTEZ BARKER - DIRECT BY MR. WALLER

1 defendant that stayed across the street from me, you know. So  
2 I had -- I had limited information.

3 Q: Okay. And once you got your motion of discovery, did you  
4 -- were you able to give him some more information after that?

5 A: Well, I gave him information about, like, what actually  
6 -- what actually took place, you know, other than what my co-  
7 defendant was saying in the statements because his statements  
8 were conflicting. It was conflicting each other because he  
9 wrote two different statements. So one statement was saying  
10 this and the next time he came around and changed it and said  
11 something -- something different, you know.

12 And I was telling him that it doesn't -- it didn't happen  
13 like that, you know, and I was telling him what actually  
14 happened, but that was the only -- that was the only piece of  
15 evidence that they had, you know, and he was saying that -- he  
16 was saying that -- that Ed Clements was going by that  
17 regardless of -- regardless of if there -- if there's  
18 statements that was conflicting each other because that's the  
19 only information they had at the point in time.

20 Q: Okay. Now, one thing I want to ask you about, during the  
21 time this happened, were you wearing a GPS ankle monitor?

22 A: Yes, sir.

23 Q: Okay. Did you ever see any of the -- the -- the tracking  
24 data from that?

25 A: No, sir.

MONTEZ BARKER - DIRECT BY MR. WALLER

1 Q: Okay. Did you ask Mr. Meetze about it?

2 A: Yes. I asked and I asked Marshall Weaver about it, you  
3 know, and Marshall Weaver would be like he didn't want to get  
4 it because he didn't want to request for it because he would  
5 have -- he -- he would have been afraid if it would have been  
6 -- it would have been bad on my behalf and he didn't want them  
7 going to them depths. So he didn't request for it, but -- and  
8 it was never in my motion that they had it, but that's all  
9 they're saying is they had some kind of GPS pinpointing at the  
10 scene..

11 But I said that -- I was telling them about a Brady  
12 violation of that y'all didn't disclose this in my -- in my --  
13 in my motion, you know, and I was telling him -- I'm like  
14 they're saying that I -- they're saying that I didn't --  
15 they're saying that they did have it, but I was telling them,  
16 like, okay, if y'all did have it, then why didn't y'all  
17 disclose this to me because it's supposed to be a part of my  
18 evidence, you know, and I was telling them -- I'm like -- I  
19 was asking them about, well, can they get it, you know, but it  
20 never showed -- it never appeared, you know.

21 Q: Okay. So you -- let me -- let me back up just a little  
22 bit. Do you know whether or not that either Jack Lawson or  
23 Vick Meetze or Marshall Weaver filed a Rule 5 and Brady  
24 discovery motion on your behalf?

25 A: No, sir.

MONTEZ BARKER - DIRECT BY MR. WALLER

1 Q: Okay. Do you -- did you ever get a copy of -- of a  
2 discovery motion?

3 A: Yes, sir.

4 Q: Okay. But in your discovery motion, was there any GPS  
5 data?

6 A: No, sir.

7 Q: Okay. Did you ever get evaluated for competency?

8 A: Yes, sir.

9 Q: Okay. Who had you evaluated?

10 A: Well, I was -- it was Vick representing me then, and I  
11 went through Judge Russo to get the evaluation -- get it --  
12 get it approved or whatnot, but I don't know the actual  
13 doctor's name.

14 Q: Okay. Did -- are you aware of any investigator that was  
15 hired on your case?

16 A: I met him, but I never actually knew or remembered his  
17 name, you know, but I met him, like, twice before.

18 Q: Okay. Do you know what he was investigating?

19 A: I just know he was an investigator investigating for my  
20 -- for my case. I didn't know if he was investigating against  
21 me or he was for me. I just know he was an investigator. I  
22 only met him twice and that.

23 Q: Okay. When did you -- who else was there when you met  
24 with him?

25 A: Jack Lawson.

## MONTEZ BARKER - DIRECT BY MR. WALLER

1 Q: Okay. Did y'all ever talk about the procedures of a  
2 death penalty trial?

3 A: I think so. If I'm not -- I can't -- if I can recall, I  
4 think yes.

5 Q: Okay. Did y'all talk about mitigation in a death penalty  
6 setting?

7 A: Yes.

8 Q: Okay. What -- who did you talk with that about? Mr.  
9 Lawson or Mr. Meetze?

10 A: Mr. Lawson. And I had a -- a lady -- a lady was -- she  
11 was I think Ms. Childs or something like that. I think that's  
12 her name. She said she was a mitigating investigator, and we  
13 went over the case. We went over it and she was telling me  
14 about what they do with the mitigating -- during the  
15 mitigating phase of the death penalty and stuff like that.

16 Q: Okay. Did y'all talk about -- either you and her or you  
17 and Mr. Meetze or you and Mr. Weaver talk about your  
18 childhood, your background?

19 A: Yeah.

20 Q: Okay. Did y'all talk about how you did in school?

21 A: I think that's an issue that wasn't brought up though.

22 Q: Okay. Have you ever been in trouble before?

23 A: Yes.

24 Q: Okay. Why -- why did you have the ankle monitor on?

25 A: Because I had -- they said I was on supervision, intense

MONTEZ BARKER - DIRECT BY MR. WALLER

1 supervision, and they had it on me. They had it on me for six  
2 months. I had to wear the black -- black GPS for six months  
3 and pay \$60 a week for the -- for it on me for -- because I  
4 had just got -- I just had got out of SCDC for -- for a  
5 kidnapping and -- and a lynching.

6 Q: Okay. Did -- you pled guilty under *North Carolina v.*  
7 *Alford*; is that right?

8 A: Yes, sir.

9 Q: Okay. Did you and Mr. Meetze or you and Mr. Weaver  
10 discuss the ramifications of pleading guilty under *North*  
11 *Carolina v. Alford*?

12 A: To the point -- I mean they was explaining to me, like,  
13 to the point where they was saying, like, I wouldn't be -- I  
14 wouldn't -- I'm not admitting my -- admitting that I did it.  
15 I'm not saying I'm innocent or guilty, you know, but I never  
16 -- I never actually got the -- the understanding that if I --  
17 if -- have I did known that I was actually -- it was just a  
18 regular -- a guilty -- a guilty plea or just another name for  
19 it, I would have took it to trial being that I already -- I  
20 already had a -- I already been in there for 44 months in the  
21 county jail waiting to go to trial, you know, and just to say  
22 that -- just to give up my rights and just say that I'm just  
23 going to go ahead and -- and the whole time I'm telling them  
24 I'm -- I'm not guilty, you know, and I want to go to trial,  
25 you know.

MONTEZ BARKER - DIRECT BY MR. WALLER

1           So have I known that, I would have went to trial from the  
2 beginning, you know, but they was saying -- they was having it  
3 -- they was -- they -- they gave me the impression that it was  
4 just -- it was another -- a whole 'nother plea other than a  
5 guilty plea, and I didn't know that at the time.

6 Q:    Okay.  You talked a lot about trial in that last answer.  
7 Why did you ultimately plead guilty or -- excuse me -- plead  
8 under *North Carolina v. Alford*?

9 A:    Well, that's -- that's what I'm saying.  I didn't -- I --  
10 I didn't know, you know, because -- all right.  When I -- the  
11 whole time they was -- they kept coming down to see me and  
12 they was -- and both of them -- they were like, well, this  
13 should -- it will be in your best interest to plead because  
14 you still have a life, you know.  You'll still have a life and  
15 you'll still got a good life to live.  Although you're  
16 incarcerated, you still can achieve things, you know, and I'm  
17 telling them -- I'm like, man, I'm not feeling that, you know.  
18 I'm -- I feel like I should go to trial.

19           You know what I'm saying?  I feel like I can beat it like  
20 this.  You know what I'm saying?  I'm saying I would be better  
21 -- I would be better to go to trial knowing that I'm not  
22 guilty than just going and giving up my rights, you know.  But  
23 they're giving -- they're giving the insight -- they're giving  
24 me the understanding, like -- like, this would have been  
25 better than going to trial and getting found guilty because,

MONTEZ BARKER - DIRECT BY MR. WALLER

1 like, they didn't want to go to trial with me, you know.

2 Like, they just wanted to go ahead and just get this out  
3 the way, you know, and -- and instead of just -- they  
4 basically was -- they had me -- gave me the impression, like,  
5 I was going to get found guilty, you know.

6 Q: Okay. You testified earlier that you said you had just  
7 gotten out of prison?

8 A: Mm-hmm.

9 Q: What were you in prison for?

10 A: For burglary and receiving stolen goods.

11 Q: Okay. Was there a kidnapping also?

12 A: No. That happened -- that happened with -- while I was  
13 in prison.

14 Q: Okay. But were you convicted of the kidnapping?

15 A: Mm-hmm.

16 Q: Okay. In this case, did they discuss with you that the  
17 murder charges are what's considered most serious offenses?

18 A: Somewhat, yeah.

19 Q: Okay. Did you understand what that means?

20 A: That it been -- that -- that it was the worst -- the  
21 worst crime?

22 Q: Yes, sir. Did y'all ever talk about the strike system?

23 A: I had got a -- I -- they gave me a -- they gave me a  
24 strike when I had got -- got my kidnapping charge. They gave  
25 me one strike.

MONTEZ BARKER - DIRECT BY MR. WALLER

1 Q: Okay. Did you and Mr. Meetze or you and Mr. Weaver or  
2 really you and Mr. Lawson talk about that what were you  
3 charged with is also a strike?

4 A: I don't recall really.

5 Q: Okay.

6 A: I don't recall.

7 Q: Okay. When -- you testified that Mr. Meetze and Mr.  
8 Weaver kept saying it was in your best interest. What were  
9 they basing that on?

10 A: Like, they was saying that this is strong -- like, this  
11 is strong -- strong evidence against me, you know, and I was  
12 telling them, like -- but I'm like, man, just look at the  
13 statements. I said -- I was telling them -- I'm like -- I  
14 said being that I had a GPS on, I said that just -- that just  
15 don't make me guilty, you know, and I was telling them -- I'm  
16 like -- because I'm like -- they was still -- they was going  
17 by -- they was telling me about the -- the -- the -- the --  
18 the -- the co-defendant's statements, you know.

19 They was still going by that, and I was telling them that  
20 statements just -- they don't even add up. I mean you could  
21 clearly see that the statements is not adding up, you know,  
22 but it was, like, they wouldn't actually -- they was really  
23 more -- more concerned about the GPS than the statements, you  
24 know.

25 Q: Okay. Mr. Barker, I've asked you all the questions that

MONTEZ BARKER - DIRECT BY MR. WALLER

1 I have. Is there anything that you think I've left out that  
2 you want the Court to be aware of about Mr. Meetze and his  
3 representation of you?

4 A: Well, I just feel like -- you know, I feel like it would  
5 have been better have I known that -- you know, like, it would  
6 have been better have -- have I been more aware of the *Alford*  
7 -- the *Alford* plea. It would have been better that I had  
8 known that I was pleading guilty, you know, just -- just  
9 knowing I'm pleading guilty and then -- then it would have  
10 been better knowing it for me knowing that I could have went  
11 ahead and took my -- took my case to trial and got probably a  
12 better shot than just giving up all my rights and not knowing  
13 at all.

14 Q: Okay. So it's your testimony that you didn't understand  
15 that an *Alford* plea was like a guilty plea?

16 A: Right.

17 Q: Okay. And is it also your testimony that you -- had you  
18 known that, you would not have pled guilty?

19 A: Right.

20 Q: What would you have done if you had known that?

21 A: I would have went to trial.

22 Q: Okay. I don't have any further questions. Please answer  
23 any questions that Mr. Thomas has.

24 A: Yes, sir.

25 MR. THOMAS: May it please the Court?

26

MONTEZ BARKER - CROSS BY MR. THOMAS

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. THOMAS:

4 Q: Mr. Barker, you said you had about six or seven meetings  
5 with Mr. Meetze?

6 A: Right.

7 Q: You also had some meetings with Mr. Lawson as well --

8 A: Right.

9 Q: -- before Mr. Meetze was your attorney?

10 A: Right.

11 Q: And it seems from your direct testimony you're pretty  
12 familiar with the evidence the State had against you?

13 A: Right.

14 Q: So they explained to you that there was this GPS  
15 information that tracked you not only to the scene of the  
16 murder but to the scene of the arson?

17 A: No.

18 Q: They never told you that?

19 A: No.

20 Q: So you didn't know that the GPS monitoring tracked you to  
21 the murder and to the arson?

22 A: No, I didn't. Because I was wondering. See, I had got a  
23 -- I had got a -- I had got a -- a -- a -- a -- a warrant for  
24 it, you know, but I was always -- I was concerned about  
25 whether I or my co-defendant both had got a warrant for it

MONTEZ BARKER - CROSS BY MR. THOMAS

1 because they did charge us -- they charged -- both of us  
2 charged for murder, but why -- I was wondering whether they  
3 charged him for the -- for -- for the same thing they charged  
4 me with it.

5 Q: Let me back this up then. You knew you were charged with  
6 murder?

7 A: Mm-hmm.

8 Q: Okay. And Mr. Meetze explained those charges to you at  
9 some point?

10 A: Mm-hmm.

11 Q: And you talked about how you kept telling him that the  
12 co-defendant's statements weren't right?

13 A: Right.

14 Q: So you gave him your version of what happened that day?

15 A: Right.

16 Q: Okay. And you talked about how you didn't understand the  
17 severity of the charges? Is that what you said on direct  
18 examination?

19 A: I said -- I said I didn't know that it was most serious  
20 that it was at the time, but I wasn't -- I didn't have --  
21 like, then I didn't -- they wasn't -- they didn't, like,  
22 present me with the thing about the death penalty and all of  
23 that, you know.

24 Q: But you were eventually served with the death penalty  
25 notice?

MONTEZ BARKER - CROSS BY MR. THOMAS

1 A: Right.

2 Q: Okay. And you talked about the strikes. Is that kind of  
3 what you're talking about? Most serious and least serious  
4 offense?

5 A: They gave me --

6 Q: Serious and most serious?

7 A: They gave me -- they gave me a strike when I had -- when  
8 I had all my kidnapping, but I wasn't -- I wasn't actually --  
9 like, I'm not familiar with the strike law that good though.

10 Q: But do you remember at your plea Judge Russo explained it  
11 to you that this was going to count as a strike against you?

12 A: I can't recall. I'm not saying yes or no. I can't  
13 recall.

14 Q: That's fine. That's a fair answer. You're saying --  
15 basically what you're saying is you just didn't understand  
16 that this was a -- you didn't understand the difference  
17 between an *Alford* plea and a guilty plea?

18 A: Right.

19 Q: Okay. Do you remember Judge Russo having a discussion  
20 with you about the *Alford* plea at the hearing -- at the plea?

21 A: Yeah. But at the same time, it was -- like, I was -- it  
22 was -- I was listening to so much and I was taking so much in  
23 and I wasn't remembering everything that he was telling me,  
24 and that's all I'm hearing is -- I'm hearing new -- I'm  
25 hearing new things. So I'm not actually too familiar with the

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1 law to know that what he's saying to me and what he's not  
2 saying to me is -- I'm not taking it all in, you know. I'm  
3 hearing it, but I -- it's a lot of stuff that I wasn't  
4 remembering.

5 Q: So your testimony here today is had you known that an  
6 *Alford* plea was just like a guilty plea, you would not have  
7 pled guilty?

8 A: Exactly.

9 Q: You would have gone to trial facing the death penalty?

10 A: I would have faced the death penalty like I told -- like  
11 -- because I told him. I said I preferred -- I preferred to  
12 die for something that I know that I'm innocent of rather than  
13 plead guilty for something that I know that I didn't do.

14 Q: You were evaluated? You said you went and had an  
15 evaluation done in this case?

16 A: Yes, sir.

17 Q: Do you remember that evaluation came back and said you  
18 were malingering?

19 A: I was kind of -- I kind of -- I don't really know what  
20 the word mean, but I kind of -- I kind of remember that  
21 though.

22 Q: Okay. They said you were faking it, didn't they?

23 A: I never asked them what the -- what the word meant.

24 Q: Okay. Thank you, Mr. Barker. That's all I have.

25 THE COURT: Mr. Waller?

26

VICK MEETZE - DIRECT BY MR. THOMAS

1 MR. WALLER: Your Honor, I have no further questions.

2 THE COURT: Sir, you may step down. Thank you.

3 MR. WALLER: Your Honor, the applicant rests.

4 THE COURT: All right.

5 MR. THOMAS: The State would call Mr. Meetze to the  
6 stand.

7 THE COURT: Mr. Meetze?

8 THE CLERK: Do you swear or affirm that the testimony you  
9 are about to give will be the truth, the whole truth, and  
10 nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please take your seat and state your name for  
13 the record.

14 THE WITNESS: My name is Vick Meetze.

15 MR. THOMAS: May it please the Court?

16 THE COURT: Yes, sir.

17 VICK MEETZE, being first duly sworn,  
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THOMAS:

21 Q: Mr. Meetze, how long have you been practicing law?

22 A: Since 1999, which I guess is 16 years.

23 Q: Okay. And how did you become involved in Mr. Barker's  
24 case?

25 A: I was appointed by Judge Russo after his initial

VICK MEETZE - DIRECT BY MR. THOMAS

1 appointed attorney passed away.

2 Q: And at the time you were appointed, had you been  
3 practicing -- or how long had you -- how long had you been  
4 practicing at that point?

5 A: I guess that was in 2011; so about twelve years.

6 Q: And how many years of that were criminal work?

7 A: Nine.

8 Q: So did Mr. Lawson file the Rule 5 in this case?

9 A: He did.

10 Q: Did you review all the State's response to that?

11 A: Yes, sir.

12 Q: And sort of, in a nutshell, what was the State's evidence  
13 against Mr. Barker?

14 A: Well, I guess it's hard to put it in a nutshell in a case  
15 like this, but there was an old murder out on Isaiah Road in  
16 Florence County that they were able to track a phone -- some  
17 phone records from a local restaurant called Carroll's that  
18 was run by one of the victims' families. That phone number  
19 was traced to a female. They had located that female. That  
20 female indicated to them, yes, that's a phone that was in her  
21 name, but it's actually my ex-boyfriend's phone, whose name is  
22 LaRoss Graham. That led them to LaRoss Graham, who is one of  
23 the three co-defendants in the case.

24 Upon speaking to LaRoss Graham, he gave a statement  
25 implicating Mr. Barker in the case. His initial statement was

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1 -- and I think everybody, the State and defense as well, would  
2 agree that his initial statement was extremely self-serving  
3 and clearly by reading it was full of what I would call  
4 untruths.

5 But he did give a subsequent statement that placed more  
6 responsibility on himself, but still indicated that Mr. Barker  
7 was the shooter in the case and that this was a murder-for-  
8 hire scheme that was hatched by Fannelze Delaine, who the  
9 State had serious drug distribution charges against, and the  
10 victims in the case were alleged to have been the -- or one of  
11 the victims was alleged to have been the confidential  
12 informant in that case, and Mr. Delaine wanted them out of the  
13 picture, so to speak, so that he would not be able to be  
14 prosecuted on his distribution charges.

15 Mr. Barker did have an ankle monitor on and that's --  
16 once they got his name, they were able to find that  
17 information out. That's how they caught him. They were able  
18 to track his whereabouts and have him -- they were sort of  
19 waiting at his residence or near his residence and were able  
20 to track him there and being told, you know, how far off he  
21 was according to the GPS monitoring.

22 And they also did have GPS monitoring sheets that we had  
23 as part of discovery that showed his latitude and longitude on  
24 different dates and times and all that, including the time of  
25 the -- the murder, and what his location was. And that was

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1 able to be corroborated with the time of the murder because  
2 the female victim in the case did not die right away and she  
3 placed a cell phone call to 9-1-1 as she lay dying, and they  
4 were able to pinpoint the pretty exact time of murder based on  
5 that and be able to relate that to the times on the GPS form  
6 to show that Mr. Barker was at that scene at the time that  
7 call was made.

8 Q: So it's safe to say that the best evidence against him  
9 was these statements and this GPS information?

10 A: Yes, I would say so.

11 Q: What were your discussions with him about the statements  
12 specifically?

13 A: Well, certainly, the first statement that Mr. Graham gave  
14 was full of things that would be ripe for cross-examination  
15 because they had -- they lacked credibility entirely. And I  
16 have no doubt if we had gone to trial, he would have admitted,  
17 yes, I gave that statement and, yes, I wasn't telling the  
18 truth when I gave that statement because he did give a  
19 subsequent statement, which again it didn't -- it still had  
20 some self-serving aspects to it, but it placed more  
21 responsibility on himself. He accepted the money.

22 Mr. Barker got no money. He -- you know, when he  
23 reported back to Mr. Delaine that his orders had been carried  
24 out, he did so as if he's the one that did it and he's the one  
25 that got the money from Mr. Delaine. Mr. Barker didn't get

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1 any -- any money at all.

2 Mr. Barker had no -- there was no connection between Mr.  
3 Delaine and Mr. Barker, no evidence to show, and the State  
4 admitted this during -- or talked about this during -- during  
5 the plea. He had not had any -- there was no connection  
6 between those two.

7 Mr. Graham and Mr. Delaine were both from, like,  
8 Darlington County area and I think had gone to school  
9 together. There was a lot of evidence connecting them. Mr.  
10 Delaine had a recording studio in Florence that Mr. Graham was  
11 at a lot and things like that, and there were other folks  
12 involved from a standpoint of getting rid of a gun, the  
13 payment of the money, and things like that, but anyway, you  
14 know, there wasn't any connection between Mr. Barker and Mr.  
15 Delaine, but there was still obviously evidence of his  
16 involvement in -- at the very least in an accomplice liability  
17 type of thing.

18 Q: And I guess that would be my follow-up to that. Did you  
19 explain the hand of one to him?

20 A: Yes, sir. Absolutely.

21 Q: And did y'all discuss the GPS information that you had?

22 A: We did.

23 Q: Did you do anything else in terms of investigating that  
24 GPS?

25 A: No, sir.

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1 Q: Did you talk to -- I guess I'm asking you did you speak  
2 with any of the probation officers or whoever?

3 A: Well, I did. I talked with Scott Nutter just as a  
4 conversation about any other -- you know, how -- I guess how  
5 it works and how they're able to find that out, but I didn't  
6 get anything in writing as far as all that goes. But I did  
7 talk to Mr. Nutter about -- about how that worked. I had been  
8 told that he was the one at the time in the probation office  
9 that -- that monitored that kind of thing, the GPS and folks  
10 they were supervising when they had the GPS monitoring on  
11 there.

12 Q: And this was a death penalty case?

13 A: Yes, sir.

14 Q: Were you actually served with the death penalty notice or  
15 was Mr. Lawson?

16 A: Mr. Lawson.

17 Q: Okay. But you had a copy of that?

18 A: Yes, sir.

19 Q: Did you ever -- I guess let me ask you this. You fully  
20 explained the severity of the charges to Mr. Barker?

21 A: Yes, sir.

22 Q: Okay. How does your preparation for -- for a plea or for  
23 a trial, how does that differ for a death penalty versus a  
24 non-capital case?

25 A: Well, I mean as Mr. Barker said, I mean this was in a

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1 trial posture from the time I was appointed up until, you know  
2 -- you know, Mr. -- when I first got appointed, we had --  
3 discovery-wise, we had about the same amount of discovery as  
4 we would have in about any case, which is, you know, not  
5 typical for a death penalty case, and later on we got a lot  
6 more discovery.

7         They didn't indict the case -- even though it happened I  
8 think in September of 2009, it wasn't indicted until much  
9 later than that. It had not been indicted yet by the time I  
10 got on the case, and it was two years old when I got on the  
11 case. It was probably the next summer before we got an  
12 indictment, and at the time the indictment was -- was  
13 presented is about the time when we got a much larger  
14 avalanche of discovery and things like that.

15         But, you know, you're working two different aspects.  
16 You're working on the phase of the trial where a jury  
17 determines guilt or -- guilty or not guilty, plus you've got a  
18 mitigation investigator working to -- into Mr. Barker's  
19 background to try to come up with some evidence to present in  
20 the penalty phase. So, you know, in the trial posture, you're  
21 focusing on two different -- two different things.

22         We went as a team to death penalty seminars where the --  
23 where you would spend time just working on your case and  
24 working and that kind of thing, but once, you know, Mr.  
25 Clements made the offer to -- a trial date had been set for

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1 October of -- I guess it was 2012 or '13, but it had been set.  
2 And Mr. Clements made the offer to me that he would allow Mr.  
3 Barker to plead basically straight up leaving the sentencing  
4 up to the judge where we could ask for something other than  
5 life essentially, and that the death penalty would not be on  
6 the table at that point in time.

7 I spoke with Mr. Barker about that, and we had spoken in  
8 the past about that, just sort of a -- you know, if they give  
9 you this opportunity kind of thing. He always maintained that  
10 he wanted a trial. He wanted a trial, but once we were able  
11 to speak to him with the actual offer, all right, now you have  
12 this opportunity, you know, he -- he decided he wanted to take  
13 it.

14 And initially, the conversation was not with regards to  
15 an *Alford* plea. That was sort of decided the day of the plea  
16 during a -- during a chambers meeting with Judge Russo.  
17 Decided to do that, and I explained that to him and he -- Mr.  
18 Barker, when I say explained that to him. I explained it to  
19 Mr. Barker. He understood that and felt like that was the  
20 best way to move forward.

21 I have no question in my mind that he was fully explained  
22 and fully understood the nature of an *Alford* plea, that it was  
23 a conviction just as if he was pleading guilty. He understood  
24 the consequences. There's not any question in my mind about  
25 all that.

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1 Q: And Judge Russo went over that with him again anyway?

2 A: He did, in detail.

3 Q: Would you say you -- well, let me ask you this. Did you  
4 have him evaluated?

5 A: He was evaluated.

6 Q: And what was the result of that evaluation?

7 A: He was found competent to stand trial.

8 Q: And did you make that part of the record at the plea?

9 A: It was. And just before the plea, we had the Blair  
10 hearing in regards to that, and they had the mental health  
11 professionals that did the evaluation there to testify and all  
12 that. So I don't think that's in the transcript that we have  
13 here, but that was -- that hearing was held not long before,  
14 certainly the same day as the plea was held.

15 Q: And as far as any sort of a meeting before the plea,  
16 what's your standard practice in large cases to do immediately  
17 before a plea?

18 A: Typically, I do -- I go over with my clients for serious  
19 cases a plea affidavit that goes over with them all of the  
20 important things with regards to a plea, all of the collateral  
21 consequences that go along with a plea. Typically, the way I  
22 do that is I'll be the one reading the questions to them and I  
23 will let them answer, but I will be the one that actually  
24 marks the answer on the sheet on the form. But we'll go over  
25 those one by one, marking his answers, and then give him the

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1 opportunity to look through that to make sure that those  
2 answers that have been marked are indeed his answers.

3         And then he signs saying -- when they sign, they're  
4 saying, yes, that I've been over this form with my attorney,  
5 that these are my answers, and that they're true. And I also  
6 sign an affidavit as well indicating that I'm the attorney,  
7 that I've been over these things with him, and that kind of  
8 thing. And that was done in this case.

9 Q: Thank you, Mr. Meetze. That's all I have for you. I'll  
10 let you answer any questions Mr. Waller has.

11         THE COURT: Mr. Waller?

12         MR. WALLER: Thank you, Your Honor. Just briefly.

13                                 CROSS-EXAMINATION

14 BY MR. WALLER:

15 Q: Mr. Meetze, I believe you testified you've been  
16 practicing since 1999?

17 A: Yes. I'm trying to think. I passed the bar in May of  
18 '99. I was still clerking for Judge Brogdon then, and I  
19 started with the Solicitor's Office in York County in August  
20 of '99.

21 Q: Okay. And you -- you are qualified to try a death  
22 penalty case?

23 A: Yes, sir.

24 Q: Okay. Do you know if Marshall Weaver was qualified?

25 A: I don't think he was, and I don't -- you know, and I may

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1 be wrong. To be second chair, I don't think you have to be  
2 qualified. I think that the second chair can be appointed as  
3 long as whoever is the first chair on the death penalty --  
4 that's the only one I think that has to be death-penalty  
5 certified. If I'm wrong about that, I apologize. I'm not  
6 trying to mislead anybody. But -- but I don't think Mr.  
7 Weaver had actually been certified at that time because you  
8 have to have been doing felony cases for five years and I  
9 don't think he was, but --

10 Q: Okay. When were you qualified?

11 A: I was qualified probably in 2007.

12 Q: Okay. Have you tried a death penalty case at this time?

13 A: I have not.

14 Q: Okay. How long have you been -- I know you said you were  
15 in York County. How long have you been in Florence County?

16 A: Since 2006.

17 Q: Okay. To your knowledge, has there been a death penalty  
18 case tried in Florence County?

19 A: Not since I've been here, and that's really all I can  
20 attest to. I -- you know, the current solicitor was elected  
21 in 1998. I'm not aware of a death penalty case that would  
22 have been tried since he was elected, but as far as since 2006  
23 when I started working here, there has not been any that have  
24 gone to trial. There have been a few that have been served  
25 notice, but -- but none have been tried as a death penalty

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1 case.

2 Q: Okay. And is it safe to say that even if your office  
3 wasn't involved, you would have heard about one that would  
4 have been tried here?

5 A: Certainly.

6 Q: Okay.

7 A: That's fair to say.

8 Q: Okay. You testified that Mr. Barker always wanted a  
9 trial; is that right?

10 A: Yes. Until he was confronted with the actual option.  
11 Here is -- you have an opportunity. The State will allow you  
12 to plead without, you know, the death penalty and basically  
13 with an open plea understanding that open for a murder means  
14 30 to life, and he -- he decided to do that. I mean, you  
15 know, that was his decision.

16 Q: Okay.

17 A: But before that, he had -- he had resisted saying that he  
18 would do that.

19 Q: Okay. And that leads into my next question. You  
20 testified that once the offer was in your hand, he agreed to  
21 plead guilty and that the *Alford* part of it came later; is  
22 that -- is that correct?

23 A: Right.

24 Q: Okay. Why did the *Alford* come up?

25 A: Well -- and I can't remember if the solicitor was in --

VICK MEETZE - CROSS BY MR. WALLER

1 in there or not because when you have a death penalty case,  
2 there are certain -- certain aspects of that where *ex parte*  
3 communications are -- are allowed, and I don't remember if Mr.  
4 Clements was in there, but anyway, I was talking about the  
5 case overall with Judge Russo, and Judge Russo suggested, you  
6 know, if you've got any concerns essentially as to whether or  
7 not the plea would go forward or, you know, go through as a  
8 guilty plea, we could do it as an *Alford* plea.

9         And I said, well, if Mr. Clements doesn't have a problem  
10 with that, we'll see if -- if he wants to do that. Mr.  
11 Clements didn't have a problem with it, and I talked to Mr.  
12 Barker to see if he felt more comfortable going forward with  
13 the plea as an *Alford* plea and explaining to him that in doing  
14 so -- and that in my mind because he had always told me that  
15 he was not guilty, you know, that if he was more comfortable  
16 going forward that way and I explained to him the nature of an  
17 *Alford* plea, he indicated that he would be more comfortable  
18 doing it that way, and that's how we proceeded.

19 Q: Okay. But before that, it was your understanding that he  
20 was going to plead to a -- under a regular guilty plea?

21 A: I think so. That's the way I recall it. I don't think  
22 that I had talked to him about it being an *Alford* plea until  
23 the day of the plea.

24 Q: Okay. Did he hesitate or any -- how fast was his  
25 reaction once the *Alford* plea was an -- was an option?

VICK MEETZE - CROSS BY MR. WALLER

1 A: He didn't hesitate at all, and he didn't hesitate at all  
2 during the -- during the plea colloquy with the judge. It was  
3 a very smooth plea. I would describe it as that.

4 MR. WALLER: No further questions. Thank you.

5 THE COURT: Anything further?

6 MR. THOMAS: No redirect.

7 THE COURT: Sir, you may step down.

8 THE WITNESS: Thank you, Your Honor.

9 MR. THOMAS: That's all from the State.

10 ARGUMENTS OF COUNSEL

11 THE COURT: Mr. Waller, anything by way of argument?

12 MR. WALLER: Yes, sir, Your Honor. Your Honor, both the  
13 applicant and Mr. Meetze testified here.

14 The applicant testified that he did not understand what  
15 an *Alford* plea entailed. He testified that he was represented  
16 by the Public Defender's Office for a period of 44 months I  
17 believe it was before he actually entered into his plea, and  
18 that he always wanted a trial until the *Alford* plea was an  
19 option.

20 Mr. Meetze testified that he was going to plead guilty to  
21 these charges and then changed to an *Alford* plea later on when  
22 it was an option. Your Honor, I contend that would indicate  
23 that Mr. Barker did not understand what the *Alford* plea was  
24 and that he thought it was something different than a guilty  
25 plea.

1           Your Honor, I would also -- Mr. Meetze testified that  
2 since he's been here in 2006 there has not been a death  
3 penalty case tried. I would contend that it's not necessarily  
4 realistic that this case would have made it to trial in the  
5 death penalty posture. And so Mr. Meetze and Mr. Weaver were  
6 unable to properly advise Mr. Barker as to a death penalty  
7 trial.

8           THE COURT: All right.

9           MR. THOMAS: Briefly, Your Honor.

10          THE COURT: Yes, sir.

11          MR. THOMAS: Again, I'll note that -- and I don't have  
12 the case law off the top of my head, but I know that there's  
13 no constitutional right to be explained the possibility of an  
14 *Alford* plea. Mr. Meetze's testimony was clear this plea was  
15 offered, it was accepted, and it was scheduled for a hearing.  
16 The *Alford* was a last-minute addition. I think the evidence  
17 is clear that Mr. Barker would have pled guilty either way to  
18 get the death penalty off the table.

19          And I would also note that on page 11, line 9, of the  
20 transcript, Judge Russo explains *Alford* and all of its  
21 trappings to Mr. Barker. So he has -- I would contend he  
22 hasn't met his burden on that one.

23          Mr. Meetze has -- Rule 421 of the Appellate Court Rules  
24 is the qualifications for death penalty cases. Mr. Meetze was  
25 qualified. At the time of this plea, I believe Mr. -- Mr.



1 even getting to the second prong of the requirements under the  
2 law.

3 Therefore, applicant's request for post-conviction relief  
4 is hereby denied.

5 All right. Anything further, Mr. Waller?

6 MR. WALLER: Nothing further, Your Honor.

7 THE COURT: Mr. Thomas?

8 MR. THOMAS: Nothing, Your Honor.

9 THE COURT: All right. Anything before we break for the  
10 balance of the day?

11 MR. HUNTER: No, Your Honor.

12 THE COURT: All right.

13 (WHEREUPON, the proceedings ended at 3:46 p.m.)

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15 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina )  
 ) Certificate  
County of Florence )

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 39 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 15th day of April, 2015.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina  
July 11, 2015

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF FLORENCE ) FOR THE TWELFTH JUDICIAL CIRCUIT

Montez M. Barker, #277819, ) Case No. 2014-CP-21-436

Applicant,

v.

State of South Carolina,

Respondent.

**FILED**  
2015 JUN -1 PM 2:25  
CONNIE REEL-SHEPARD  
CCCP & GS  
FLORENCE COUNTY, SC

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 21, 2014. Respondent made a timely Return on or about June 24, 2014. The Court convened an evidentiary hearing into the matter on April 15, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, William V. Meetze, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In July 2012, the Florence County Grand Jury indicted Applicant for conspiracy, grand larceny, third degree arson, and two (2) counts of murder (2012-GS-21-896). Jack W. Lawson, Jr., Esquire, William V. Meetze,

CERTIFIED: A TRUE COPY

*Connie Reel Sheppard*

CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Esquire (“plea counsel”), and Marshall S. Weaver, Esquire, represented Applicant. On September 20, 2010, the State served Applicant and his attorneys with a notice of intent to seek the death penalty. On May 8, 2013, Applicant entered an Alford<sup>1</sup> plea to all charges as indicted. In exchange for the plea, the State withdrew its notice of intent to seek the death penalty. The Honorable Thomas A. Russo sentenced Applicant to consecutive terms of life without the possibility of parole on each count of murder, five years for conspiracy, ten years for grand larceny, and ten years for third degree arson.

Applicant filed a timely appeal from his plea, but the South Carolina Court of Appeals dismissed the order pursuant to Rule 203, SCACR, on September 5, 2013. The Court of Appeals returned the remittitur to the circuit court on October 4, 2013.

## **II. ALLEGATIONS**

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

1. “Ineffective assistance of counsel”
2. “Involuntarily and unintelligently plea”

At the evidentiary hearing, Applicant proceeded on only allegations his guilty plea was involuntary for the following reasons:

1. Plea counsel failed to advise him of the nature of an Alford plea.
2. Plea counsel failed to review GPS tracking evidence with him.
3. Plea counsel was not qualified to handle a death penalty case.

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

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**A. Summary of Testimony**

Applicant testified Mr. Lawson was his initial attorney. Applicant testified he did not understand the severity of his charges until served with the death penalty notice because Lawson told him he could only get thirty years. Applicant recalled meeting with plea counsel six or seven times prior to the plea. He recalled discussing the State's evidence with plea counsel at these meetings. Nevertheless, Applicant testified he did not have any knowledge of the GPS tracking data that showed him at the location of the murder and the arson. He testified when he asked about it, Mr. Weaver told him that data would only further implicate him in the crimes. Applicant also testified he explained to plea counsel that his co-defendant's statement was not accurate. He recalled explaining to plea counsel exactly what happened the day of the murders. Applicant testified he believed plea counsel was not qualified to handle a death penalty case. However, he recalled meeting with an investigator and a mitigation specialist to discuss his childhood and background. Applicant recalled discussing the nature of an Alford plea to the extent he understood it did not require an admission of guilt. However, Applicant maintained he would not have entered his plea if plea counsel had further explained the nature of an Alford plea.

Plea counsel testified he has been a practicing attorney since 1999, and had been a public defender for nine years at the time he was appointed to Applicant's case. He testified he became certified to handle death penalty cases in 2007, although no death penalty trials had occurred during his time as a public defender. Plea counsel recalled being appointed after Lawson's

health left him unable to practice law. He recalled meeting with Applicant and explaining the State's evidence to him. Plea counsel testified he discussed the GPS data and the co-defendant's statements with Applicant. He recalled explaining to Applicant he could still be guilty under the "hand of one" theory even if the co-defendant was the shooter. Plea counsel recalled devoting significant time to preparation for this case because it was noticed as a death penalty case. He testified he attended death penalty seminars, retained an investigator, and retained a mitigation expert. He also recalled having Applicant evaluated. Plea counsel recalled Applicant initially wanted a trial on these charges, but changed his mind when the State offered to allow him to enter a plea in exchange for withdrawing the death penalty notice. Plea counsel testified Applicant was initially planning to enter a guilty plea, but Judge Russo indicated the morning of the plea that he would accept an Alford plea. Plea counsel recalled explaining the nature of an Alford plea to Applicant. He also recalled Judge Russo giving Applicant the same explanation. Plea counsel testified Applicant never indicated he was uncomfortable with the Alford plea. Plea counsel testified Applicant completed a plea affidavit prior to the plea and the affidavit was entered as a court's exhibit at the plea.

#### **B. Involuntary Guilty Plea**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). In post-conviction relief cases, an applicant asserting his guilty plea was involuntary must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant

who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel's advice was deficient and (2) there is a reasonable probability that, but for counsel's deficient advice, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52 (1985); Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56 (quoting McMann v. Richardson, 397 U.S. 759 (1970)). However, the Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

The Court finds Applicant failed to meet his burden to show his guilty plea was rendered involuntary by plea counsel's performance. Applicant's allegation he was not advised of the nature of an Alford plea is without merit. Regarding this allegation, the Court finds plea counsel's testimony credible and gives it great weight. Correspondingly, the Court finds

Applicant's testimony not credible. An Alford plea is virtually indistinguishable from a guilty plea. See, e.g., State v. Herndon, 403 S.C. 84, 95, 742 S.E.2d 375, 381 (2013) (“[A]n Alford plea is merely a guilty plea with the gloss of judicial grace allowing a defendant to enter a plea in her best interests. Moreover, the defendant entering an Alford plea is still treated as guilty for the purposes of punishment, and simply put, is not owed anything merely because the State and the court have agreed to deviate from the standard guilty plea.”). Plea counsel fully advised Applicant that his Alford plea would be treated as a guilty plea for all intents and purposes. Accordingly, Applicant has failed to demonstrate plea counsel's advice was deficient in any way. Furthermore, Judge Russo fully explained the nature of an Alford plea to Applicant, and Applicant voiced no mis-understanding at that stage. (Plea Tr. p. 11, line 9-p. 12, line 13). Thus, any misconceptions he may have had about the consequences of his plea were cured by the plea colloquy. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citing Bennett v. State, 371 S.C. 198, 638 S.E.2d 673 (2006); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)).

Applicant's allegation he did not review the GPS tracking evidence before his plea is likewise without merit. Regarding this allegation, the Court again finds plea counsel's testimony credible and Applicant's not credible. Plea counsel discussed all of the State's evidence with Applicant, including the GPS data and the co-defendant's statements. Thus, Applicant had a full understanding and awareness of the fact the GPS tracking data indicated he was at the scene of the murder and the arson. See Hyman v. State, 397 S.C. 35, 46-49, 723 S.E.2d 375, 381-82 (2012) (court unwilling to “assume that the Constitution requires disclosure of Brady evidence to

a criminal defendant personally” especially where he “was fully aware of the inculpatory nature of the [evidence]”).

Applicant’s allegation plea counsel was not qualified to handle a death penalty case is also without merit. The Court finds plea counsel’s testimony on this issue credible. The Court finds Applicant’s testimony neither credible nor supported by the record. Lead counsel in a death penalty case must have five years experience as an attorney and three years experience trying felony cases. Rule 421, SCACR. Plea counsel was clearly qualified under the rule. Furthermore, plea counsel’s testimony demonstrates he conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Therefore, Applicant has failed to demonstrate how plea counsel was deficient in his representation, especially in light of the overwhelming evidence of Applicant’s guilt. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show “something that would have affected counsel’s advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”).

#### **C. All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

#### **IV. CONCLUSION**

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. The record before the Court demonstrates Applicant’s guilty plea was freely, knowingly,


voluntarily, and intelligently entered. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

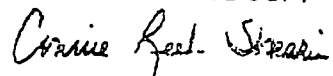
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1<sup>st</sup> day of June, 2015.

  
 THE HONORABLE D. CRAIG BROWN  
 Presiding Judge  
 Twelfth Judicial Circuit

Florence, South Carolina

FILED  
 2015 JUN -1 PM 2:25  
 CONNIE REEL-SHEPARD  
 C.C.P. & G.S.  
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY  
  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

WITNESSES

Chad Collins  
Florence County Sheriff

DOCKET NO. 2012-GS-21-00896

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE

vs.

MONTEZ MYIHARELL BARKER

E. L. Clements, III

ARREST WARRANT NUMBER

M280053 M280054 M280061

2012GS2100896A 2012GS2100896B

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *Kimberly Bynell*  
Date: *7-15-12*

VERDICT

Foreperson of Petit Jury

Date:

140

Indictment for  
MURDER (TWO COUNTS),  
CONSPIRACY,  
GRAND LARCENY,  
AND  
ARSON THIRD DEGREE

2012 JUL 19 AM 11:09  
COCKIE REEL-SWEARIN  
COOP 2 CS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
*Carmelita...*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )

INDICTMENT FOR  
 MURDER (TWO COUNTS), CONSPIRACY,  
 GRAND LARCENY, AND ARSON THIRD DEGREE

At a Court of General Sessions, convened on JULY 19, 2012 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE - MURDER**

CDR: 0116 16-03-0010, 0020, 16-01-0060

That MONTEZ MYIHARELL BARKER did in Florence County on or about September 01, 2009, feloniously, willfully and with malice aforethought kill one Billy Lee Hall, II, by means shooting said victim, Billy Lee Hall, II in the back of the head with a handgun, and that the said Billy Lee Hall, II did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT TWO - MURDER**

CDR: 0116 16-03-0010, 0020, 16-01-0060

That MONTEZ MYIHARELL BARKER did in Florence County on or about September 01, 2009, feloniously, willfully and with malice aforethought kill one Talya Jeanette Poston, by means of shooting said victim, Talya Jeanette Poston with a handgun, and that the said Talya Jeanette Poston did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT THREE - CONSPIRACY**

CDR: 0049 16-17-0410

That MONTEZ MYIHARELL BARKER did in Florence County on or about July 14, 2009 to September 01, 2009, unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among LAROSS ANTONIO GRAHAM and/or FONNELEZE TRAVIS DELANE, and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Murder of Billy Lee Hall, II and/or Talya Jeanette Poston; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

RECEIVED  
 JUDGE  
 2012 JUL 19 10 58 AM  
 FLORENCE COUNTY

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER (TWO COUNTS), CONSPIRACY, GRAND LARCENY, AND ARSON THIRD DEGREE, WITH THE AFORESAID NAME(S) OF MONTEZ MYIHARELL BARKER SHOWN THEREON:

**COUNT FOUR – GRAND LARCENY**

CDR: 3420                      16-13-0030(B)(1)

That MONTEZ MYIHARELL BARKER did in Florence County on or about September 01, 2009, feloniously take and carry away the personal goods of Billy Lee Hall, II and/or Talya Jeanette Poston, of the value of more than two thousand dollars but less than ten thousand dollars, to wit: a 2004 Ford Explorer, with the intent to deprive the owner thereof permanently of such goods; in violation of Section 16-13-0030(B)(1), S.C. Code of Laws, 1976, as amended.

**COUNT FIVE – ARSON THIRD DEGREE**

CDR: 0008                      16-11-0110(C)

That MONTEZ MYIHARELL BARKER did in Florence County on or about September 04, 2009, feloniously, willfully and maliciously cause an explosion, set fire to, burn or cause to be burned, or aided, counseled, or procured the burning of a 2004 Ford Explorer belonging to Billy Lee Hall, II and/or Talya Jeanette Poston; in violation of Section 16-11-0110(C), S.C. 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.



---

**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 143

COUNTY OF Florence
STATE VS.
Montez Myhrell Barker
AKA:
Race: B Sex: M Age: 28
DOB: SS#:
Address:
City, State, Zip: Florence, SC 29501
DL#: SID#:

INDICTMENT/CASE#: 2012-GS-21-00896
A/W#: M280053
Date of Offense: 9/1/2009
S.C. Code §: 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Clements, III, E. L. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of Life w/o Parole 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
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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:

Table with columns for assessment type, amount, and total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (DUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), and TOTAL \$105.00.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.
Presiding Judge Judge Code: 2141 Sentence Date: 5-8-2013

Clerk of Court/ Deputy Clerk: Kema Thomas
Court Reporter:
SCCA/217 (03/2011)

CERTIFIED: A TRUE COPY
Clerk of Court - Special
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence

STATE VS.

Montez Myhrell Barker

AKA:

Race: B Sex: M Age: 28

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Florence, SC 29501

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder / Murder

INDICTMENT/CASE#: 2012-GS-21-00896

A/W#: M280054

Date of Offense: 9/1/2009

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS: Clements, III, E. L. SC Bar# 15295 Montez Barker Defendant UdeMata Attorney for Defendant SC Bar# 15871

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Life w/o Parole 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: Counts 1, 3, 4, 5 (M280054, 2012GS2100896)

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.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered 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:

Table with 3 columns: Description, Amount, Total. 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, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL \$10500

CERTIFIED TRUE COPY Anne Spalding CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation. Presiding Judge Judge Code: 2147 Sentence Date: 5-8-2013

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA )  
 COUNTY OF Florence )  
 STATE VS. )  
Montez Myiharell Barker )  
 AKA: \_\_\_\_\_ )  
 Race: B Sex: M Age: 28 )  
 DOB: [REDACTED] SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: Florence, SC 29501 )  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_ )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

INDICTMENT/CASE#: 2012-GS-21-00896  
 A/W#: M280061  
 Date of Offense: 9/4/2009  
 S.C. Code § : 16-11-0110(C)  
 CDR Code #: 0008

SENTENCE SHEET

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Arson / Arson - Third degree

in violation of § 16-11-0110(C) of the S.C. Code of Laws, bearing CDR Code # 0008  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS.  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: [Signature] 15295 Montez Barker [Signature] 15871  
 Clements, III, E. L. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 10 ~~days/months~~ years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; 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: Counts 1, 2, 3, 4  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 2012-GS-21-00896  
 by the State Department of Corrections. UB  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

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: \_\_\_\_\_

Recipient: \_\_\_\_\_  
 \*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>105.00</u>

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.  
 Presiding Judge [Signature]  
 Judge Code: 2141  
 Sentence Date: 5-8-2013

Clerk of Court/ Deputy Clerk [Signature]  
 Court Reporter: [Signature]  
 SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
STATE VS.

INDICTMENT/CASE#: 2012-GS-21-00896
A/W#: 2012GS2100896A
Date of Offense: 7/14/2009
S.C. Code §: 16-13-0030(B)(2)
CDR Code #: 0479

AKA:
Race: B Sex: M Age: 28
Address:
City, State, Zip: Florence, SC 29501
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Larceny / Grand Larceny, value \$5,000 or more

CONVICTED OF or PLEADS

in violation of § 16-13-0030(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0479
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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: Clements, III, E. L. SC Bar# 15295
Defendant: Montez Myiharell Barker
Attorney for Defendant: [Signature] SC Bar# 15871

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; 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: Counts 1, 2, 3, 5
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.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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:

Table with 3 columns: Description, Amount, Total. 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, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL \$105.00

Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk
during probation.
Presiding Judge: [Signature]
Judge Code: 2141
Sentence Date: 5-8-2013

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: Rena Thomas
SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

147

COUNTY OF Florence
STATE VS.

AKA: Montez Myiharell Barker

Race: B Sex: M Age: 28

DOB: [REDACTED]

Address: [REDACTED]

City, State, Zip: Florence, SC 29501

DL#: SID#:

\*GDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

INDICTMENT/CASE#: 2012-GS-21-00896
A/W#: 2012GS2100896B
Date of Offense: 9/1/2009
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

CONVICED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTORNEYS: Clements, III, E. L. SC Bar# 15295 Defendant Montez Barker Attorney for Defendant SC Bar# 15871

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: Counts 1, 2, 4, 5 (MARRIAGE; MARRIAGE; MARRIAGE)
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. 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, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$105.00

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, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: Rema Thomas
SCCA 217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2141
Sentence Date: 5-8-2013