

21855

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2013-002616

THE STATE,

RESPONDENT,

v.

LAKEITHON M. HALL,

APPELLANT.

RECORD ON APPEAL

TRICIA A. BLANCHETTE
PO Box 12725
Columbia, SC 29211
(803) 988-0008
ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

JOHN MCINTOSH
Chief Deputy Attorney General
DONALD ZELENKA
Senior Assistant Deputy Attorney General

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Assistant Attorney General
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RANDY NEWMAN, JR.
Sixth Circuit Solicitor
PO Box 607
Lancaster, SC 29721
(803)416-9367
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 18 2015

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

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ATTORNEYS FOR RESPONDENT

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WITNESSES

Sgt. T. L. Witherspoon - LPD

ARREST WARRANT NUMBER

G-482199

ACTION OF GRAND JURY

Elaine C. Cornwell

Foreperson of Grand Jury

Date: FEB 8 2001

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. -2001-GS-29-71

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2001

THE STATE

vs.

Lakeithon Mandrell Hall

Indictment for

MURDER

SC Code 16-03-0010

CDR Code 116

Class FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on February 8, 2001, the
Grand Jurors of Lancaster County present upon their oath:

MURDER

That Lakeithon Mandrell Hall did in Lancaster County on or about November 20, 2000, with malice aforethought, kill one Sheila Jury by means of shooting her with a .38 caliber handgun and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

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


John R. Justice, SOLICITOR

ARREST WARRANT

G-482199

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

THE STATE
against

Lakeithon Mandrell Hall

Address:

Lancaster, SC 29721

Phone:

SSN:

M Race: B Height: 5'09" Weight: 210

State: SC DL #:

DOB:

Agency ORI #: SC0290100

Prosecuting Agency: LANCASTER POLICE DEPARTMENT

Prosecuting Officer: Sgt. T.L. Witherspoon

Offense: Murder

Offense Code:

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
Lancaster

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)
Kathryn A. Hayes

RETURN

A copy of this arrest warrant was delivered to
defendant Lakeithon Mandrell Hall
on 11-29-00

Signature of Constable/Law Enforcement Officer
C.T. Kinley

RETURN WARRANT TO:

Kathryn A. Hayes, Associate Judge

P. O. BOX 1149

Lancaster, SC 29721

(803) 283-1171

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

AFFIDAVIT

Personally appeared before me the affiant Sgt. T.L. Witherspoon who
being duly sworn deposes and says that defendant Lakeithon Mandrell Hall
did within this county and state on November 20, 2000 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster)
in the following particulars:

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

One Lakeithon Mandrell Hall did commit murder in the 1600 block of Pardue Street Apartments when he
shot into a vehicle fatally wounding Sheila Jury, who was eight months pregnant. Hall and a group of
young men were standing on the sidewalk when the vehicle drove by and he stated that he was going to rob
the occupants of the vehicle. He stopped the vehicle when it came back by and had a conversation with
the driver. He then walked away and turned to walk back, firing once into the vehicle with a .38 caliber
handgun, shooting Mrs. Jury in reckless disregard for human life. Eye witnesses have given statements to
Sgt. T.L. Witherspoon substantiating this charge. He is within a few days of his seventeenth birthday
and is being charged as an adult.

Sworn to and subscribed before me

on 11/21/2000

Signature of Affiant
Affiant's Address P. O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone (803) 283-1171

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on November 20, 2000 defendant Lakeithon Mandrell Hall
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Murder

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge
Judge Code: _____

Judge's Address P. O. BOX 1149Lancaster, SC 29721Judge's Telephone (803) 283-1171

issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

G-482199

Xref #: 2000-23986

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

COUNTY OF LANCASTER
STATE VS.Lakeithon Moncrell Hall

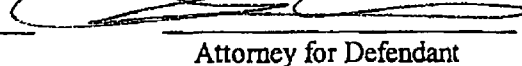
AKA:

Race: B Sex: M Age: 19DOB: 11/11/90 SS#: 1-11-111111Address: Lancaster, SC 29110DL# SID# 01 -GS- 29-11A/W#: G482199Date of Offense: 11.20.00S.C. Code §: 16-3-10CDR Code #: 0 / 1 / 1 / 6☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 6☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The 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:


SolicitorLakeithon Hall
Defendant
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.

☒ The Defendant is to be given credit for 282 days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$§14-1-206 (Assessments 100%) \$§14-1-211(A)(1) (Surcharge) \$§14-1-211(A)(2) (Surcharge) \$§56-5-2995 (DUI Assessment) \$3% to County (if paid in installments) \$TOTAL \$PTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps 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: PRESIDING JUDGE Paul E. ShorttJudge Code: 0 / 0 / 4 / 7Sentence Date: 12.9.02Court Reporter: Nancy Monteth

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

WITNESSES

Sgt. T. L. Witherspoon - LPD

ARREST WARRANT NUMBER

G-482239

ACTION OF GRAND JURY

Elaine C. Cornwell

Foreperson of Grand Jury

Date:

FEB 8 2001

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. -2001-GS-29-72

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2001

E **THE STATE**

vs.

Lakeithon Mandrell Hall

Indictment for

**ATTEMPTED ARMED OR
ALLEGED ROBBERY**

SC Code: 16-11-0330

CDR Code: 0026

Class FEL-C(V)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

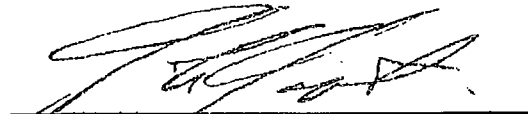
INDICTMENT

At a Court of General Sessions, convened on February 8, 2001 the Grand Jurors of Lancaster County present upon their oath:

ATTEMPTED ARMED OR ALLEGED ROBBERY

That Lakeithon Mandrell Hall did in Lancaster County on or about November 20, 2000, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Thomas Jury and Sheila Jury, by means of force or intimidation goods or monies of Thomas Jury and Sheila Jury, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

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


 John R. Justice, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

COUNTY OF LANCASTER
STATE VS. La Keithon N. H. Hill
AKA: _____
Race: B Sex: M Age: 19
DOB: 11/11/80 SS#: 1-11-11-11-11
Address: Lancaster, SC 29120
DL# _____ SII #: _____

01 -GS- 29 - 72
A/W#: G.482239
Date of Offense: 11.20.00
S.C. Code §: 16.11.330(B)
CDR Code #: 0 / 0 / 2 / 6
☐ CASE RESTORED

SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Attempted Armed Robbery

in violation of § 16.11.330 (B) of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 2 / 6

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

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

[Signature] Solicitor La Keithon Hill Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 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.

☒ The Defendant is to be given credit for 282 days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine:\$ _____
§14-1-206 (Assessments 100%)\$ _____
§14-1-211(A)(1) (Surcharge)\$ _____
§14-1-211(A)(2) (Surcharge)\$ _____
§56-5-2995 (DUI Assessment)\$ _____
3% to County (if paid in installments) ...\$ _____
TOTAL\$ _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

[Signature]
Clerk of Court/ Deputy Clerk
Court Reporter: Nancy Monteth
White - Clerk Green - Corrections

PRESIDING JUDGE Paul E. Shortz Jr.
Judge Code: 0101417
Sentence Date: 12.9.02
Canary - Probation Pink - Defendant

ARREST WARRANT

G# 482239

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

 THE STATE
against

Lakeithon Mandrell Hall

 Address: _____
Lancaster, SC 29203

 Phone: _____ SSN: _____
M Race: 8 Height: 5'09" Weight: 219

State: SC DL #: _____

DOB: _____ Agency ORI #: SC0290100

Prosecuting Agency: LANCASTER POLICE DEPARTMENT

Prosecuting Officer: C. H. H.

Offense: Attempted Armed Robbery

Offense Code: _____

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of

 The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

 A copy of this arrest warrant was delivered to
defendant Lakeithon Mandrell Hall
on 12-1-00

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 Kathryn A. Hayes, Associate Judge
P. O. BOX 1149
Lancaster, SC 29721
(803) 283-1171

 STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
 Lancaster)

AFFIDAVIT

 Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 516

 Personally appeared before me the affiant Sgt. T.L. Witherspoon who
being duly sworn deposes and says that defendant Lakeithon Mandrell Hall
did within this county and state on November 20, 2000 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster)
in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Armed Robbery

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

 One Lakeithon Mandrell Hall did attempt to commit armed robbery in the 1600 block of Pardue Street
Apartments when he demanded money from Thomas Jury, the driver of a vehicle that had passed him. Hall
and a group of young men were standing on the sidewalk when the vehicle drove by and he stated that he
was going to rob the occupants of the vehicle. He got a .38 caliber gun from one of the group,
approached the vehicle, and told Jury to give him his f---ing money. The robbery was not accomplished
because Mr. Jury "gunned" his motor and drove away, but Hall did fire the gun. After the shot Hall and
the others fled. Eye witnesses have given statements to Sgt. T.L. Witherspoon identifying Hall and
substantiating this charge.

 Sworn to and subscribed before me)
on 11/21/2000)
 Signature of Issuing Judge)
 Kathryn A. Hayes (L.S.)

 Signature of Affiant)
 Affiant's Address P. O. BOX 1149
Lancaster, SC 29721
 Affiant's Telephone (803) 283-1171

 STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
 Lancaster)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
on November 20, 2000 defendant Lakeithon Mandrell Hall
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Attempted Armed Robbery

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

 Signature of Issuing Judge)
 Kathryn A. Hayes (L.S.))
 Judge's Address P. O. BOX 1149
Lancaster, SC 29721
 Judge's Telephone (803) 283-1171
 Judge Code: _____ Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

6-482239

Xref #: 2000-23986

WITNESSES

Sgt. T. L. Witherspoon - LPD

ARREST WARRANT NUMBER

G-482236

ACTION OF GRAND JURY

Elaine C. Cornwell

Foreperson of Grand Jury

Date:

FEB 8 2001

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. -2001-GS-29- 73

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2001

THE STATE
vs.

Lakeithon Mandrell Hall

Indictment for

**POSSESSION OF FIREARM DURING
COMMISSION OF VIOLENT CRIME**

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

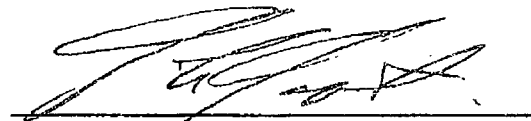
INDICTMENT

At a Court of General Sessions, convened on February 6, 2001 the Grand Jurors of County present upon their oath:

POSSESSION OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

That Lakeithon Mandrell Hall did in Lancaster County on or about November 20, 2000, while committing the crimes of Attempted Armed Robbery of Thomas Jury and Sheila Jury and Murder of Sheila Jury, a crime of violence, have in the defendants possession various handguns and rifles, to wit: a .38 caliber handgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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


John R. Justice, SOLICITOR

ARREST WARRANT

G-482236

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

THE STATE

against

01-73

Lakeithon Mandrell Hall

Address: Lancaster, SC 29701

Phone: [REDACTED]

M Race: B Height: 5'9" Weight: 210

State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0290106

Prosecuting Agency: LANCASTER POLICE DEPARTMENT

Prosecuting Officer: Citizen

Offense: Possession of a Firearm in the Commission of
a Violent Crime

Offense Code:

Code/Ordinance Sec. 16-23-490

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
Lancaster
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Lakeithon Mandrell Hall
on 12-1-00

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Kathryn A. Hayes, Associate Judge

P. O. BOX 1149

Lancaster, SC 29721

(803) 283-1171

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

AFFIDAVIT

Personally appeared before me the affiant Sgt. T.L. Witherspoon who
being duly sworn deposes and says that defendant Lakeithon Mandrell Hall
did within this county and state on November 20, 2000 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster)
in the following particulars:

DESCRIPTION OF OFFENSE: Possession of a Firearm in the Commission of a Violent Crime

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

One Lakeithon Mandrell Hall did possess a .38 caliber handgun that he used in the commission of the
violent crimes of attempted armed robbery and murder in the 1600 block of Pardue Street Apartments. In
the failed robbery attempt Hall fatally shot Sheila Jury, the eight-month pregnant wife of Thomas Jury.
When he demanded money from Thomas Jury, the driver of a vehicle that had passed him. Hall and a group
of young men were standing on the sidewalk when the vehicle drove by and he stated that he was going to
rob the occupants of the vehicle. He got the gun from Calvin Peay, one of the group, approached the
vehicle, and told Jury to give him his f---ing money. The robbery was not accomplished because Mr. Jury
"gunned" his motor and drove away, but Hall did fire the gun. After the shot Hall and the others fled.
Eye witnesses have given statements to Sgt. T.L. Witherspoon identifying Hall and substantiating this
charge.

Sworn to and subscribed before me
on 11/21/2000

Signature of Affiant
Affiant's Address P. O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone (803) 283-1171

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on November 20, 2000 defendant Lakeithon Mandrell Hall
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Possession of a Firearm in the Commission of a Violent Crime

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge
Judge Code: _____

Judge's Address P. O. BOX 1149
Lancaster, SC 29721
Judge's Telephone (803) 283-1171

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

G-482236

Xref #: 2000-23986

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
 STATE VS. Lakeithon Mandrell Hall
 AKA: _____
 Race: B Sex: M Age: 19
 DOB: _____ SS#: _____
 Address: _____
Lancaster, SC 29720
 DL# _____ SI# _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

01 -GS- 29 - 73
 A/W#: G482236
 Date of Offense: 11.20.00
 S.C. Code §: 16-23-490
 CDR Code #: 0 / 5 / 4 / 9
☐ CASE RESTORED

SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Possession of Firearm During Commission of Violent Crime
 in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0 / 5 / 4 / 9

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

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

ATTEST:

[Signature]
 Solicitor

Lakeithon Hall
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 282 days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
 *Fine:\$ _____
 §14-1-206 (Assessments 100%)\$ _____
 §14-1-211(A)(1) (Surcharge)\$ _____
 §14-1-211(A)(2) (Surcharge)\$ _____
 §56-5-2995 (DUI Assessment)\$ _____
 3% to County (if paid in installments)\$ _____
 TOTAL\$ _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc Rehab. or Job Corps _____
 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: _____

PRESIDING JUDGE Paul G. Shortt

Judge Code: 0 / 0 / 4 / 7
 Sentence Date: 12-9-02

Court Reporter: Nancy Montalbano

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

WITNESSES

Pat Parsons - LPD

ARREST WARRANT NUMBER

G-482357

ACTION OF GRAND JURY

Elaine C. Cornwell

Foreperson of Grand Jury

Date: FEB 8 2001

TRUE BILL VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -2001-GS-29-0346

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2001

THE STATE

vs.

Lakeithon Mandrell Hall

Indictment for

MURDER

SC Code 16-03-0010

CDR Code 116

Class FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on February 8, 2001, the
Grand Jurors of Lancaster County present upon their oath:

MURDER

That Lakeithon Mandrell Hall did in Lancaster County on or about November 20, 2000, with malice aforethought, kill one Sheila J., the unborn child of Sheela R. Jury of an approximate gestational age of 37 weeks, by firing a .38 caliber bullet into the person of Sheela R. Jury which resulted in the death of Sheela R. Jury and necessitated the delivery of Sheila J. by emergency caesarean section, and Sheila J. died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

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


John R. Justice, SOLICITOR

ARREST WARRANT

G-482357

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Lancaster

THE

against

C1-346

Lakeithon Mandrell Hall

Address:
Lancaster, SC

Phone:
N:
H Race: B Height: 5'9" Weight: 210

State: SC DL #:
DOB:
Prosecuting Agency: LANCASTER POLICE DEPARTMENT

Prosecuting Officer: Sgt. L. Witherspoon

Offense: Murder

Offense Code:
Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Lakeithon Mandrell Hall
on 01-24-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Darlene H. Whitley, Associate Judge
P. O. BOX 1149
Lancaster, SC 29721
(803) 285-7622

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Lancaster

AFFIDAVIT

Personally appeared before me the affiant PFC Pat Parsons who
being duly sworn deposes and says that defendant Lakeithon Mandrell Hall
did within this county and state on November 20, 2000 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster)
in the following particulars:

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

One Lakeithon Mandrell Hall did commit murder in the 1600 block of Pardue Street Apartments when he
shot into a vehicle causing the death of an eight month old unborn child by fatally wounding the mother
Sheila Jury, who was eight months pregnant. Hall and a group of young men were standing on the sidewalk
when the vehicle drove by and he stated that he was going to rob the occupants of the vehicle. He
stopped the vehicle when it came back by and had a conversation with the driver. He then walked away and
turned to walk back, firing once into the vehicle with a .38 caliber handgun, shooting Mrs. Jury in
reckless disregard for human life. Eye witnesses have given statements to Sgt. L.L. Witherspoon
substantiating this charge. He is within a few days of his seventeenth birthday and is being charged as
an adult.

Sworn to and subscribed before me
on 01/24/2001

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address P. O. BOX 1149
Lancaster, SC 29721

Affiant's Telephone (803) 285-1171

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Lancaster

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on November 20, 2000 defendant Lakeithon Mandrell Hall
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Murder

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge Code:
Judge's Address P. O. BOX 1149
Lancaster, SC 29721
Judge's Telephone (803) 285-7622

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

G-482357

Xref #: 2000-23986

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER
STATE VS.

LeKeithon N. Hall

AKA:

Race: B Sex: M Age: 19

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]

Lancaster, SC 29110

DL# [REDACTED] SI# [REDACTED]

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

01 -GS- 29 - 346

A/W#: G482357

Date of Offense: 11.20.00

S.C. Code §: 16.3.10

CDR Code #: 0 / 1 / 1 / 6

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Murder

in violation of § 16.3.10 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 6

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

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

ATTEST:

[Signature]
Solicitor

LeKeithon Hall
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 38 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.

☒ The Defendant is to be given credit for 282 (days/months) jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: —

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ — plus 20% fee: \$ —

Payment Terms: —

☐ set by SCDPPPS —

Recipient: —

*Fine: —

§14-1-206 (Assessments 100%) —

§14-1-211(A)(1) (Surcharge) —

§14-1-211(A)(2) (Surcharge) —

§56-5-2995 (DUI Assessment) —

3% to County (if paid in installments) —

TOTAL —

PTUP —

— days/hours Public Service Employment

Obtain GED —

Attend Voc Rehab. or Job Corps —

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: —

PRESIDING JUDGE Paul J. Shortt

Judge Code: 0 / 0 / 4 / 7

Sentence Date: 12-9-02

[Signature]
Clerk of Court/ Deputy Clerk
Court Reporter: Nancy Montano
White - Clerk Green - Corrections Canary - Probation Pink - Defendant

P.6/12

To: 803 734 4035

1 803 581 2242

DEC-05-2008 10:50 From: CHESTER SOLICITOR

017
20022863 ARREST WARRANT
H-317027
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHESTER COUNTY

THE STATE
against

HALL, LAKEITHON MANDRELL
Address: [REDACTED]
Race: B Height: 6' Weight: 170
DL State: DL #: [REDACTED]
DOB: [REDACTED] Agency ORI#: SC0120000
Prosecuting Agency: CHESTER CO SHERIFF
Prosecuting Officer: ANY LAWELL OFFICER
Offense: BURGLARY 1ST DEGREE
Offense Code: 039F
Code/Ordinance Sec. 16-11-311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant HALL, LAKEITHON MANDRELL
on

RD Moore 8-30-02
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
D. H. MOORE
2740 DAWSON DR.
CHESTER, SC 29706

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHESTER COUNTY

Personally appeared before me the affiant DET. TERRY M. LOVE, CCSD
being duly sworn deposes and says that defendant HALL, LAKEITHON MANDRELL
did within this county and state on 08/12/02 violate the criminal laws
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHESTER

in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE
16-11-311

I further state that there is probable cause to believe that the defendant named above did
the crime set forth and that probable cause is based on the following facts:
ON OR ABOUT AUGUST 12, 2002 LAKEITHON MANDRELL HALL DID ENTER THE RESIDENCE
OF CAROL WESSINGER, [REDACTED], WITH THE INTENT TO COMMIT A CRIME
THEREIN. ENTRY WAS GAINED BY BREAKING IN THE REAR DOOR OF THE RESIDENCE.
UPON ENTRY, SUSPECT DID TAKE FOURTEEN FIREARMS, TWO OF WHICH WERE FOUND
IN HIS POSSESSION IN COLUMBIA, SC. VEHICLE OPERATED BY THE SUSPECT
MATCHED THE DESCRIPTION OF THE VEHICLE SUSPECT WAS OPERATING ON AUGUST 9,
2002 WHEN HE CAME TO VICTIM'S RESIDENCE ASKING DIRECTIONS. THIS OFFENSE
OCCURRED IN CHESTER COUNTY, SC.

Sworn to and subscribed before me
on AUGUST 23, 2002
Did Moore
Signature of Issuing Judge

Terry M. Love
Signature of Affiant
Affiant's Address 2740 DAWSON DR.
CHESTER, SC 29706
Affiant's Telephone 803 581-5143

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHESTER

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNT

It appearing from the above affidavit that there are reasonable grounds to believe
on 08/12/02 defendant HALL, LAKEITHON MANDRELL
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of CHESTER) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE
16-11-311

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered
defendant at the time of its execution, or as soon thereafter as is practicable.

Did Moore (L.S.)
Signature of Issuing Judge
Judge's Address 2740 DAWSON DR.
CHESTER, SC 29706
Judge's Telephone 803 581-5143
Judge Code: 041
D. H. MOORE

Issuing Court: ☒ Magistrate ☐ Municipal ☐

ORIGINAL

Form Approved by
SC Attorney Gen
Jul 28, 1990
SOCA 518

VICTIM FORM TAKEN

2002 SEP 16 A 11:24

Schulman

P. 4/12

WITNESSES

DOCKET NO. 2003-GS-12-118

The State of South Carolina

County of Chester

Officer: Terry Love

Agency: Chester County Sheriff's Office

COURT OF GENERAL SESSIONS

JANUARY TERM 2003

WARRANT NUMBERS

H317027 (DOA 08/30/2002)

THE STATE

vs.

1st

Lakeithon Mondrell Hall

11-19-03 Nolle prosequere

Ch. D. 19

VICTIM IMPACT STATEMENT

CDR CODE 79

**Indictment for
§16-11-0311**

**BURGLARY (AFTER JUNE 20, 1985) -
FIRST DEGREE**

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

To: 803 734 4035

1 803 581 2242

DEC-05-2008 10:50 From: CHESTER SOLICITOR

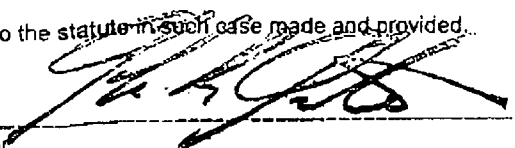
STATE OF SOUTH CAROLINA)
County of Chester) INDICTMENT FOR
) §16-11-0311
) BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE
)

At a Court of General Sessions, convened in January 2003 the Grand Jurors of Chester County present upon their oath:

That Lakeithon Mondrell Hall did in Chester County on or about August 12, 2002 enter the dwelling of one Carol Wessinger during the hours of darkness with intent to commit a crime therein.

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

DOCKET NO. 2003-GS-12-118


Solicitor

DEC-05-2008 10:51 From: CHESTER SOLICITOR 1 803 581 2242 To: 803 734 4035 P. 7/12

WITNESSES

Officer: Terry Love
Agency: Chester County Sheriff's Office

Mitchell

WARRANT NUMBERS

1317055 (DOA 08/30/2002)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2003-GS-12-115

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2003

THE STATE

vs.

1211

Lakeithon Mondrell Hall

[Signature]
[Signature]
[Signature]
23 Feb

CDR CODE 139

**Indictment for
§16-11-0330(A)**

**ARMED ROBBERY, ROBBERY WHILE
ARMED OR ALLEGEDLY ARMED WITH A
DEADLY WEAPON**

DEC-05-2008 10:51 From:CHESTER SOLICITOR

1 803 581 2242

To:803 734 4035

P.8/12

STATE OF SOUTH CAROLINA

County of Chester

) INDICTMENT FOR

) **§16-11-0330(A)**

) ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY

) ARMED WITH A DEADLY WEAPON

)

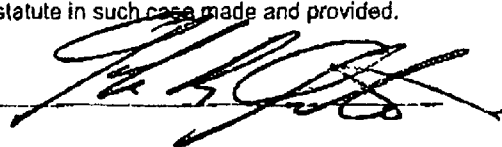
At a Court of General Sessions, convened in January 2003 the Grand Jurors of Chester County present upon their oath:

That Lakeithon Mondrell Hall did in Chester County on or about August 8, 2002, while armed with a deadly weapon, to wit: pistol, feloniously take from the person or presence of James M. Thomas, such goods or monies being described as follows: firearm, with intent to deprive the owner permanently of such property.

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

DOCKET NO. 2003-GS-12-115

Solicitor



P. 9/12

To: 803 734 4035

1 803 581 2242

DEC-05-2008 10:51 From: CHESTER SOLICITOR

WITNESSES

Officer: Terry Love
Agency: Chester County Sheriff's Office

Mitchell

WARRANT NUMBERS

H317054 (DOA 08/30/2002)

ACTION OF GRAND JURY

[Signature]

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2003-GS-12-116

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2003

THE STATE

vs.

[Signature]

Lakeithon Mondrell Hall

[Signature]
Order of arrest
return to the indictment

23 Feb

CDR CODE 95

Indictment for
§16-03-0910

KIDNAPPING (SR IF VICTIM >=18 UNLESS
JUDGE ORDER NOT)

DEC-05-2008 10:51 From:CHESTER SOLICITOR

1 803 581 2242

To:803 734 4035

P.10/12

STATE OF SOUTH CAROLINA

County of Chester

) INDICTMENT FOR
)
) **§16-03-0910**
) KIDNAPPING (SR IF VICTIM >=18 UNLESS JUDGE ORDER NOT)
)
)

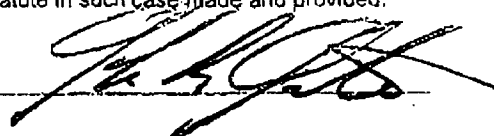
At a Court of General Sessions, convened in January 2003 the Grand Jurors of Chester County present upon their oath:

That Lakeithon Mondrell Hall did in Chester County on or about August 8, 2002, wilfully and with criminal intent, kidnap, abduct, confine or seize without lawful authority, to wit: James M. Thomas. This is in violation of Section 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

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

DOCKET NO. 2003-GS-12-116

Solicitor



Schusterman

WITNESSES

Officer: Terry Love
Agency: Chester County Sheriff's Office

Mitdel

WARRANT NUMBERS

H317053 (DOA 08/30/2002)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2003-GS-12-117

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2003

THE STATE

vs.

ail

Lakeithon Mondrell Hall

[Signatures]
23 Feb 04

CDR CODE 549

Indictment for
§16-23-0490

POSS. WEAPON DURING VIOLENT CRIME,
IF NOT ALSO SENTENCED TO LIFE
WITHOUT PAROLE OR DEATH

DEC-05-2008 10:51 From:CHESTER SOLICITOR

1 803 581 2242

To:803 734 4035

P.12/12

STATE OF SOUTH CAROLINA

County of Chester

) INDICTMENT FOR

) **§16-23-0490**

) POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO

) SENTENCED TO LIFE WITHOUT PAROLE OR DEATH

)

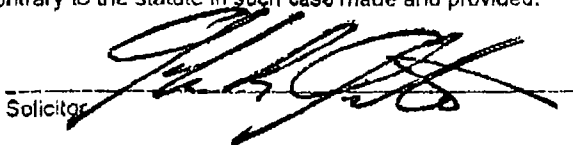
At a Court of General Sessions, convened in January 2003 the Grand Jurors of Chester County present upon their oath:

That Lakeithon Mondrell Hall did in Chester County on or about August 8, 2002 possess or visibly display a pistol during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

DOCKET NO. 2003-GS-12-117

Solicitor



Intentionally

Left

Blank

P.2/12

To: 803 734 4035

1 803 581 2242

DEC-05-2008 10:50 From: CHESTER SOLICITOR

WITNESSES

Officer: Terry Love
Agency: Chester County Sheriff's Office

Mitchell

WARRANT NUMBERS

H317062 (DOA 08/30/2002)

ACTION OF GRAND JURY

[Signature]
Person of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2003-GS-12-114

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2003

THE STATE

vs. *p.i.*

Lakeithon Mondrell Hall

11-19-03 Nolle prosequere

Ch. D. Tigh

VICTIM IMPACT STATEMENT

CDR CODE 479

**Indictment for
§16-13-0030(B)(2)**

**GRAND LARCENY, VALUE \$5,000 OR
MORE**

STATE OF SOUTH CAROLINA

County of Chester

)
)
)
)
)
)

INDICTMENT FOR

\$16-13-0030(B)(2)

GRAND LARCENY, VALUE \$5,000 OR MORE

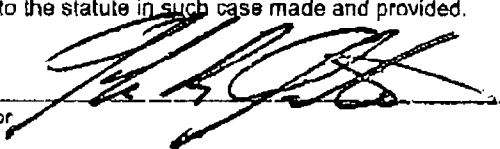
At a Court of General Sessions, convened in January 2003 the Grand Jurors of Chester County present upon their oath:

That Lakeithon Mondrell Hall did in Chester County, on or about August 12, 2002, feloniously take and carry away the personal goods of Carol Wessinge , the value of \$5000 or more, described as follows: 14 firearms, with the intent to permanently deprive the owner of such property.

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

DOCKET NO. 2003-GS-12-114

Solicitor



STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LANCASTER)

STATE OF SOUTH CAROLINA,) DOCKET NO. 01-GS-29-071
) 01-GS-29-072
 PLAINTIFF,) 01-GS-29-073
) 01-GS-29-346

V.)

LAKEITHON M. HALL,) TRANSCRIPT OF RECORD
) (GUILTY PLEA)
 DEFENDANT.)

DECEMBER 6, 2002
 LANCASTER, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL E. SHORT, JR.

APPEARANCES:

FOR THE PLAINTIFF: DOUGLAS A. BARFIELD, JR., SENIOR
ASSISTANT SOLICITOR

FOR THE DEFENDANT: ROSS A. BURTON, PUBLIC DEFENDER

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
 RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

1 (WHEREUPON, LAKEITHON M. HALL, HAVING FIRST BEEN
2 DULY SWORN, TESTIFIES AS FOLLOWS).

3 MR. BARFIELD: YOUR HONOR, THIS IS LAKEITHON
4 MANDRELL HALL, REPRESENTED BY ROSS BURTON. MR. HALL
5 IS HERE TENDERING A GUILTY PLEA. I THINK WE HAVE AN
6 UNDERSTANDING WITH THE COURT THAT SENTENCING WILL BE
7 CONDUCTED MONDAY BECAUSE MR. HALL HAS SOME OTHER FOLKS
8 HE WOULD LIKE TO HAVE PRESENT WITH HIM AT THAT TIME.

9 MR. BURTON: THAT IS RIGHT, YOUR HONOR.

10 MR. BARFIELD: THE CASE NUMBERS ARE 01-GS-29-071,
11 INDICTED FOR MURDER; 01-GS-2-346, INDICTED FOR
12 MURDER; 01-GS-29-072, INDICTED FOR ATTEMPTED ARMED
13 ROBBERY; AND 01-GS-29-073, INDICTED FOR POSSESSION OF
14 A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.
15 THE NEGOTIATION IN THIS CASE IS THAT SENTENCES IMPOSED
16 UPON MR. HALL FOR THESE OFFENSES WILL BE RUN
17 CONCURRENT WITH EACH OTHER AND THAT THE COURT MAY
18 SENTENCE HIM UNDER THE STATUTORY SCHEME SET OUT FOR
19 MURDER TO ANYTHING OTHER THAN A LIFE PRISON TERM.

20 THE COURT: IS HE PLEADING TO ALL THE INDICTMENTS,
21 SOLICITOR?

22 MR. BARFIELD: HE IS, YOUR HONOR.

23 THE COURT: NOW, MR. BURTON, OBVIOUSLY YOU ARE
24 REPRESENTING MR. HALL.

25 MR. BURTON: YES, YOUR HONOR, I AM.

3

1 THE COURT: AND HAVE YOU HAD A FULL OPPORTUNITY TO
2 EXPLAIN TO HIM THE CHARGES CONTAINED IN EACH OF THE
3 BILLS OF INDICTMENT AND ADVISE HIM OF ALL OF HIS
4 CONSTITUTIONAL RIGHTS, AS WELL AS THE MAXIMUM SENTENCE
5 HE COULD RECEIVE?

6 MR. BURTON: YES, YOUR HONOR, I HAVE.

7 THE COURT: DOES HE FULLY UNDERSTAND THESE
8 MATTERS?

9 MR. BURTON: YES, SIR, I BELIEVE HE DOES.

10 THE COURT: HOW DOES HE INDICATE TO YOU HE WISHES
11 TO PLEAD?

12 MR. BURTON: HE INDICATES TO ME HE WISHES TO PLEAD
13 GUILTY.

14 THE COURT: BASED ON YOUR INVESTIGATION OF HIS
15 CASE AND YOUR DISCUSSIONS WITH MR. HALL, DO YOU AGREE
16 WITH HIS DECISION?

17 MR. BURTON: YES, YOUR HONOR, I DO.

18 THE COURT: ALL RIGHT. HAS MR. HALL BEEN SWORN,
19 MR. CLERK?

20 THE CLERK: YES, SIR, YOUR HONOR.

21 THE COURT: THANK YOU.

22 MR. HALL, SIR, I HAVE QUESTIONS TO ASK OF YOU TO
23 ENSURE THAT YOUR GUILTY PLEA IS BEING GIVEN FREELY
24 AND VOLUNTARILY ON YOUR OWN BEHALF. IF I HAVE ANY
25 QUESTIONS THAT YOU DO NOT UNDERSTAND OR I MAKE ANY

1 STATEMENTS YOU DO NOT UNDERSTAND, PLEASE RAISE YOUR
2 HAND AS FAR AS YOU ARE ABLE TO INDICATE YOU DON'T
3 UNDERSTAND, AND I WILL EXPLAIN IT TO YOU AGAIN OR I
4 WILL ALLOW YOU TO STEP AWAY FROM THE BAR AND HAVE YOUR
5 ATTORNEY, MR. BURTON, TO EXPLAIN IT FURTHER TO YOU.
6 DO YOU UNDERSTAND THAT, MR. HALL?

7 MR. HALL: YES, SIR.

8 THE COURT: MR. HALL, HOW OLD ARE YOU, SIR?

9 MR. HALL: NINETEEN.

10 THE COURT: AND WHAT IS YOUR DATE OF BIRTH?

11 MR. HALL: 8/11/83 -- I MEAN, 11/24/83.

12 THE COURT: 11/24/83, ALL RIGHT. AND YOU'RE
13 PRESENTLY INCARCERATED, IS THAT CORRECT?

14 MR. HALL: YES, SIR.

15 THE COURT: AND HOW LONG HAVE YOU BEEN IN JAIL,
16 MR. HALL?

17 MR. HALL: SINCE AUGUST 21.

18 THE COURT: ALL RIGHT, NOW, YOU'VE BEEN AT THE
19 LANCASTER JAIL SINCE NOVEMBER 11. IS THAT RIGHT?

20 MR. HALL: YES.

21 THE COURT: BUT YOU'VE BEEN INCARCERATED SINCE
22 AUGUST WHAT?

23 MR. HALL: TWENTY-FIRST.

24 THE COURT: DOES THE STATE AGREE WITH THAT DATE?

25 MR. BARFIELD: I BELIEVE THAT'S CORRECT, YOUR

5

1 HONOR. HE WAS DETAINED IN RICHLAND COUNTY FOR A SHORT
2 PERIOD.

3 THE COURT: WELL, I'M JUST MAKING SURE THE STATE
4 AGREES.

5 MR. BARFIELD: WE AGREE WITH THAT.

6 THE COURT: ALL RIGHT.

7 AND, MR. HALL, WHAT IS THE HIGHEST GRADE THAT YOU
8 ATTAINED IN FORMAL EDUCATION?

9 MR. HALL: THE NINTH.

10 THE COURT: DID YOU QUIT IN THE NINTH GRADE OR DID
11 YOU COMPLETE THE NINTH?

12 MR. HALL: NO, I GOT KICKED OUT OF SCHOOL.

13 THE COURT: WHY DID YOU GET KICKED OUT?

14 MR. HALL: DUE TO THE SITUATION WHAT I AM HERE FOR
15 TODAY.

16 THE COURT: YOU WERE ATTENDING SCHOOL AT THE TIME
17 OF THESE OFFENSES?

18 MR. HALL: UH-HUH, YES, SIR.

19 THE COURT: AND YOU WERE IN THE NINTH GRADE?

20 MR. HALL: (NODDING HEAD) .

21 THE COURT: WHERE WERE YOU IN SCHOOL?

22 MR. HALL: LANCASTER HIGH SCHOOL.

23 THE COURT: DID YOU LIVE ALONE?

24 MR. HALL: NO, SIR.

25 THE COURT: WITH WHOM DID YOU LIVE?

1 MR. HALL: MY MOTHER.

2 THE COURT: AND WHAT IS YOUR MOTHER'S NAME?

3 MR. HALL: NOVELLA HALL.

4 THE COURT: DO YOU HAVE BROTHERS AND SISTERS?

5 MR. HALL: TWO BROTHERS.

6 THE COURT: ARE THEY OLDER OR YOUNGER THAN YOU,
7 MR. HALL?

8 MR. HALL: OLDER.

9 THE COURT: HAVE YOU EVER BEEN TREATED FOR
10 ALCOHOL ABUSE, DRUG ABUSE OR MENTAL ILLNESS?

11 MR. HALL: NO.

12 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY
13 ALCOHOL, DRUGS OR MEDICATIONS TODAY?

14 MR. HALL: NO, SIR.

15 THE COURT: MR. HALL, DO YOU KNOW OF ANYTHING
16 THAT WOULD PREVENT YOU FROM UNDERSTANDING WHY YOU ARE
17 IN COURT TODAY?

18 MR. HALL: NO, SIR.

19 THE COURT: DO YOU FULLY UNDERSTAND WHY YOU'RE
20 PRESENT IN THIS COURTROOM TODAY, MR. HALL?

21 MR. HALL: YES, SIR.

22 THE COURT: IN THESE INDICTMENTS THE STATE OF
23 SOUTH CAROLINA CHARGES THAT YOU DID, IN THE FIRST TWO
24 INDICTMENTS -- THEY CHARGE THAT YOU DID, IN LANCASTER
25 COUNTY, ON OR ABOUT NOVEMBER 20 OF THE YEAR 2000, WITH

1 MALICE AFORETHOUGHT, DID KILL ONE SHEILA [REDACTED] J [REDACTED], AN
2 UNBORN CHILD OF SHEILA R. JURY, AT APPROXIMATELY
3 GESTATION AGE OF 37 WEEKS, BY FIRING A .38 CALIBER
4 BULLET INTO THE SHOULDER OF SHEILA R. JURY, WHICH
5 RESULTED IN THE DEATH OF SHEILA R. JURY, THAT IT
6 NECESSITATED THE DELIVERY OF SHEILA [REDACTED] J [REDACTED] BY
7 EMERGENCY C-SECTION, AND THAT SAID SHEILA [REDACTED] J [REDACTED] DID
8 DIE AS A RESULT THEREOF, IN VIOLATION OF § 16-3-10 OF
9 THE 1976 CODE OF LAWS OF SOUTH CAROLINA.

10 DO YOU UNDERSTAND THAT CHARGE OF MURDER?

11 MR. HALL: YES, SIR.

12 THE COURT: AND DO YOU UNDERSTAND THE COURT COULD
13 SENTENCE YOU TO 30 YEARS IN PRISON UP TO LIFE IN
14 PRISON FOR A VIOLATION OF THIS LAW?

15 MR. HALL: YES, SIR.

16 THE COURT: THE NEXT INDICTMENT ALLEGES THAT YOU
17 DID, HERE IN LANCASTER COUNTY, ON THAT SAME DATE,
18 NOVEMBER 20, 2000, WITH MALICE AFORETHOUGHT, KILL ONE
19 SHEILA JURY BY MEANS OF SHOOTING HER WITH A .38
20 CALIBER HANDGUN AND THAT SAID VICTIM DIED AS A RESULT
21 THEREOF, ALL IN VIOLATION OF § 16-3-10 OF THE 1076
22 CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED.

23 DO YOU UNDERSTAND THAT CHARGE OF MURDER?

24 MR. HALL: YES, SIR.

25 THE COURT: AND ONCE AGAIN, DO YOU UNDERSTAND THE

1 COURT COULD SENTENCE YOU TO 30 YEARS UP TO LIFE IN
2 PRISON FOR A VIOLATION OF THAT STATUTE?

3 MR. HALL: YES, SIR.

4 THE COURT: THE NEXT INDICTMENT ALLEGES THAT YOU
5 DID, AT THAT SAME DATE AND TIME AND PLACE, HERE IN
6 LANCASTER COUNTY, WHILE ARMED WITH A DEADLY WEAPON,
7 ATTEMPT TO FELONIOUSLY TAKE FROM THE PERSON OR
8 PRESENCE OF THOMAS JURY AND SHEILA JURY, BY MEANS OF
9 FORCE OR INTIMIDATION, GOODS OR MONEY OF THOMAS JURY
10 AND SHEILA JURY, ALL IN VIOLATION OF THE LAW OF THIS
11 STATE.

12 DO YOU UNDERSTAND THIS CHARGE OF ATTEMPTED ARMED
13 ROBBERY?

14 MR. HILL: YES, SIR.

15 THE COURT: DO YOU UNDERSTAND THE COURT COULD
16 SENTENCE YOU UP TO 20 YEARS IN PRISON FOR A VIOLATION
17 OF THIS LAW?

18 MR. HILL: YES, SIR.

19 THE COURT: AND DO YOU UNDERSTAND THAT THE LAST
20 INDICTMENT ALLEGES THAT YOU DID, IN LANCASTER COUNTY,
21 ON OR ABOUT NOVEMBER 20, 2000, WHILE COMMITTING THE
22 CRIME OF ARMED ROBBERY OF THOMAS AND SHEILA JURY AND
23 THE MURDER OF SHEILA JURY, CRIMES OF VIOLENCE, THAT
24 YOU DID HAVE IN YOUR POSSESSION A HANDGUN, TO WIT A
25 .38 CALIBER HANDGUN, IN VIOLATION OF THE LAW OF THIS

1 STATE?

2 DO YOU UNDERSTAND THAT CHARGE?

3 MR. HALL: YES, SIR.

4 THE COURT: DO YOU UNDERSTAND THE COURT COULD
5 SENTENCE YOU UP TO FIVE YEARS FOR A VIOLATION OF THAT
6 LAW?

7 MR. HALL: YES, SIR.

8 THE COURT: UNDERSTANDING THE CHARGES CONTAINED
9 IN ALL FOUR OF THESE SEPARATE BILLS OF INDICTMENT AND
10 UNDERSTANDING THE MAXIMUM SENTENCES YOU COULD RECEIVE,
11 HOW DO YOU WISH TO PLEAD, MR. HALL, GUILTY OR NOT
12 GUILTY?

13 MR. HALL: GUILTY.

14 THE COURT: NOW, MR. HALL, SIR, WHEN YOU PLEAD
15 GUILTY, YOU WAIVE OR GIVE UP ALL OF YOUR
16 CONSTITUTIONAL RIGHTS. MR. HALL, SIR, YOU HAVE A
17 CONSTITUTIONAL RIGHT TO REMAIN SILENT. YOU CANNOT BE
18 COMPELLED TO TESTIFY AGAINST YOURSELF OR PRESENT ANY
19 EVIDENCE AGAINST YOURSELF. DO YOU UNDERSTAND THAT
20 CONSTITUTIONAL RIGHT?

21 MR. HALL: YES, SIR.

22 THE COURT: DO YOU WISH TO WAIVE THAT RIGHT TO
23 PLEAD GUILTY TODAY?

24 MR. HALL: YES, SIR.

25 THE COURT: MR. HALL, SIR, YOU ALSO HAVE A

1 CONSTITUTIONAL RIGHT TO A TRIAL BY JURY, A TRIAL BY A
2 JURY OF YOUR PEERS OR YOUR EQUALS. IN THAT TRIAL,
3 THE STATE OF SOUTH CAROLINA WOULD BE REQUIRED TO PROVE
4 YOUR GUILT BEYOND EVERY REASONABLE DOUBT TO THE TRIAL
5 JURY, AND THIS COURT WOULD SO INSTRUCT THAT JURY.

6 DO YOU UNDERSTAND THAT RIGHT OF TRIAL BY JURY,
7 SIR?

8 MR. HALL: YES, SIR.

9 THE COURT: DO YOU WISH TO WAIVE THAT RIGHT AND
10 PLEAD GUILTY TODAY?

11 MR. HALL: YES, SIR.

12 THE COURT: MR. HALL, YOU ALSO HAVE A RIGHT TO
13 CONFRONT OR BE CONFRONTED BY ANY WITNESSES THE STATE
14 MAY CALL TO TESTIFY AGAINST YOU DURING THE TRIAL OF
15 YOUR CASE. YOU HAVE A RIGHT TO SEE THOSE WITNESSES
16 ON THIS WITNESS STAND, TO HEAR THEM TESTIFY AND TO
17 CROSS-EXAMINE OR HAVE YOUR ATTORNEY, MR. BURTON,
18 CROSS-EXAMINE THOSE WITNESSES FOR YOU.

19 DO YOU UNDERSTAND THAT RIGHT, MR. HALL?

20 MR. HALL: YES, SIR.

21 THE COURT: AND DO YOU ALSO WISH TO GIVE UP THAT
22 RIGHT AND PLEAD GUILTY TODAY?

23 MR. HALL: YES, SIR.

24 THE COURT: NOW, MR. HALL, WHEN YOU PLEAD GUILTY,
25 ONCE AGAIN DO YOU UNDERSTAND THAT YOU WILL WAIVE AND

11

1 GIVE UP ALL OF THESE CONSTITUTIONAL RIGHTS AND THAT
2 YOU WILL NOT HAVE A TRIAL BY JURY? DO YOU FULLY
3 UNDERSTAND THAT?

4 MR. HALL: YES, SIR.

5 THE COURT: THAT IS WHAT YOU WISH TO DO?

6 MR. HALL: YES, SIR.

7 THE COURT: HAS ANYONE PROMISED YOU ANYTHING OR
8 HELD OUT ANY HOPE OF REWARD TO GET YOU TO PLEAD
9 GUILTY, OTHER THAN THE RECOMMENDATION BY THE
10 SOLICITOR?

11 MR. HALL: NO, SIR.

12 THE COURT: HAS ANYBODY THREATENED YOU OR USED
13 ANY FORCE OR INTIMIDATION AGAINST YOU WHICH MIGHT
14 CAUSE YOU TO PLEAD GUILTY?

15 MR. HALL: NO, SIR.

16 THE COURT: MR. HALL, ARE YOU PLEADING GUILTY OF
17 YOUR OWN FREE WILL AND ACCORD?

18 MR. HALL: YES, SIR.

19 THE COURT: AND ARE YOU GUILTY?

20 MR. HALL: YES, SIR.

21 THE COURT: DID YOU COMMIT THE TWO OFFENSES OF
22 MURDER, AS STATED IN THE INDICTMENT?

23 MR. HALL: YES, SIR.

24 THE COURT: DID YOU DO THAT?

25 MR. HALL: YES, SIR.

1 THE COURT: DID YOU COMMIT THE OFFENSE OF ARMED
2 ROBBERY, AS STATED IN THE INDICTMENT?

3 MR. HALL: YES, SIR.

4 THE COURT: DID YOU DO THAT?

5 MR. HALL: YES, SIR.

6 THE COURT: AND DID YOU COMMIT THE OFFENSE OF
7 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
8 VIOLENT CRIME?

9 MR. HALL: YES, SIR.

10 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF
11 YOUR LAWYER, MR. BURTON?

12 MR. HALL: YES, SIR.

13 THE COURT: HAS HE DONE EVERYTHING YOU'VE ASKED
14 HIM TO DO FOR YOU IN REGARD TO YOUR CASE?

15 MR. HALL: YES, SIR.

16 THE COURT: HAS MR. BURTON REFUSED TO DO ANYTHING
17 THAT YOU ASKED HIM TO DO?

18 MR. HALL: NO, SIR.

19 THE COURT: HAVE YOU UNDERSTOOD THE COURT'S
20 QUESTIONS TO YOU TODAY, MR. HALL?

21 MR. HALL: YES, SIR.

22 THE COURT: IS THERE ANYTHING THAT YOU WOULD LIKE
23 FOR THIS COURT TO EXPLAIN FURTHER TO YOU AT THIS TIME?

24 MR. HALL: NO, SIR.

25 THE COURT: I FIND THERE IS A SUBSTANTIAL FACTUAL

1 BASIS FOR HIS GUILTY PLEAS. I FIND THE DEFENDANT'S
2 DECISION TO PLEAD GUILTY IS FREELY, VOLUNTARILY,
3 KNOWINGLY AND INTELLIGENTLY MADE AND THAT HE'S HAD
4 THE ADVICE AND COUNSEL OF A VERY COMPETENT LAWYER
5 WITH WHOM HE SAYS HE IS SATISFIED. THE COURT WILL
6 ACCEPT THE PLEA.

7 (TO CLERK) YOU MAY PUBLISH HIS PLEA.

8 THE CLERK: YOUR HONOR, CASE 01-GS-29-073, STATE
9 OF SOUTH CAROLINA V. LAKEITHON HALL, INDICTED FOR
10 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
11 VIOLENT CRIME; CASE ~~01-GS-29-072~~, STATE OF SOUTH
12 CAROLINA V. LAKEITHON HALL, INDICTED FOR ATTEMPTED
13 ARMED ROBBERY; CASE 01-GS-29-346, STATE OF SOUTH
14 CAROLINA V. LAKEITHON HALL, INDICTED FOR MURDER;
15 CASE 01-GS-29-071, STATE OF SOUTH CAROLINA V.
16 LAKEITHON HALL, INDICTED FOR MURDER. THE DEFENDANT
17 HEREBY PLEADS GUILTY TO THE WITHIN INDICTMENTS, SIR.

18 THE COURT: SOLICITOR?

19 MR. BARFIELD: YOUR HONOR, STANDING TO MY RIGHT
20 IS TOMMY JURY, THE HUSBAND AND FATHER OF THE TWO
21 VICTIMS OF THE HOMICIDES.

22 THE COURT: YES.

23 MR. BARFIELD: ON NOVEMBER 20 OF 2000, SOMETIME
24 SHORTLY BEFORE FIVE O'CLOCK IN THE AFTERNOON,
25 DEPUTIES JEFF JACKSON AND TODD WALLACE, OF THE

1 LANCASTER COUNTY SHERIFF'S OFFICE, ENCOUNTERED A GREEN
2 FORD TEMPO ON ARCH STREET, HERE IN THE CITY OF
3 LANCASTER, DRIVING ERRATICALLY. THE CAR PULLED OVER
4 AT ARCH STREET GROCERY.

5 THEY DETERMINED THAT THE OCCUPANTS OF THE CAR
6 WERE TOMMY JURY AND HIS WIFE, SHEILA JURY. IT WAS
7 OBVIOUS THAT SHEILA JURY HAD A SERIOUS INJURY, WHICH
8 TURNED OUT TO BE A GUNSHOT WOUND TO THE BACK OF HER
9 LEFT SHOULDER/UPPER ARM. MRS. JURY, AT THE TIME, WAS
10 37 WEEKS PREGNANT WITH THEIR DAUGHTER, SHEILA
11 ~~XXXXXXXXXX~~ JURY.

12 E.M.S. ATTENDED MRS. JURY AT THE SCENE. HER
13 SITUATION WAS GRAVE. SHE WAS TAKEN TO THE EMERGENCY
14 ROOM AT SPRINGS MEMORIAL HOSPITAL, WHERE SHE
15 ESSENTIALLY WAS DECEASED UPON HER ARRIVAL THERE.
16 EFFORTS WERE MADE, SUCCESSFULLY, TO PERFORM AN
17 EMERGENCY C-SECTION ON MRS. JURY TO DELIVER THE BABY.
18 THE BABY WAS DELIVERED, WAS WARM AT BIRTH BUT HAD NO
19 HEARTBEAT. THE BABY WAS IMMEDIATELY RESUSCITATED,
20 WAS PUT ON LIFE SUPPORT SYSTEMS, A VENTILATOR. THE
21 BABY SOON THEREAFTER DEVELOPED SEIZURES. THE BABY
22 WAS TRANSFERRED TO CAROLINAS MEDICAL CENTER.

23 I WILL GO AHEAD AND TALK ABOUT THE BABY FOR A
24 MOMENT. OF COURSE, MRS. JURY WAS DECEASED THERE AT
25 THE HOSPITAL. THE BABY WAS TREATED FOR TWO DAYS AT

1 CAROLINAS MEDICAL CENTER ON A VENTILATOR. DR. LESSER,
2 AT CAROLINAS MEDICAL CENTER, IS A CHILD NEUROLOGIST
3 AND DID A CONSULT DURING THE TIME THE BABY WAS THERE.
4 IT WAS CONCLUDED THAT THE BABY HAD BEEN DEPRIVED OF
5 OXYGEN FOR LONG ENOUGH TO HAVE SUFFERED PROFOUND
6 BRAIN DAMAGE AS A RESULT OF THE GUNSHOT WOUND TO THE
7 MOM.

8 THE BABY WAS MOST LIKELY TO HAVE SERIOUS AND
9 PERMANENT AND PROFOUND MENTAL INJURIES WHICH WOULD
10 HAVE MADE IT VIRTUALLY IMPOSSIBLE FOR HER TO SUSTAIN
11 ANY TYPE OF DECENT LIFE WHATSOEVER, I GUESS. AFTER
12 A COUPLE OF DAYS IT WAS DETERMINED IN CONSULTATION
13 WITH MR. JURY TO DISCONTINUE LIFE SUPPORT, AND THE
14 CHILD DIED WITHIN 30 MINUTES OF THEM CUTTING OFF THE
15 VENTILATOR.

16 AFTER THIS INCIDENT WAS DISCOVERED BY LAW
17 ENFORCEMENT, CITY POLICE WAS CALLED. MR. JURY
18 INDICATED THAT HIS WIFE HAD BEEN SHOT IN PARDUE STREET
19 APARTMENTS, WHICH IS JUST EAST OF THE AREA ON ARCH
20 STREET WHERE ARCH STREET GROCERY IS. CITY, COUNTY
21 AND SLED AGENTS CONVERGED ON THE SCENE. SEVERAL
22 YOUNG MEN WERE FOUND THERE IN PARDUE WHO, IT LATER
23 WAS DETERMINED, HAD BEEN PRESENT AND SOME WHO HAD
24 ACTUALLY PARTICIPATED, TO ONE DEGREE OR ANOTHER, IN
25 THIS INCIDENT.

1 MR. JURY GAVE A STATEMENT TO PAT PARSONS OF THE
2 LANCASTER POLICE DEPARTMENT AFTER THINGS HAD SETTLED
3 DOWN A LITTLE BIT. HE INDICATED THAT ON THE DAY THIS
4 INCIDENT OCCURRED, HE AND HIS WIFE HAD GONE TO
5 COLUMBIA. THERE WAS SOME SORT OF AN INSURANCE
6 SETTLEMENT THAT THEY WERE DUE, AND THEY PICKED UP AN
7 INSURANCE SETTLEMENT CHECK, CAME BACK TO LANCASTER,
8 WENT TO FIRST PALMETTO BANK, WHERE THE BULK OF THE
9 CHECK WAS DEPOSITED, LEFT THERE, WENT TO MCDONALD'S
10 AND GOT SOME FOOD TO EAT, INCLUDING TWO HAPPY MEALS
11 FOR THEIR, THEN, FIVE AND THREE-YEAR-OLD SONS WHO
12 WERE NOT IN THE CAR WHEN THIS OCCURRED.

13 AFTER LEAVING MCDONALD'S, MRS. JURY DETERMINED
14 THAT THEY NEEDED TO GO BACK TO PALMETTO TO GET A
15 MONEY ORDER TO PAY A BILL THEY OWED, SO THEY WERE
16 HEADED BACK TO PALMETTO. MR. JURY BELIEVED THAT
17 PARDUE STREET WOULD GIVE HIM KIND OF A SHORTCUT TO
18 WHERE HE WAS TRYING TO GO.

19 HE GOT INTO PARDUE AND REALIZED THAT THAT WAS NOT
20 THE WAY HE NEEDED TO GO, TURNED INTO THE PARKING LOT,
21 I BELIEVE, AT THE 1600 BLOCK OF PARDUE, AND INTENDED
22 TO JUST BACK OUT AND TURN AROUND AND GO BACK THE OTHER
23 WAY, BUT A VAN PULLED UP BEHIND HIM AND HE COULDN'T
24 GET OUT, SO HE WENT ON INTO THE PARKING LOT, TURNED
25 HIS CAR AROUND TO HEAD BACK OUT OF THE PARKING LOT,

1 AND AS HE WAS COMING BACK OUT, WAS CONFRONTED BY
2 SOMEONE HE SUBSEQUENTLY IDENTIFIED IN A PHOTO LINEUP
3 AS MR. HALL.

4 MR. HALL BASICALLY MADE -- MR. JURY'S WINDOW WAS
5 PARTIALLY DOWN. MR. HALL ASKED HIM WHAT HE WANTED,
6 AND MR. JURY JUST KIND OF SHRUGGED IT OFF AND THOUGHT
7 NO MORE OF IT BUT HAD STOPPED HIS CAR BECAUSE HIS WIFE
8 HAD DROPPED ONE OF THE HAPPY MEAL TOYS IN THE FLOOR
9 AND WAS FISHING AROUND UNDER THE SEAT, TRYING TO GET
10 IT. AND WHILE MR. JURY WAS PAYING ATTENTION TO HER,
11 MR. HALL CAME BACK UP TO THE CAR, INDICATED -- WELL,
12 BASICALLY DEMANDED MONEY IN NO UNCERTAIN TERMS.

13 MR. JURY TOLD MR. HALL, IN NO UNCERTAIN TERMS, HE
14 HAD NO MONEY, AND BEFORE HE KNEW IT, MR. HALL HAD
15 PRODUCED A FIREARM, EXTENDED HIS ARM TOWARD OR INTO
16 THE WINDOW OF THE CAR, FIRED ONE SHOT, WHICH DID NOT
17 HIT MR. JURY BUT STRUCK MRS. JURY AS SHE WAS LEANED
18 FORWARD IN THE FRONT SEAT, FISHING AROUND, LOOKING FOR
19 THE HAPPY MEAL TOY.

20 MR. JURY, ABOUT THE TIME HE SAW THE GUN BEING
21 PRODUCED, MASHED ON THE GAS OF THE CAR TRYING TO GET
22 OUT OF THERE. OF COURSE, HE WAS NOT SUCCESSFUL BEFORE
23 HIS WIFE WAS SHOT, BUT HE DID GET OUT OF THE PARKING
24 LOT OF PARDUE, GOT BACK OUT ONTO ARCH STREET, AND
25 THAT'S WHERE DEPUTIES JACKSON AND WALLACE DEALT WITH

1 HIM.

2 YOUR HONOR, CITY -- AGAIN, OFFICERS CONVERGED ON
3 PARDUE AND ROUNDED UP SEVERAL YOUNG MEN WHO WERE
4 TAKEN TO THE POLICE DEPARTMENT AND QUESTIONED. I WILL
5 SAY MR. HALL WAS NOT IN PARDUE WHEN POLICE GOT THERE
6 AND, IN FACT, WAS NOT ARRESTED FOR ABOUT NINE DAYS
7 AFTER THIS INCIDENT OCCURRED. MR. CALVIN LAMAR PEAY,
8 WHO PLED EARLIER THIS MORNING FOR HIS PART IN THIS
9 INCIDENT, WAS AMONG THOSE WHO WAS ROUNDED UP.

10 MR. PEAY GAVE MULTIPLE STATEMENTS OVER THE COURSE
11 OF THE NEXT SEVERAL DAYS BUT ULTIMATELY PROVIDED WHAT
12 WE BELIEVE IS PRETTY CLOSE TO THE TRUTH AND INDICATED
13 THAT TWO OR THREE DAYS BEFORE THIS INCIDENT HAPPENED,
14 HE ACTUALLY SAID MR. HALL WAS WITH HIM WHEN HE FOUND
15 THE GUN ON THE PATHWAY LEADING FROM PARDUE OVER TO
16 WILLOW LAKE, BUT MR. PEAY TOOK POSSESSION OF THIS
17 .38 SMITH & WESSON PISTOL, WHICH WAS LOADED WHEN HE
18 FOUND IT, HID IT AT HIS HOUSE UNTIL THE DAY OF THIS
19 INCIDENT, PUT IT IN HIS POCKET THE DAY OF THIS
20 INCIDENT, ACCORDING TO HIM WITH NO PARTICULAR
21 INTENTION FOR IT THAT DAY BUT JUST PUT IT IN HIS
22 POCKET, WALKED OUT INTO PARDUE, GOT UP WITH HIS
23 BUDDIES, INCLUDING MR. HALL.

24 MR. PEAY DESCRIBED THE JURYS' APPROACH INTO THE
25 PARKING LOT. AS I'VE SAID AT PLEAS OF OTHER

1 DEFENDANTS EARLIER IN THE MORNING, THERE ARE
2 ALLEGATIONS FROM THEM THAT MR. JURY WAS THERE
3 ATTEMPTING TO BUY DRUGS, WHICH MR. JURY DENIES, AND
4 WE DON'T REALLY NEED TO GET INTO MUCH OF A
5 DISCUSSION ABOUT THAT AT THIS POINT, BUT THERE ARE
6 STATEMENTS FROM SOME OF THESE YOUNG MEN THAT THAT
7 WAS WHAT WAS GOING ON.

8 IN ANY CASE, MR. PEAY INDICATES THAT MR. HALL
9 APPROACHED THE CAR, CAME BACK TO THE GROUP, SAID THAT
10 HE WAS GOING TO TRY TO "GET THEM", AND WHAT MR.
11 PEAY TOOK THAT TO MEAN WAS ROB THEM. AND THEN MR.
12 HALL ASKED MR. PEAY IF HE STILL HAD THE GUN, WHICH
13 MR. PEAY RESPONDED AFFIRMATIVELY TO. MR. HALL ASKED
14 FOR THE GUN, MR. PEAY PRODUCED THE GUN AND GAVE IT TO
15 MR. HALL, AT WHICH TIME MR. HALL WALKED BACK UP TO
16 THE CAR. WHILE MR. HALL WAS THERE AT THE DRIVER'S
17 SIDE OF THE CAR, MR. PEAY HEARD A SHOT, SAW THE CAR
18 SPEED AWAY, AND EVERYTHING KIND OF UNFOLDED FROM
19 THERE.

20 YOUR HONOR, MRS. JURY SUFFERED A SINGLE GUNSHOT
21 WOUND, AGAIN, TO THE LEFT SHOULDER. THE CAUSE OF
22 DEATH WAS LISTED BY DR. KIM COLLINS, AT THE MEDICAL
23 UNIVERSITY, AS PENETRATION OF THE HEART AND THE LEFT
24 LUNG DUE TO A SINGLE, PENETRATING GUNSHOT WOUND TO
25 THE LEFT SHOULDER.

1 YOUR HONOR, THE SITUATION WITH THE BABY WAS MUCH
2 MORE COMPLICATED. BEAR WITH ME JUST ONE SECOND.
3 CAUSE OF DEATH FOR THE BABY WAS DETERMINED TO BE
4 HYPOXIC ENCEPHALOPATHY DUE TO INTRAUTERINE ISCHEMIA,
5 WITH PULMONARY HYALINE MEMBRANES DUE TO MATERNAL
6 DEATH BY GUNSHOT WOUND. ESSENTIALLY THIS BABY
7 SUFFOCATED DURING THE PERIOD OF TIME THAT MOM WAS
8 DECEASED PRIOR TO DELIVERY OF THE BABY.

9 DR. LESSER, AT CAROLINAS MEDICAL CENTER, AS I
10 MENTIONED BEFORE, DID CONSULTS CONCERNING THE BABY
11 WHILE HE WAS THERE, AND THE DECISION WAS MADE THAT
12 THIS CHILD HAD NO CHANCE OF ANY TYPE OF MEANINGFUL
13 LIFE AFTER THAT POINT.

14 (OFF-THE-RECORD DISCUSSION)

15 MR. BARFIELD: THE BABY HAD BEEN RESUSCITATED
16 AT SPRINGS MEMORIAL HOSPITAL. MY UNDERSTANDING FROM
17 TALKING TO DR. LESSER IS THAT ONCE THE BAY WAS
18 RESUSCITATED -- AND, OF COURSE, DR. TEAT WAS THE
19 OB-GYN DOCTOR FOR MRS. JURY, AND HE WAS ALSO A
20 WITNESS IN THIS CASE, AND I HAVE TALKED TO HIM. HE
21 ESSENTIALLY SAID THE BABY WAS BROUGHT BACK TO LIFE.
22 I DON'T THINK THERE'S ANY DISPUTE ABOUT THAT, BUT
23 I THINK THE RECORD ALSO SHOWS THAT THE BABY HAD NO
24 SPONTANEOUS RESPIRATIONS OF ANY SIGNIFICANCE FROM
25 THE TIME THE BABY WAS RESUSCITATED. IT EXISTED FOR

1 THOSE NEXT TWO DAYS ON LIFE SUPPORT.

2 YOUR HONOR, AGAIN, MR. PEAY PROVIDED THE
3 INFORMATION ABOUT THE GUN, ALSO INDICATED THAT AFTER
4 THIS SHOOTING OCCURRED, EVERYBODY RAN AND HE AND MR.
5 HALL ENDED UP BACK AT MR. PEAY'S APARTMENT IN PARDUE.
6 MR. HALL PRODUCED THE GUN, GAVE IT BACK TO MR. PEAY,
7 WHO PUT IT BETWEEN HIS MATTRESS AND HIS BOX SPRINGS.
8 SLED AGENTS, ALONG WITH CITY POLICE OFFICERS, GOT
9 CONSENT TO SEARCH MR. PEAY'S APARTMENT FROM HIS MOM,
10 FOUND THE GUN WITH ROUNDS IN IT WHERE IT WAS LEFT.

11 IT WAS SENT TO SLED. BALLISTICS INDICATE THAT
12 A BULLET -- THE SINGLE BULLET TAKEN OUT OF THE BODY
13 OF SHEILA JURY WAS, IN FACT, FIRED FROM THAT .38
14 CALIBER SMITH & WESSON REVOLVER. I THINK I'VE SAID
15 ALL I NEED TO SAY AT THIS POINT.

16 MR. JURY IS HERE, UNDERSTANDS THAT WE ARE NOT
17 GOING TO SENTENCE TODAY, AND IS WILLING TO COME BACK
18 MONDAY AND HAS INDICATED THAT HE WILL WITHHOLD ANY
19 STATEMENTS OR COMMENTS THAT HE WOULD LIKE TO MAKE
20 UNTIL THAT TIME.

21 THE COURT: ALL RIGHT, SIR.

22 ALL RIGHT, MR. HALL, DID YOU HEAR THE SOLICITOR
23 RECITE INTO THE RECORD THE FACTS AS THE ALLEGES THAT
24 THEY OCCURRED IN THIS CASE?

25 MR. HALL: YES, SIR.

1 THE COURT: DO YOU AGREE OR DISAGREE?

2 MR. HALL: YES, SIR.

3 THE COURT: YOU AGREE?

4 MR. HALL: YES, SIR.

5 THE COURT: IS THAT WHAT HAPPENED?

6 MR. HALL: YES, SIR.

7 THE COURT: IS THAT WHAT YOU DID?

8 MR. HALL: YES, SIR.

9 THE COURT: THANK YOU.

10 MR. BURTON?

11 MR. BURTON: YOUR HONOR, I WOULD ALSO LIKE TO
12 WITHHOLD MY COMMENTS REGARDING MR. HALL UNTIL MONDAY
13 MORNING, WHEN WE'LL HAVE SOME FAMILY MEMBERS HERE AS
14 WELL.

15 THE COURT: IT MAY BE MONDAY AFTERNOON.

16 MR. BURTON: WELL, YES.

17 THE COURT: WE HAVEN'T SET THE SCHEDULING, MR.
18 BURTON.

19 MR. BURTON: THAT'S FINE.

20 THE COURT: I WILL DEFER SENTENCING UNTIL MONDAY,
21 THANK YOU. THANK YOU, GENTLEMEN.

22 MR. BARFIELD: THANK YOU, JUDGE.

23 (WHEREUPON, THE HEARING WAS CONCLUDED AT 1:30
24 P.M.).
25

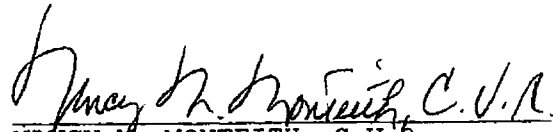
23

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

CERTIFICATE

I, NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER AND
 OFFICIAL COURT REPORTER FOR THE SIXTH JUDICIAL CIRCUIT, STATE OF
 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING REPRESENTS
 A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
 TESTIMONY HAD AND EVIDENCE PRESENTED AT THE HEARING IN THE
 ABOVE-CAPTIONED ACTION IN LANCASTER, SOUTH CAROLINA ON DECEMBER
 6, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
 INTEREST TO ANY PARTY HERETO.


 NANCY M. MONTEITH, C.V.R.
 RESIDENT COURT REPORTER
 SIXTH JUDICIAL CIRCUIT

APRIL 24, 2004

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LANCASTER)

STATE OF SOUTH CAROLINA,) DOCKET NO. 01-GS-29-071
) 01-GS-29-072
 PLAINTIFF,) 01-GS-29-073
) 01-GS-29-346
 V.)
) TRANSCRIPT OF RECORD
 LAKEITHON M. HALL,) (SENTENCING)
)
 DEFENDANT.)

DECEMBER 9, 2002
 LANCASTER, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL E. SHORT, JR.

APPEARANCES:

FOR THE PLAINTIFF: DOUGLAS A. BARFIELD, JR., SENIOR
ASSISTANT SOLICITOR

FOR THE DEFENDANT: ROSS A. BURTON, PUBLIC DEFENDER

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
 RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

1 MR. BARFIELD: YOUR HONOR, THIS IS IN RELATION TO
2 LAKEITHON MANDRELL HALL, WHO WAS BEFORE YOU FRIDAY AND
3 ENTERED PLEAS OF GUILTY TO TWO COUNTS OF MURDER, ONE
4 COUNT OF ATTEMPTED ARMED ROBBERY AND ONE COUNT OF USE
5 OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.
6 SENTENCING WAS WITHHELD UNTIL TODAY, AND WE'RE
7 PREPARED TO GO FORWARD WITH THAT AT THIS TIME.

8 I APOLOGIZE THAT I DO NOT HAVE THE CASE NUMBERS,
9 BUT I'VE TURNED EVERYTHING I HAD WITH THE CASE NUMBERS
10 OVER TO THE CLERK, AND I THINK THE COURT REPORTER HAS
11 THEM ON RECORD.

12 THE COURT: (TO CLERK) I NEED THE INDICTMENTS.

13 THE CLERK: (HANDING INDICTMENTS TO THE COURT).

14 THE COURT: (TO MR. BURTON) ALL RIGHT, I BELIEVE
15 YOU HAD RELATED THE FACTS AND I HAD ACCEPTED THE PLEA.

16 MR. BARFIELD: THAT'S CORRECT.

17 THE COURT: AND I BELIEVE THAT AT YOUR REQUEST,
18 MR. BURTON, YOU WANTED TO POSTPONE SENTENCING UNTIL
19 TODAY IN ORDER THAT YOU COULD HAVE OTHER MEMBERS OF
20 THE DEFENDANT'S FAMILY PRESENT.

21 MR. BURTON: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: SO ARE YOU READY TO PROCEED,
23 SOLICITOR?

24 MR. BARFIELD: THE STATE IS READY.

25 THE COURT: (TO MR. BURTON) ARE YOU READY?

1 MR. BURTON: YES, YOUR HONOR.

2 THE COURT: BE GLAD TO HEAR FROM YOU ON BEHALF OF
3 MR. HALL.

4 MR. BURTON: MAY IT PLEASE THE COURT, YOUR HONOR.

5 THE COURT: YES.

6 MR. BURTON: WHEN WE WERE UP HERE FRIDAY, I'VE
7 PRETTY MUCH SPENT THAT TIME BETWEEN THEN AND NOW AND
8 ALL WEEKEND THINKING ABOUT WHAT KIND OF WORDS COULD I
9 SAY ON BEHALF OF MR. HALL. MY JOB IN THIS CASE IS A
10 VERY, VERY DIFFICULT ONE IN THAT WE HAVE A VERY
11 SEASONED JUDGE IN THIS CASE WHO HAS SEEN IT ALL AND
12 HAD MANY DEFENDANTS LIKE MR. HALL IN FRONT OF HIM, AND
13 MY JOB WAS TO TRY AND CONVINCE THAT JUDGE THAT THE
14 BEST INTERESTS OF JUSTICE COULD BE SERVED IN THIS CASE
15 BY SENTENCING MR. HALL TO THE 30-YEAR MINIMUM THAT
16 THIS CRIME THAT MR. HALL HAS PLED TO CARRIES.

17 AND UNDERSTANDING YOUR HONOR HAS NO DISCRETION TO
18 GO BELOW THAT, I FELT THAT WAS MY JOB AND I WAS HAVING
19 AN EXTREMELY DIFFICULT TIME THINKING ABOUT WHAT WORDS
20 THAT I COULD COME UP WITH THAT COULD MITIGATE THE
21 KILLING OF TWO INNOCENT PEOPLE. WHATEVER THEIR
22 BUSINESS THAT NIGHT, THEY OUGHT TO BE WALKING THE
23 EARTH WITH ALL OF US TODAY, BUT THEY'RE NOT.

24 IT BECAME A LITTLE CLEARER TO ME THIS WEEKEND
25 WHEN WE HAD A LITTLE FAMILY CRISIS INVOLVING A

1 BELOVED FAMILY PET IN MY HOUSE, AND I SAW HOW MY
2 CHILDREN REACTED. AND THEY REACTED DIFFERENTLY THAN I
3 REACTED, AND THEY REACTED DIFFERENTLY THAN MY WIFE
4 REACTED, AND I COULD SEE THAT THEY REACTED THAT WAY
5 BECAUSE THEY WERE CHILDREN. THEY DIDN'T HAVE THE
6 JUDGMENT THAT AN ADULT HAS. THEY DIDN'T HAVE THE WAY
7 OF LOOKING AT THINGS THAT AN ADULT HAS. THEY DIDN'T
8 HAVE THE ABILITY TO MAKE THE RIGHT CHOICES THAT WE
9 HAVE.

10 AND I'D POINT OUT TO YOUR HONOR THAT IN THIS
11 CASE HERE, AT THE TIME OF THIS OCCUPANCY ON THE
12 TWENTIETH OF NOVEMBER, 2000, WE HAD ANOTHER CHILD.
13 THAT CHILD STANDS BEFORE YOU. HE'S AN ADULT NOW, BUT
14 HE WAS SHY OF HIS SEVENTEENTH BIRTHDAY AT THE TIME
15 THIS OCCURRED, AND THAT MAKES HIM, WITHOUT QUESTION,
16 UNDER THE LAW A CHILD, JUST A CHILD HIMSELF AT THAT
17 POINT.

18 AND WE HAVE OTHER COURTS THAT GENERALLY DEAL WITH
19 CHILD DEFENDANTS. IT'S THE FAMILY COURT. AND THAT
20 COURT IS ONE WHERE A CHILD WOULD GO BEFORE THE COURT
21 TO PLEAD GUILTY OR NOT GUILTY, AND IF HE PLED GUILTY
22 OR WAS FOUND GUILTY, THE JUDGE WOULD SCOLD HIM. THE
23 JUDGE WOULD SEND HIM, PERHAPS, TO BE EVALUATED,
24 PERHAPS TO SERVE A PROBATIONARY SENTENCE, BUT IN NO
25 CASE WOULD THAT JUDGE SENTENCE THAT CHILD TO ANYTHING

1 HARSHER THAN COMMITMENT TO THE DEPARTMENT OF JUVENILE
2 JUSTICE UNTIL THEIR TWENTY-FIRST BIRTHDAY.

3 RIGHT NOW WE CAN'T DEAL WITH THIS CASE THAT WAY,
4 UNFORTUNATELY, BECAUSE IT'S A MORE SERIOUS CASE THAT'S
5 BEEN BROUGHT TO ADULT COURT. BUT NOTHING, NONE OF
6 THAT, CHANGES THE FACT THAT HE WAS A CHILD AT THAT
7 TIME AND THAT CHILDREN, BY THEIR NATURE, LACK GOOD
8 JUDGMENT IN MANY THINGS. THEY LACK THE ABILITY TO
9 MAKE GOOD CHOICES. THEY DON'T DO THINGS FOR THE SAME
10 MOTIVATION THAT ADULTS DO, YOUR HONOR, AND BY GOOD
11 PARENTING AND GOOD PEER RELATIONS AND BY THE GRACE OF
12 GOD, MORE THAN ANYTHING ELSE, YOUR HONOR, MOST OF
13 THEM DON'T FIND THEMSELVES CHARGED WITH MURDER.

14 CHILDREN DO THINGS DIFFERENTLY THAN WE DO. THEY
15 DO THINGS FOR DIFFERENT REASONS. SOME OF THE
16 THINGS -- SOME OF THE REASONS THAT CHILDREN ACT LIKE
17 THEY ACT IS BECAUSE THEY WANT THE ESTEEM OF THEIR
18 PEERS. I HAVE CHILDREN THAT THEIR WHOLE LIFE IS
19 DEPENDENT UPON WHAT THEY CAN DO TO MAKE THEMSELVES
20 POPULAR, WHAT THEY CAN DO TO IMPRESS THEIR FRIENDS,
21 AND SO FORTH. THEY DO THAT BECAUSE THEY'RE CHILDREN.
22 THEY DO THAT BECAUSE THEY'RE NOT -- THEY HAVEN'T
23 EARNED THE RIGHT TO MAKE ADULT DECISIONS, AND WE
24 DON'T ALWAYS HOLD THEM ACCOUNTABLE FOR THOSE
25 DECISIONS.

1 SOME DO THINGS FOR THE ESTEEM OF THEIR PEERS,
2 SUCH AS EXCELLING AT SPORTS. SOME DO THINGS BY TRYING
3 TO LOOK LIKE A BIG SHOT IN FRONT OF THEIR PEERS. SOME
4 DO THINGS TO SHOW THEIR PEERS THAT THEY DON'T HAVE
5 ANY FEAR IN A DANGEROUS SITUATION. THOSE AREN'T GOOD
6 CHOICES, BUT THEY'RE THE CHOICES THAT CHILDREN OFTEN
7 MAKE, YOUR HONOR, AND THIS IS ESSENTIALLY WHAT
8 HAPPENED HERE.

9 I DON'T THINK THAT ANYBODY DOUBTS THAT THERE WAS
10 NO INTENTION THAT PEOPLE WOULD GET KILLED, YOUR HONOR.
11 PERHAPS THERE WAS INTENT TO LOOK LIKE A BIG GUY, TO
12 GO UP AND SCARE THESE PEOPLE. PERHAPS THERE WAS AN
13 INTENT TO IMPRESS HIS FRIENDS AND PEERS AT THAT TIME.
14 PERHAPS THERE WAS AN INTENT EVEN TO ROB THE VICTIMS,
15 BUT SURELY THERE WAS NO INTENT TO KILL ANYBODY. I
16 MEAN, WHAT WOULD THAT HAVE GAINED ANYBODY THAT WAS
17 STANDING THERE THAT NIGHT, YOUR HONOR?

18 SO I ASK YOU, PLEASE, PLEASE, YOUR HONOR, DON'T
19 SENTENCE HIM TO ANY LONGER A PRISON TERM THAN JUSTICE
20 REQUIRES BECAUSE HE WAS A CHILD, BECAUSE HE WAS
21 THINKING LIKE A CHILD ON THAT AFTERNOON. AND, PLEASE,
22 YOUR HONOR, PLEASE DON'T SENTENCE HIM TO ANY LONGER
23 A PRISON TERM THAN JUSTICE REQUIRES BECAUSE THIS WAS
24 AN ACCIDENT, AN ACCIDENT THAT WENT HORRIBLY WRONG
25 THAT AFTERNOON, BUT AN ACCIDENT NOTWITHSTANDING.

1 AND, PLEASE, PLEASE, YOUR HONOR, DON'T SENTENCE HIM TO
2 ANY LONGER A PRISON TERM THAN JUSTICE REQUIRES BECAUSE
3 HE WAS AN IMPULSIVE YOUTH, AN IMPULSIVE YOUTH THAT DID
4 SOMETHING REALLY STUPID THAT CAUSED A VERY, VERY
5 UNFORTUNATE RESULT.

6 AND MINE AND MR. HALL'S HEART GO OUT TO MR. JURY
7 OVER WHAT HAPPENED TO HIM AND HIS WIFE AND HIS CHILD.
8 AND, PLEASE, PLEASE, YOUR HONOR --

9 THE COURT: EXCUSE ME, MR. BURTON. WHEN YOU USE
10 THE TERM "ACCIDENT", I ASSUME YOU'RE USING THAT IN A
11 DIFFERENT SENSE THAN A LEGAL SENSE.

12 MR. BURTON: YES, OBVIOUSLY, YOUR HONOR.

13 THE COURT: OBVIOUSLY THIS WAS A MURDER, AND MR.
14 HALL HAS PLED GUILTY TO MURDER.

15 MR. BURTON: YES, SIR, NOT IN THE WAY OF ANY SORT
16 OF A DEFENSE WHATSOEVER.

17 THE COURT: YOU'RE NOT TALKING ABOUT AN ACCIDENT
18 AS KNOWN IN THE LAW?

19 MR. BURTON: NO, SIR.

20 THE COURT: ALL RIGHT, I THINK I UNDERSTAND YOUR
21 USE OF THAT WORD. GO AHEAD.

22 MR. BURTON: AND, PLEASE, PLEASE, IF YOUR HONOR
23 CAN FIND IT IN YOUR HEART TO SENTENCE HIM TO 30 YEARS,
24 BECAUSE I THINK THAT WOULD BE IN THE INTEREST OF
25 COMPLETE JUSTICE AND IT'S THE RIGHT THING TO DO.

1 THE COURT: THANK YOU, MR. BURTON.

2 MR. HALL, I'D BE GLAD TO HEAR FROM YOU --

3 OR FROM MR. HALL'S MOTHER. IS THAT WHO'S

4 PRESENT WITH YOU TODAY, MR. BURTON?

5 MR. BURTON: YES, YOUR HONOR. THIS IS MR. PAUL
6 STEVENS, MR. HALL'S FATHER, AND MS. NOVELLA HALL, HIS
7 MOTHER.

8 THE COURT: (TO PARENTS) I'LL BE GLAD TO HEAR
9 FROM EITHER ONE OR BOTH OF YOU.

10 PAUL STEVENS: WELL, FIRST OF ALL, I'D JUST LIKE
11 TO SAY THAT WE ARE TRULY SORRY THAT THIS HAS HAPPENED,
12 AND WE ALL HAVE REMORSE FOR HIS FAMILY AND WE ARE
13 TRULY SORRY.

14 (TO MR. JURY) AND I KNOW WORDS CANNOT BRING YOUR
15 FAMILY BACK. IF THEY COULD, THEY WOULD BE BACK
16 BECAUSE I'VE BEEN PRAYING FOR YOU AND YOUR FAMILY,
17 THAT THE LORD WOULD MAKE A WAY FOR YOUR HEART TO BE A
18 LITTLE LENIENT TOWARD OUR SON, EVEN THOUGH HE MAY BE
19 RESPONSIBLE, I DON'T EVEN KNOW.

20 BUT I'D JUST ASK THE MERCY OF THE COURT FOR MY
21 SON.

22 THE COURT: THANK YOU, SIR.

23 MRS. HALL?

24 MRS. HALL: PRETTY MUCH THE SAME THING. I'M
25 SORRY. I ALWAYS, WHEN I WAS RAISING HIM UP, I ALWAYS

1 ASKED THE LORD TO NOT TAKE ME FROM THEM WHILE THEY
2 WAS YOUNG.

3 (TO MR. JURY) AND I KNOW YOUR TWO BOYS ARE
4 STILL SMALL AND THEY NEED THEIR MAMA. LIKE I SAY,
5 WORDS CAN'T BRING THEM BACK, BUT I AM TRULY, TRULY
6 SORRY. I AM. IF I COULD CHANGE IT, I WOULD, BUT I
7 CAN'T. I PROMISE YOU, I AM SORRY.

8 THE COURT: THANK YOU.

9 MS. HALL: I AM SO SORRY.

10 MR. HALL: I'D LIKE TO APOLOGIZE BECAUSE I'VE
11 DONE SOMETHING I CAN'T TAKE BACK. I'M SAYING IF I
12 COULD CHANGE THE PAST, I WOULD, BUT IT'S OVER WITH.
13 I CAN'T TAKE BACK WHAT'S DONE BEEN DONE.

14 (TO MR. JURY) ALL I CAN DO IS PRAY THAT YOU'LL
15 FORGIVE ME, YOU KNOW WHAT I'M SAYING? IF YOU COULD
16 FIND THE MERCY IN YOUR HEART TO FORGIVE ME, I ACCEPT,
17 AND I PRAY THAT YOU'LL ACCEPT MY APOLOGY. I'M
18 JUST -- I'M LEAVING THE REST TO GOD'S HANDS. NOW,
19 HE KNOWS WHAT'S BEST FOR ME. HE AIN'T GOING TO LET
20 THIS COURT SENTENCE ME MORE THAN HE THINKS I DESERVE.

21 (TO THE COURT) AND I JUST PRAY THAT YOU'D HAVE
22 MERCY IN YOUR HEART. I'D JUST LIKE TO APOLOGIZE.

23 THE COURT: THANK YOU, MR. HALL.

24 MR. BURTON, ANYTHING FURTHER BEFORE WE HEAR FROM
25 THE VICTIMS?

1 MR. BURTON: I'D SIMPLY POINT OUT THAT MR. HALL
2 HAS NO GENERAL SESSIONS RECORD.

3 THE COURT: ASK THE DEFENDANT TO FACE THE COURT.
4 SOLICITOR, UNDER OUR VICTIM'S BILL OF RIGHTS,
5 I'D BE GLAD TO HEAR FROM THE VICTIMS IF THEY CHOOSE TO
6 MAKE A STATEMENT. THEY ARE NOT REQUIRED TO. I JUST
7 WOULD LIKE TO EXTEND THAT OPPORTUNITY.

8 MR. BARFIELD: LET ME ADDRESS TWO OR THREE
9 DIFFERENT THINGS TO THE COURT. I DON'T THINK IT
10 REALLY WOULD MAKE A WHOLE LOT OF DIFFERENCE IN YOUR
11 SENTENCING SCHEME IN THIS CASE, BUT MR. HALL DOES
12 HAVE A JUVENILE RECORD WHICH I WILL TELL YOU ABOUT.
13 HE HAD A RECEIVING STOLEN GOODS IN '96, ALONG WITH AN
14 ASSAULT AND BATTERY. HE GOT PROBATIONARY SENTENCES.
15 HE GOT A PROBATION VIOLATION IN '96 AND WENT TO THE
16 RECEPTION AND EVALUATION CENTER AND CAME BACK OUT ON
17 PROBATION.

18 AND THEN HE HAD A DISORDERLY CONDUCT IN THE YEAR
19 2000 FOR WHICH HE ALSO GOT PROBATION. HE WAS
20 RELEASED FROM PROBATION IN DECEMBER OF '98.

21 YOUR HONOR, FROM A FACTUAL STANDPOINT, ONE BRIEF
22 MATTER THAT I TELL NOT BY WAY OF CHANGING FACTS, BUT
23 JUST POINTING OUT SOMETHING THAT MR. TOMMY JURY HAS
24 POINTED OUT TO ME A COUPLE OF TIMES THAT KIND OF
25 STICKS IN HIS CRAW A LITTLE BIT, I GUESS, ABOUT THE

1 WAY THIS WHOLE THING HAPPENED.

2 TOMMY JURY INDICATED TO ME THAT WHEN HE WAS FIRST
3 APPROACHED IN HIS CAR BY MR. HALL, MR. HALL ASKED HIM
4 FOR MONEY AND WAS NOT SHOWING A GUN AT THAT POINT, AND
5 MR. JURY, BELIEVING, AS MR. BURTON ALLUDED, THAT MAYBE
6 MR. HALL WAS JUST SHOWING A LITTLE BRAVADO AND TRYING
7 TO BE THE BIG GUY ON THE BLOCK, REBUFFED MR. HALL'S
8 REQUEST FOR HIS MONEY. AND, OF COURSE, MR. JURY
9 SAYS, "HAD I KNOWN THAT HE REALLY HAD A GUN, THINGS
10 MIGHT HAVE BEEN DIFFERENT", YOU KNOW. "MY WIFE AND MY
11 CHILD MIGHT BE ALIVE TODAY".

12 SO THE GUN WAS ONLY SHOWN, ACCORDING TO MR.
13 JURY, AFTER MR. JURY REBUFFED HIM, AND HE THINKS IT
14 WAS JUST SO SENSELESS. YOUR HONOR, MR. JURY PREPARED
15 A BRIEF STATEMENT WHICH HE ASKED ME TO READ FOR HIM,
16 AND I WILL TELL YOU, BEFORE I GET INTO IT, THERE ARE
17 CERTAIN COMMENTS THAT MR. JURY MADE CONCERNING THE
18 POSSIBLE SENTENCES IN THIS CASE. AND I WILL ALSO
19 TELL YOU THAT BEFORE THIS PLEA AND ALL THE PLEAS IN
20 THESE CASES WERE NEGOTIATED, I CONSULTED WITH TOMMY
21 JURY MANY TIMES, AND HE AGREED THEN, AND I BELIEVE
22 STILL AGREES, WITH THE WAY WE HAVE PROSECUTED THIS
23 CASE AND THE AGREEMENTS THAT HAVE BEEN REACHED WITH
24 VARIOUS DEFENDANTS.

25 HE DOES HAVE A COMMENT IN HERE, THOUGH, WHICH

1 IS BASICALLY THAT HE HAS A WISH MORE THAN WHAT HE
2 UNDERSTANDS THE REALITY WILL BE, AND I'M, AGAIN,
3 READING MR. JURY'S STATEMENT NOW. "THE REASON FOR
4 THIS LETTER IS BECAUSE I KNOW THAT IF I GIVE AN ORAL
5 STATEMENT, I WILL BECOME EMOTIONAL AND BREAK DOWN.

6 "MY REQUEST TO YOU IS FOR THE MEN THAT ARE
7 RESPONSIBLE FOR THE DEATHS OF MY WIFE AND DAUGHTER
8 TO BE SENTENCED TO THE MAXIMUM PENALTY THAT THE LAW
9 ALLOWS. I WANT THESE MEN TO THINK ABOUT THE
10 SUFFERING MY CHILDREN AND MYSELF HAVE BEEN GOING
11 THROUGH FOR THE PAST TWO YEARS AND FOR THE REST OF
12 OUR LIVES. MY CHILDREN AND I HAVE MISSED THE PAST
13 TWO CHRISTMASES AND THE BOYS' BIRTHDAYS WITHOUT THEIR
14 MOTHER." AND, YOUR HONOR, MR. JURY DOES HAVE TWO
15 OTHER SONS WHO I BELIEVE ARE NOW SEVEN AND FIVE.

16 "THEY'VE REPEATEDLY ASKED, 'WHEN IS MOMMY
17 COMING HOME?' 'WHY ARE WE LIVING WITH' MY FATHER, WHO
18 IS A RETIRED WIDOWER. MY FATHER CANNOT TAKE THE
19 PLACE OF THEIR MOTHER BUT HAS BEEN AN ENORMOUS HELP
20 WITH THE BOYS. I WOULD LIKE VERY MUCH TO SEE THESE
21 MEN INCARCERATED FOR THE REST OF THEIR LIVES WITHOUT
22 THE POSSIBILITY OF PAROLE. I WANT THEM TO THINK ABOUT
23 WHAT THEY'VE DONE TO MY FAMILY. AND FINALLY, YOUR
24 HONOR, YOUR CONSIDERATION OF MY REQUEST WILL BE
25 DEEPLY APPRECIATED."

1 I TOLD MR. JURY THAT I WOULD READ THAT STATEMENT.
2 I ALSO TOLD HIM THAT IF, AT ANYTIME DURING THIS
3 PROCEEDING, HE DID DESIRE TO ADDRESS THE COURT, THAT
4 I WOULD RECOGNIZE HIM AND LET HIM DO SO. AND I WOULD,
5 AT THIS TIME, ASK TOMMY JURY IF THERE IS ANYTHING HE
6 WOULD LIKE TO SAY TO THE JUDGE.

7 MR. JURY: WELL, FIRST OF ALL, I ACCEPT THE
8 APOLOGY OF MR. HALL'S PARENTS, BUT I REJECT THE
9 APOLOGY OF MR. HALL BECAUSE THE WAY HE PULLED THAT
10 GUN OUT, OUT OF HATRED, AND SHOT --

11 THE COURT: THANK YOU.

12 ANYTHING FURTHER, SOLICITOR?

13 MR. BARFIELD: THAT'S ALL FROM THE STATE.

14 THE COURT: ANYTHING FURTHER, MR. BURTON?

15 MR. BURTON: I'D JUST SAY THAT NO MATTER WHAT
16 HAPPENS, MR. HALL WILL HAVE A LONG, LONG TIME TO
17 THINK ABOUT IT.

18 THE COURT: I UNDERSTAND.

19 THIS IS TRULY, TRULY A SENSELESS TRAGEDY. MR.
20 HALL, I REALIZE YOU'RE VERY YOUNG, AND I REALIZE THAT
21 WE'VE ALL COMMITTED THE ACTS, NOT JUST WHEN WE WERE
22 YOUNG BUT MORE FOOLISH ACTS WHEN WE WERE YOUNG THAN
23 WHEN WE'RE OLDER. BUT SITTING UP HERE, A LOT OF
24 OLDER PEOPLE COMMIT FOOLISH ACTS, ALSO.

25 YOU CERTAINLY KNOW THE DIFFERENCE BETWEEN RIGHT

1 AND WRONG AND YOU KNOW WHAT YOU DID THAT DAY IS JUST
2 UNACCEPTABLE. THERE IS NO WAY TO EXPLAIN IT; THERE'S
3 NO "WHY". AS I SIT HERE DAY AFTER DAY AFTER DAY,
4 MONTH AFTER MONTH, YEAR AFTER YEAR, I JUST DON'T
5 UNDERSTAND SOME OF THE ACTS THAT PEOPLE COME UP WITH.
6 THEY'RE JUST DEVASTATING, SO VIOLENT, AND THEN, OF
7 COURSE, IT'S NOT LIKE WHEN YOU WERE A CHILD. AS MR.
8 BURTON SAID, YOU CAN'T JUST SAY, "I WISH IT WOULD GO
9 AWAY", "I WISH IT HADN'T HAPPENED."

10 WHEN YOU PRESENT A FIREARM AND PULL THE TRIGGER,
11 BAD THINGS USUALLY HAPPEN. THEY DID IN THIS CASE,
12 PARTICULARLY SO. YOU'VE GOT A FATHER OF TWO YOUNG
13 CHILDREN WITHOUT A WIFE AND MOTHER. YOU'RE A VERY
14 YOUNG MAN, YOUR LAWYER HAS POINTED OUT, AND YOUR
15 MOTHER AND FATHER -- IT'S BEEN TRAGIC FOR THEM ALSO.
16 IT'S JUST A TRAGEDY ALL THE WAY AROUND.

17 01-GS-29-071, THE CASE OF STATE OF SOUTH
18 CAROLINA V. LAKEITHON M. HALL, AND INDICTMENT 01-GS-
19 29-346, STATE V. LAKEITHON M. HALL, WHEREIN THE
20 DEFENDANT HAS PLED GUILTY TO MURDER, IT IS THE
21 SENTENCE OF THE COURT THAT HE BE CONFINED TO THE
22 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A
23 PERIOD OF 38 YEARS IN EACH INDICTMENT.

24 IN REGARDS TO INDICTMENT 072, WHEREIN HE'S
25 PLED GUILTY TO ATTEMPTED ARMED ROBBERY, IT IS THE

1 SENTENCE OF THE COURT HE BE CONFINED TO THE SOUTH
2 CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20
3 YEARS. IN REGARD TO INDICTMENT 073, WHEREIN HE'S
4 PLED GUILTY TO POSSESSION OF A FIREARM DURING THE
5 COMMISSION OF A VIOLENT CRIME, IT IS THE SENTENCE OF
6 THE COURT HE BE CONFINED TO THE SOUTH CAROLINA
7 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FIVE YEARS.

8 (TO DEFENDANT) THANK YOU. GOOD LUCK TO YOU.

9 MR. BURTON: CREDIT FOR TIME SERVED?

10 THE COURT: YES.

11 MR. BARFIELD: THANK YOU, JUDGE.

12 (WHEREUPON, THE HEARING WAS CONCLUDED AT 2:20
13 P.M.).

21

FORM 5

STATE OF SOUTH CAROLINA)

2003-CP-29-960
IN THE COURT OF COMMON PLEASCounty of LANCASTER)LAKEITHON MANDRELL HALL #289440)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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
990 WISACK HIGHWAY BISHOPVILLE, SC 29010
2. Name and location of Court which imposed sentence LANCASTER COUNTY
COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) SEE ATTACHMENT
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) SEE ATTACHMENT

- (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) GUILTY PLEA INVOLUNTARILY, UNKNOWNINGLY, INTELLIGENTLY ENTERED
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NIA
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA
- (b) the name and location of the Court in which each was filed:
- i. NIA
- ii. NIA
- iii. NIA

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) NO
 - (b) NO
 - (c) NO
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? NIA
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NIA
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NIA
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. MR. ROSS A. BURTON
[REDACTED] LANCASTER, SC 29721
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. ARRAIGNMENT AND PLEA / MR. ROSS A. BURTON
[REDACTED]
 - ii. SENTENCING / MR. ROSS A. BURTON
 - iii. _____

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

I, LAKEITHON MALL, 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.

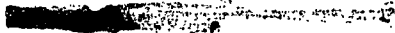
LAKEITHON M. MALL
Applicant

SWORN or affirmed to and subscribed before me this

4 day of Sept, 2003.

Barbara Bickerton
Notary Public

My Commission Expires: Oct 28, 2012



LAKETHAN M. HALL -VS- STATE

11

STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE
POINTS SET OUT IN (10):

A

INEFFECTIVE ASSISTANCE OF COUNSEL:

FOR TO MY PLEA, COUNSEL WAS INEFFECTIVE INASMUCH HE FAILED TO ADEQUATELY
INVESTIGATE MY CASE.

2

FOR TO MY PLEA, COUNSEL WAS INEFFECTIVE INASMUCH HE FAILED TO INVESTIGATE
AND INTERVIEW CRUCIAL WITNESSES.

3

FOR TO MY PLEA, COUNSEL WAS INEFFECTIVE INASMUCH HE FAILED TO ADEQUATELY
INVESTIGATE EXCULPATORY EVIDENCE OF FORENSIC REPORTS TO BUILD A POSSIBLE DEFENSE FOR
CASE.

B

GUILTY PLEA INVOLUNTARILY, UNKNOWNINGLY, UNINTELLIGENTLY ENTERED

GUILTY PLEA WAS INVOLUNTARILY, UNKNOWNINGLY, AND UNINTELLIGENTLY ENTERED
INASMUCH COUNSEL PRETRIAL INVESTIGATION OF MY CASE WAS INADEQUATE,
REASONABLE, AND PREJUDICE ME INTO PLEADING GUILTY.

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

LAKEITHON M. HALL,)
PETITIONER,)
V.)
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

DOCKET NO. 03-CP-29-960

TRANSCRIPT OF RECORD
(HEARING)

MARCH 21, 2006
WINNSBORO, SOUTH CAROLINA

BEFORE:

HONORABLE JOHN C. HAYES, III

APPEARANCES:

FOR THE PETITIONER:

GOVAN T. MYERS, III, ESQUIRE

FOR THE RESPONDENT:

MOLLY R. CRUM, ASSISTANT ATTORNEY
GENERAL

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

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1 THE COURT: THIS IS A HEARING ON THE MERITS?

2 MS. CRUM: YES, SIR, YOUR HONOR. THIS IS
3 LAKEITHON MANDRELL HALL V. STATE OF SOUTH CAROLINA,
4 CASE NUMBER 2003-CP-29-960. HE IS REPRESENTED HERE
5 TODAY. MR. VAN MYERS IS APPEARING FOR MR. BLACKWELL
6 IN THIS MATTER. BY WAY OF BACKGROUND, MR. HALL PLED
7 GUILTY TO TWO COUNTS OF MURDER, ATTEMPTED ARMED
8 ROBBERY AND POSSESSION OF A FIREARM DURING A CRIME OF
9 VIOLENCE ON DECEMBER 6, 2002. HE WAS SENTENCED
10 DECEMBER 9, 2002. HE RECEIVED AN AGGREGATE SENTENCE
11 OF 38 YEARS ON THAT PLEA.

12 AND, YOUR HONOR, IF COUNSEL WOULD PLEASE STATE
13 THE GROUNDS ON WHICH HE'S TO PROCEED TODAY.

14 MR. MYERS: YES, YOUR HONOR. OUR APPLICATION IS
15 TWO-FOLD. INEFFECTIVE ASSISTANCE OF COUNSEL IS OUR
16 FIRST GROUNDS, FOR FAILURE OF COUNSEL, DEFENSE
17 COUNSEL, TO PROPERLY INVESTIGATE THE CASE,
18 INTERVIEWING WITNESSES, INTERVIEWING FORENSIC EXPERTS,
19 INTERVIEWING CO-DEFENDANTS AND EXPLORING POSSIBLE
20 DEFENSES IN PHYSICAL EVIDENCE. THE SECOND PART OF OUR
21 APPLICATION IS INVOLUNTARY GUILTY PLEA, AND THAT WOULD
22 ALSO BE CONNECTED INTO FAILURE TO INVESTIGATE AND
23 EXAMINE WITNESSES. THEREFORE, MY CLIENT WAS UNABLE TO
24 GIVE A VOLUNTARY PLEA BECAUSE HE DID NOT ADEQUATELY
25 KNOW WHAT THE MERITS OF HIS CASE WERE. AND IN
26 ADDITION, HE WAS NOT INFORMED OF -- ADEQUATELY

1 INFORMED OF SENTENCING GUIDELINES, OF MINIMUMS AND
2 MAXIMUMS, AS TO ELIGIBILITY OF PAROLE, AND WAS NOT
3 INSTRUCTED AS TO THAT THE JURY COULD BE INSTRUCTED AS
4 TO LESSER INCLUDED OFFENSES, THEREFORE, HIS PLEA WAS
5 NOT VOLUNTARY AND WAS UNKNOWING, YOUR HONOR.

6 THE COURT: WELL, I'M GLAD TO HEAR HIS TESTIMONY,
7 BUT I'VE NEVER HEARD OF US HAVING SENTENCING
8 GUIDELINES IN THIS STATE, SO I DON'T KNOW WHAT HE
9 MEANS BY THAT. HE'LL TELL ME, I'M SURE. HE'S RAISING
10 HIS HAND. QUITE OFTEN THE INMATES NOW KNOW MORE ABOUT
11 THE LAW THAN I DO. DO YOU WANT TO CALL YOUR FIRST
12 WITNESS?

13 MR. MYERS: YES, YOUR HONOR. I WOULD CALL
14 TAKEISHA CUNNINGHAM TO THE STAND, YOUR HONOR.

15 THE COURT: PLEASE COME DOWN AND BE SWORN.

16 (WHEREUPON, TAKEISHA CUNNINGHAM, HAVING FIRST
17 BEEN DULY SWORN, TESTIFIES AS FOLLOWS.)

18 DIRECT EXAMINATION

19 BY MR. MYERS:

20 Q MS. CUNNINGHAM, COULD YOU PLEASE STATE YOUR FULL NAME FOR
21 THE RECORD, PLEASE?

22 A TAKEISHA GAQON CUNNINGHAM.

23 Q AND WHAT IS YOUR ADDRESS, MS. CUNNINGHAM?

24 A [REDACTED].

25 Q WERE YOU IN PARDUE STREET APARTMENTS ON NOVEMBER 20, 2000?

26 A YES, SIR.

1 Q IS THAT WHERE SHEILA JURY, WHO WAS THE VICTIM IN THIS CASE,
2 IS THAT WHERE SHE WAS SHOT?

3 A YES, SIR. YES, SIR.

4 Q AND DO YOU KNOW LAKEITHON HALL WHO IS MY CLIENT?

5 A YES, SIR.

6 Q AND HOW LONG HAVE YOU KNOWN HIM?

7 A ABOUT ALL MY LIFE, ALL HIS LIFE.

8 Q SO HE'S AN EASILY RECOGNIZABLE PERSON TO YOU?

9 A YES, SIR.

10 Q WERE YOU PRESENT WHEN SHEILA JURY WAS SHOT?

11 A YES, SIR.

12 Q DESCRIBE THE SITUATION WHERE YOU WERE AND WHAT YOUR
13 VIEWPOINT OF THE SCENE OF THE CRIME WAS.

14 A WELL, WHEN THIS INCIDENT TOOK PLACE, I WAS IN MY WINDOW IN
15 THE APARTMENTS AT 1703, AND IF I'M NOT MISTAKEN, THERE WAS
16 A GREEN CAR THAT SHEILA WAS IN.

17 Q CORRECT.

18 A SHE CAME UP IN THE 700 BLOCK AND MADE A U-TURN IN THE
19 MIDDLE.

20 Q OKAY. AND DID YOU GIVE A STATEMENT TO THE POLICE ABOUT
21 ANYTHING YOU SAW THAT DAY OR AT LEAST WHAT THEY ASKED YOU
22 ABOUT?

23 A YES, SIR.

24 Q AND YOU SAY YOU WERE AT A WINDOW. HOW FAR IS THIS WINDOW
25 AWAY FROM THE CAR WHERE MS. JURY WAS SHOT?

26 A FROM ABOUT HERE (INDICATING) TO ABOUT THAT SECOND STAND.

1 Q THE SECOND --

2 A THE BENCH.

3 MR. MYERS: YOUR HONOR, COULD WE JUST HAVE THE
4 RECORD REFLECT THAT -- 20, 25 FEET.

5 Q SO IT WAS ABOUT 20 TO 25 FEET AWAY?

6 A YES, SIR.

7 Q AND YOU GAVE A STATEMENT TO THE POLICE, AND IS THAT
8 STATEMENT AN ACCURATE STATEMENT BASED ON THE QUESTIONS YOU
9 WERE ASKED?

10 A YES, SIR.

11 Q PLEASE INDICATE WHAT YOU TOLD THE POLICE AND ALSO WHAT
12 YOU'VE INFORMED ME OF.

13 A WHEN THE CAR CAME UP AND TURNED AROUND, THEY DID STOP, AND
14 IT WAS -- I BELIEVE IT WAS TWO PEOPLE APPROACHED THE CAR,
15 AND AFTER ABOUT -- IT WASN'T EVEN A MINUTE. IT WAS A WHOLE
16 -- IT WAS ABOUT SIX OF THEM AT THE CAR.

17 Q IT WAS SIX -- SO YOU SAW SIX PEOPLE IN OR AROUND THE CAR IN
18 SOME FASHION?

19 A YES, SIR.

20 Q NOW, WAS MR. HALL ANYWHERE NEAR THE CAR?

21 A NO, SIR.

22 Q DID YOU SEE MR. HALL AT ALL THAT DAY AROUND THE SCENE OF
23 THE CRIME?

24 A NO, SIR.

25 Q RIGHT BEFORE THE CRIME OR AFTER THE CRIME?

26 A NO, SIR.

1 Q YOU DID NOT SEE HIM AT ALL?

2 A NO, SIR.

3 Q AND WOULD YOU HAVE CERTAINLY RECOGNIZED HIM, BEING THAT
4 YOU'VE KNOWN HIM FOR THAT LONG?

5 A YES, SIR.

6 Q DID MR. BURTON, WHO WAS HIS ATTORNEY ON THIS MATTER, DID HE
7 EVER CONTACT YOU REGARDING THIS MATTER AT ALL?

8 A NO, SIR.

9 Q DID YOU EVER RECEIVE A MESSAGE OR ANYTHING INDICATING THAT
10 HE WANTED TO TALK TO YOU?

11 A NO, SIR.

12 Q SO YOU WERE NOT TALKING -- YOU DID NOT DISCUSS THIS CASE
13 WITH HIM AT ALL?

14 A NO, SIR.

15 Q THE ONLY PEOPLE YOU GAVE A STATEMENT TO WERE THE POLICE?

16 A YES, SIR.

17 MR. MYERS: I HAVE NOTHING FURTHER FOR MS.

18 CUNNINGHAM, YOUR HONOR.

19 CROSS-EXAMINATION

20 BY MS. CRUM:

21 Q MA'AM, YOU TOLD THE POLICE THAT YOU DON'T KNOW WHO FIRED
22 THE SHOT. ISN'T THAT CORRECT?

23 A YES, MA'AM.

24 Q AND YOU IDENTIFIED A COUPLE OF PEOPLE INITIALLY AS PEOPLE
25 YOU RECOGNIZED, IS THAT CORRECT?

26 A YES, MA'AM.

1 Q AND THEN LATER YOU SAID THAT YOU THOUGHT THAT THERE WERE
2 TWO ADDITIONAL PEOPLE, ISN'T THAT CORRECT?

3 A NO, MA'AM. WHEN I WAS -- WHEN I WROTE THE STATEMENT, I
4 TOLD THE ONES THAT I SEEN, THE NAMES.

5 MS. CRUM: I BEG THE COURT'S INDULGENCE JUST A
6 MOMENT.

7 Q SO YOU WEREN'T ACTUALLY LOOKING AT THE CAR WHEN THE SHOT
8 WAS FIRED, ISN'T THAT CORRECT?

9 A I WAS LOOKING AT THE CAR, BUT I DON'T KNOW WHO FIRED THE
10 SHOT.

11 Q YOU WERE LOOKING -- SO DID YOU TELL THE POLICE THAT YOU
12 WERE LOOKING THERE AT THE TIME?

13 A YES, MA'AM.

14 Q ISN'T IT TRUE THAT YOU TOLD THE POLICE THAT YOU HAD HEARD A
15 GUNSHOT COMING FROM WHERE THEY WERE STANDING? ISN'T THAT
16 TRUE?

17 A YES, MA'AM.

18 Q AND YOU DIDN'T RECOGNIZE A COUPLE OF THE PEOPLE, ISN'T THAT
19 CORRECT, INITIALLY?

20 A NO. I TOLD WHO I SEEN, ALL SIX THAT WAS AT THE CAR.

21 Q AND YOU'VE KNOWN THE DEFENDANT ALL YOUR LIFE, ISN'T THAT
22 CORRECT?

23 A YES, MA'AM.

24 Q AND HE'S A FRIEND OF YOURS, ISN'T THAT CORRECT?

25 A YES. YES, MA'AM.

1 MS. CRUM: I BEG THE COURT'S INDULGENCE JUST A
2 MOMENT.

3 Q MA'AM, HAVE YOU EVER BEEN CONVICTED OF ANY CRIMES?

4 A YES, MA'AM.

5 Q CAN YOU TELL ME WHAT THEY WERE?

6 A JUST ASSAULT AND BATTERY.

7 Q WHEN WERE YOU CONVICTED OF ASSAULT AND BATTERY?

8 A IT'S BEEN SOME YEARS AGO, ABOUT FIVE YEARS AGO.

9 Q AND WAS THAT -- WHAT ELSE HAVE YOU BEEN CONVICTED OF?

10 A AND FORGERY, THAT'S ALL.

11 Q WHEN WERE YOU CONVICTED OF -- ONE COUNT OF FORGERY?

12 SEVERAL COUNTS? HOW MANY COUNTS?

13 A JUST UNDER \$1,000.

14 Q SO YOU WERE CONVICTED OF FORGERY UNDER \$1,000, IS THAT
15 CORRECT?

16 A YES, MA'AM.

17 Q DO YOU KNOW WHEN THAT WAS?

18 A IT'S BEEN ABOUT -- IT WAS IN '92, '93.

19 Q WERE YOU CONVICTED OF ANYTHING ELSE?

20 A I MEAN, IT'S JUST BEEN MOSTLY ASSAULT AND BATTERIES.

21 Q HOW MANY ASSAULT AND BATTERIES HAVE YOU BEEN CONVICTED OF?

22 A PROBABLY ABOUT THREE.

23 Q YOU'VE BEEN CONVICTED OF THREE ASSAULT AND BATTERIES?

24 A YES, MA'AM.

25 Q AND YOU'VE BEEN CONVICTED OF FORGERY, IS THAT CORRECT?

1 A YES, MA'AM.

2 Q WHAT ELSE HAVE YOU BEEN CONVICTED OF, MA'AM?

3 A THAT'S ALL I CAN REMEMBER.

4 MS. CRUM: I HAVE NO FURTHER QUESTIONS.

5 REDIRECT EXAMINATION

6 BY MR. MYERS:

7 Q MS. CUNNINGHAM, JUST TO REITERATE, YOU IDENTIFIED SIX MALES
8 THAT YOU SAW AT THE SCENE IN YOUR STATEMENT, CORRECT?

9 A YES, SIR.

10 Q WERE ANY OF THOSE MALES MR. HALL?

11 A NO, SIR.

12 Q AND YOU'RE SAYING TODAY AND YOU SAID IN YOUR STATEMENT --
13 OR YOU DIDN'T SAY IN YOUR STATEMENT, BUT IT DOES NOT
14 INDICATE THAT MR. HALL WAS THERE IN YOUR STATEMENT,
15 CORRECT?

16 A COULD YOU REPEAT THAT?

17 Q IT DOES NOT INDICATE IN YOUR STATEMENT THAT MR. HALL WAS
18 PRESENT AT THE SCENE OF THAT CRIME AT ALL, CORRECT?

19 A RIGHT.

20 Q AND YOUR TESTIMONY TODAY IS THAT YOU DID NOT SEE HIM
21 ANYWHERE AT THE CRIME THAT DAY, CORRECT?

22 A YES, SIR.

23 Q AND YOU'RE ABSOLUTELY POSITIVE OF THAT FACT?

24 A YES, SIR.

25 MR. MYERS: THAT'S ALL I HAVE OF THIS WITNESS,

1 YOUR HONOR.

2 MS. CRUM: NOTHING FURTHER.

3 THE COURT: (TO WITNESS) YOU CAN STEP DOWN AND BE
4 EXCUSED. WE APPRECIATE YOUR TIME. THANK YOU.

5 MR. MYERS: YOUR HONOR, I'D CALL TARA EVANS TO THE
6 STAND, PLEASE.

7 (WHEREUPON, TARA EVANS, HAVING FIRST BEEN DULY
8 SWORN, TESTIFIES AS FOLLOWS.)

9 THE COURT: HOW DO YOU SPELL HER FIRST NAME?

10 MR. MYERS: T-A-R-A, YOUR HONOR.

11 DIRECT EXAMINATION

12 BY MR. MYERS:

13 Q MS. EVANS, PLEASE STATE YOUR FULL LEGAL NAME FOR THE
14 RECORD.

15 A TARA NELSON EVANS.

16 Q AND WHAT IS YOUR ADDRESS?

17 A ~~REDACTED ADDRESS~~.

18 Q WERE YOU IN THE PARDUE STREET APARTMENT COMPLEX ON NOVEMBER
19 20, 2000?

20 A YES.

21 Q IS THIS WHERE SHEILA JURY WAS SHOT AND KILLED?

22 A YES.

23 Q WAS ANYONE WITH YOU THAT DAY?

24 A YES, SIR.

25 Q AND WHO WAS THAT?

1 A CRYSTAL DUNCAN.

2 Q AND DO YOU KNOW LAKEITHON HALL?

3 A YES.

4 Q HOW LONG HAVE YOU KNOWN HIM?

5 THE COURT: (TO WITNESS) YOU NEED TO SPEAK UP.

6 A I'VE BEEN KNOWING -- WELL, I JUST KNOW THE FAMILY REALLY,
7 BUT --

8 Q SO WOULD YOU RECOGNIZE HIM IF YOU SAW HIM?

9 A YES.

10 Q NOW, YOU INDICATED THAT YOU WERE THERE THAT DAY WHEN SHEILA
11 JURY WAS SHOT. HOW FAR AWAY FROM THE SHOOTING WERE YOU?

12 A I WAS PROBABLY -- PROBABLY FROM HERE TO THE DOOR, TO THE
13 COURT DOOR.

14 Q TO THE DOOR?

15 A UN-HUH.

16 MR. MYERS: JUST LET THE RECORD REFLECT, YOUR
17 HONOR --

18 THE COURT: ABOUT TWICE AS FAR AS BEFORE.

19 MR. MYERS: ABOUT TWICE AS FAR AS BEFORE, ABOUT 40
20 FEET.

21 Q DID YOU GIVE A STATEMENT TO THE POLICE REGARDING THIS
22 MATTER, REGARDING THE SHOOTING OF SHEILA JURY?

23 A YES.

24 Q AND HAVE YOU SEEN A COPY OF THAT STATEMENT?

25 A YES.

1 Q IS THAT STATEMENT AN ACCURATE STATEMENT BASED ON THE
2 QUESTIONS THEY ASKED YOU THAT DAY?

3 A YES.

4 Q PLEASE DESCRIBE TO THE COURT WHAT YOU WITNESSED THAT DAY.

5 A ME AND MY COUSIN, WE WERE SITTING IN THE CAR TALKING.

6 Q HOLD ON A SECOND. AND YOUR COUSIN IS?

7 A MY COUSIN, CRYSTAL DUNCAN.

8 Q OKAY.

9 A WE WERE SITTING IN THE CAR TALKING, AND THEN WE SEEN THE
10 PEOPLE WHO WERE JUST PASSING BY. I WASN'T PAYING NO
11 ATTENTION, BUT THAT CAR STOPPED.

12 Q YOU'RE SAYING THE PEOPLE -- WHAT COLOR CAR WAS IT?

13 A IT WAS, LIKE, A LITTLE GREEN/BLUE LOOKING CAR.

14 Q OKAY.

15 A THEY STOPPED, AND ALL OF THEM RAN TO THE CAR -- LIKE, A
16 COUPLE OF PEOPLE RAN TO THE CAR, AND THEN WE HEAR THE
17 GUNSHOT. I DUCKED, AND AFTER THE GUNSHOT I LOOKED UP AND I
18 SEEN THE BOYS RUNNING.

19 Q YOU SAW?

20 A THE BOYS.

21 Q THE BOYS. AND HOW MANY OF THEM WAS IT?

22 A I'D SAY PROBABLY ABOUT FOUR OR FIVE. PROBABLY ABOUT THAT
23 MANY.

24 Q AND YOU SAW THE PEOPLE FLEEING THE SCENE -- A GROUP OF GUYS
25 RUN AWAY FROM THE SCENE?

1 A YES.

2 Q AND DID YOU SEE LAKEITHON HALL AT THAT TIME RUNNING AWAY
3 FROM THE SCENE AT ALL?

4 A NO.

5 Q WOULD YOU HAVE RECOGNIZED LAKEITHON HALL IF HE WAS AT THE
6 SCENE THAT DAY?

7 A YES.

8 Q DID YOU EVER SPEAK WITH ROSS BURTON, MR. HALL'S ATTORNEY AT
9 THE TIME, REGARDING WHAT YOU SAW THAT DAY?

10 A NO.

11 Q DID YOU EVER RECALL HIM TRYING TO ATTEMPT TO CONTACT YOU?

12 A NO.

13 Q SO THE ONLY PERSON YOU TALKED TO WAS THE POLICE OFFICER?

14 A YES.

15 MR. MYERS: I HAVE NOTHING FURTHER FROM THIS
16 WITNESS, YOUR HONOR.

17 CROSS-EXAMINATION

18 BY MS. CRUM:

19 Q MA'AM, WHAT WERE YOU DOING IN THE PARKING LOT THAT DAY?

20 A TALKING TO MY COUSIN, CRYSTAL DUNCAN.

21 Q WHAT ELSE WERE YOU DOING?

22 A NOTHING. I WAS SITTING IN MY CAR TALKING TO HER.

23 Q HOW LONG HAD YOU BEEN SITTING THERE?

24 A PROBABLY ABOUT 20 TO 30 MINUTES.

25 Q AND YOU TOLD POLICE THAT YOU WERE TALKING TO CRYSTAL, AND

1 YOU HEARD A LOUD SHOT AND SAID, "WHAT'S THAT?" ISN'T THAT
2 CORRECT?

3 A MA'AM?

4 Q ISN'T IT TRUE THAT YOU TOLD THE POLICE THAT YOU WERE
5 TALKING TO YOUR COUSIN, CRYSTAL, AND YOU HEARD A LOUD SHOT
6 AND SAID, "WHAT'S THAT?" ISN'T THAT CORRECT?

7 A YES.

8 Q AND THEN YOU TURNED AROUND AND LOOKED AND SAW THE GREEN
9 CAR, ISN'T THAT CORRECT?

10 A YES, MA'AM.

11 Q SO YOU WEREN'T LOOKING AT THE GREEN CAR PRIOR TO THE
12 SHOOTING, ISN'T THAT CORRECT?

13 A NO. LIKE I SAID, IT WAS A LOT OF CARS GOING UP AND DOWN
14 THE STREET.

15 Q AND YOU WEREN'T LOOKING AT THE GREEN CAR AT THE TIME THAT
16 THE GUNSHOT WAS HEARD. ISN'T THAT CORRECT?

17 A THAT'S CORRECT.

18 Q BUT YOU LOOKED AT IT AFTER YOU HEARD THE GUNSHOT?

19 A AFTER, YES.

20 Q AND YOU SAW ABOUT SIX TO EIGHT BOYS RUNNING AWAY. ISN'T
21 THAT CORRECT?

22 A YES.

23 Q AND YOU IDENTIFIED, I BELIEVE, ONE OF THEM AS MR. STEVENS.
24 IS THAT CORRECT?

25 A MARTINIO STEVENS, YES.

1 Q AND YOU SAID THAT THE OTHER ONE YOU NOTED WAS VERY LIGHT
2 SKINNED. IS THAT CORRECT?

3 A YES, MA'AM.

4 Q BUT YOU COULDN'T IDENTIFY THE OTHER SIX PEOPLE. YOU DIDN'T
5 IDENTIFY THE OTHER SIX PEOPLE, ISN'T THAT CORRECT?

6 A YES.

7 Q DID YOU EVER CALL MR. BURTON YOURSELF?

8 A NO. AFTER I TALKED TO THE DETECTIVES, I DIDN'T THINK I
9 SHOULD. I THOUGHT MAYBE THEY WOULD CALL ME IF THEY NEEDED
10 ME.

11 Q BUT YOU WEREN'T LOOKING AT THE CAR AT THE TIME THE SHOT
12 OCCURRED?

13 A I WASN'T LOOKING AT THE -- NO, I DUCKED DOWN AFTER I HEARD
14 IT.

15 Q MA'AM, HAVE YOU EVER BEEN CONVICTED OF ANY CRIMES?

16 A YES.

17 Q COULD YOU TELL US WHAT THEY WERE?

18 A FORGERY.

19 Q CAN YOU TELL US HOW MANY?

20 A JUST ONLY ONE.

21 Q ONE FORGERY? CAN YOU TELL US WHAT YEAR THAT WAS? DO YOU
22 KNOW?

23 A THAT WAS PROBABLY 2001, PROBABLY.

24 Q DO YOU KNOW WHAT COUNTY THAT WAS IN? DID YOU PLEAD OR DID
25 YOU GO TO TRIAL?

1 A THAT WAS LANCASTER COUNTY.

2 Q DID YOU PLEAD OR DID YOU GO TO TRIAL?

3 A I PLEAD.

4 Q AND IT WAS TO ONE COUNT OF FORGERY?

5 A YES.

6 Q DO YOU HAVE ANY OTHER CONVICTIONS?

7 A NO, MA'AM.

8 MS. CRUM: I HAVE NO FURTHER QUESTIONS.

9 MR. MYERS: JUST BRIEFLY, YOUR HONOR.

10 REDIRECT EXAMINATION

11 BY MR. MYERS:

12 Q MS. EVANS, YOU INDICATED THAT YOU DIDN'T SEE THEM BEFORE
13 THE SHOTS WERE FIRED, BUT YOU SAW PEOPLE RUNNING AWAY?

14 A YES.

15 Q AS SOON AS THE SHOTS WERE FIRED, RUNNING AWAY FROM THE
16 GREEN CAR, CORRECT?

17 A YES.

18 Q DID YOU SEE MR. HALL RUN AWAY FROM THE GREEN CAR?

19 A NO.

20 Q WOULD YOU HAVE RECOGNIZED MR. HALL?

21 A YES.

22 Q AND, NOW, MS. CRUM INDICATED YOU DIDN'T SEE -- THAT YOU
23 DIDN'T RECOGNIZE THE OTHER SIX PEOPLE, BUT YOU WOULD HAVE
24 RECOGNIZED MR. HALL IF HE WOULD HAVE BEEN --

25 A YES. LIKE I SAY, I'VE BEEN KNOWING THAT FAMILY -- I KNOW

1 THEM.

2 Q SO YOU WOULD HAVE RECOGNIZED MR. HALL RUNNING AWAY FROM THE
3 SCENE --

4 A YES. ██████████ ██████████

5 Q -- IF HE WAS ONE OF THE ONES RUNNING AWAY FROM THE SCENE?

6 A YES.

7 Q DID YOU FEEL ANY DUTY OR RESPONSIBILITY TO CALL MR. BURTON
8 AFTER YOU HAD TALKED TO THE POLICE?

9 A NO.

10 Q DID YOU TRY TO FOLLOW THIS CASE IN ANY WAY AFTER YOU TALKED
11 TO THE POLICE? YOU FELT YOUR RESPONSIBILITY HAD ENDED AS
12 FAR AS A DUTY TO TELL THEM WHAT YOU SAW?

13 A YES.

14 MR. MYERS: THAT'S ALL I HAVE, YOUR HONOR.

15 THE COURT: (TO MS. CRUM) ANYTHING FURTHER?

16 MS. CRUM: NO, YOUR HONOR.

17 THE COURT: (TO WITNESS) YOU CAN STEP DOWN AND BE
18 EXCUSED.

19 MR. MYERS: YOUR HONOR, I'D CALL CRYSTAL DUNCAN TO
20 THE STAND.

21 (WHEREUPON, CRYSTAL DUNCAN, HAVING FIRST BEEN
22 DULY SWORN, TESTIFIES AS FOLLOWS.)

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q MS. DUNCAN, PLEASE STATE YOUR FULL LEGAL NAME FOR THE

1 RECORD.

2 A CRYSTAL GIVONNE DUNCAN.

3 Q WHAT IS YOUR ADDRESS, MS. DUNCAN?

4 A [REDACTED]

5 Q SO YOU LIVE IN THE PARDUE STREET APARTMENTS?

6 A (WITNESS NODDING HEAD).

7 Q WERE YOU IN THE PARDUE STREET APARTMENTS ON NOVEMBER 20,
8 2000?

9 A YES, SIR.

10 Q WERE YOU AT THE SCENE OF THE CRIME WHEN MS. SHEILA JURY WAS
11 SHOT IN THE PARDUE STREET APARTMENTS?

12 A YES, SIR.

13 Q WHO WERE YOU THERE WITH?

14 A TARA EVANS.

15 Q AND DO YOU KNOW LAKEITHON HALL?

16 A YES.

17 Q HOW LONG HAVE YOU KNOWN HIM?

18 MS. CRUM: YOUR HONOR, I'M SORRY, I CAN'T HEAR
19 HER.

20 THE COURT: (TO WITNESS) YOU NEED TO SPEAK UP.
21 YOU'VE GOT A VERY SOFT VOICE.

22 MS. CRUM: (TO MR. MYERS) IF YOU COULD REPEAT THE
23 LAST QUESTION.

24 MR. MYERS: OKAY.

25 Q WHO WERE YOU WITH AT THE PARDUE STREET APARTMENTS THAT DAY?

1 A TARA EVANS.

2 Q AND WHERE WERE YOU -- I BELIEVE SHE INDICATED YOU WERE --

3 SHE WAS IN A CAR. WHERE WERE YOU IN RELATION?

4 A I WAS BENT OVER. I WAS ON THE OUTSIDE BENT OVER TALKING TO

5 HER.

6 Q YOU WERE ON THE OUTSIDE OF THE VEHICLE?

7 A YES.

8 Q AND DO YOU KNOW LAKEITHON HALL?

9 A YES.

10 Q AND HOW LONG HAVE YOU KNOWN HIM FOR?

11 A OVER 15 YEARS PROBABLY.

12 Q SO YOU WOULD EASILY RECOGNIZE MR. HALL IF YOU SAW HIM?

13 A YES.

14 Q NOW, YOU INDICATED YOU WERE BESIDE THE CAR WHEN SHEILA JURY

15 WAS SHOT?

16 A UH-HUH.

17 Q AND SO CAN YOU JUST DESCRIBE TO ME WHAT YOU SAW?

18 A WELL, WHEN I TURNED AROUND TO SEE WHERE THE SHOT WAS COMING

19 FROM, I SEEN A BUNCH OF BOYS STANDING UP THERE, AND THEN I

20 SEEN A LIGHT-SKINNED DUDE AND ANOTHER DUDE RUNNING FROM THE

21 CAR.

22 Q RUNNING FROM THE CAR?

23 A YES.

24 Q RUNNING --

25 A I SEEN TWO GUYS RUNNING FROM THE CAR.

1 Q RUNNING FROM THE CAR, AND THOSE PEOPLE WEREN'T --
2 A YES, BACK INTO THE CROWD.
3 Q THEY WEREN'T WITH THESE OTHER PEOPLE THAT RAN AWAY?
4 A NO, THE OTHER GUYS WERE STANDING JUST UP ON, LIKE, A HILL.
5 Q OKAY. SO THESE OTHER TWO GUYS WERE AT THE CAR AND RAN
6 AWAY?
7 A YES. WHEN I TURNED AROUND, THEY WAS RUNNING FROM THE CAR.
8 Q YOU SAW THOSE TWO RUNNING FROM THE CAR. WERE THEY CLOSE TO
9 THE CAR WHEN THEY STARTED RUNNING AWAY?
10 A YES, THEY WAS LEAVING FROM THE CAR.
11 Q SO HOW CLOSE WOULD THEY BE TO THE CAR?
12 A AS CLOSE AS -- CLOSE. WHEN I TURNED AROUND THEY WERE
13 PROBABLY JUST --
14 Q ONE FEET? TWO FEET? WITHIN THREE FEET OF THE CAR?
15 A IT WASN'T FAR. I MEAN, IT WAS JUST LIKE HOW YOU TURN
16 AROUND -- IF YOU GO TO THE CAR AND TURNED AROUND, THAT'S
17 WHERE I SEEN THEM. THAT'S HOW FAR FROM THE CAR.
18 Q OKAY. SO WOULD TWO TO THREE FEET BE AN ACCURATE --
19 A YES.
20 Q OKAY. AND THESE TWO INDIVIDUALS TURNED AND RAN, AND THAT
21 WAS AS SOON AS YOU HEARD THE SHOTS FIRED, YOU SAW THOSE TWO
22 INDIVIDUALS RUN AWAY FROM THE CAR?
23 A I DUCKED, THEN I TURNED AROUND TO SEE.
24 Q AND THEN YOU SAW THEM TURNING AND RUNNING AWAY FROM THE
25 CAR?

1 A YES.

2 Q WERE EITHER ONE OF THESE INDIVIDUALS LAKEITHON HALL?

3 A NO, SIR.

4 Q AND WOULD YOU MOST CERTAINLY HAVE RECOGNIZED LAKEITHON HALL
5 IF HE WAS ONE OF THOSE TWO INDIVIDUALS?

6 A YES, SIR.

7 Q CAN YOU SAY WITH 100% CERTAINTY THAT LAKEITHON HALL WAS NOT
8 ONE OF THE TWO INDIVIDUALS THAT YOU SAW RUN AWAY FROM THE
9 CAR THAT DAY?

10 A YES, SIR.

11 Q DID ROSS BURTON, WHO WAS THE ATTORNEY FOR MR. HALL AT THE
12 TIME, DID HE ATTEMPT TO CONTACT YOU?

13 A NO, SIR.

14 Q DID YOU TALK TO THE POLICE ABOUT THIS MATTER?

15 A YES, SIR.

16 Q YOU DID TALK TO THEM?

17 A (NODDING HEAD).

18 Q AND I DON'T HAVE A STATEMENT IN THE RECORD WHERE YOU TALKED
19 TO THEM, BUT I DO HAVE MS. EVANS' STATING YOU WERE A
20 WITNESS THERE WITH HER. AND THAT'S ACCURATE, IS THAT
21 CORRECT?

22 A YES. SHE SENT THEM TO ME.

23 Q WHAT?

24 A SHE SENT THE POLICE TO ME.

25 Q OKAY, OKAY. AND JUST TO REITERATE, YOU SAW TWO PEOPLE

1 RUNNING FROM THE CAR, AND NEITHER ONE OF THOSE TWO PEOPLE
2 WERE LAKEITHON HALL?

3 A NO, SIR.

4 Q AND YOU REALIZE YOU'RE UNDER OATH WHEN YOU SAY THAT?

5 A YES, SIR.

6 MR. MYERS: THAT'S ALL I HAVE AT THIS TIME, YOUR
7 HONOR.

8 CROSS-EXAMINATION

9 BY MS. CRUM:

10 Q THERE WERE OTHER PEOPLE AT THE CAR, TOO, WEREN'T THERE?

11 A EXCUSE ME?

12 Q THERE WERE OTHER PEOPLE AT THE CAR, TOO?

13 A WHEN I TURNED AROUND, ALL I SEEN WAS THE TWO GUYS.

14 Q WHAT HAPPENED -- WHERE WERE THE OTHER FOUR PERSONS?

15 A IT WAS A GROUP OF BOYS STANDING, LIKE, UP THE HILL, LIKE.
16 I CAN'T EXPLAIN IT, BUT IT WAS LIKE THEY WAS -- LIKE, THE
17 CAR WAS RIGHT HERE (INDICATING), AND THE GUYS WAS, LIKE,
18 RIGHT THERE (INDICATING) UP ON THE HILL, LIKE, GOING
19 THROUGH THE APARTMENTS. IT'S LIKE GOING THROUGH THE
20 APARTMENTS. THEY WERE UP THERE.

21 Q HOW LONG HAVE YOU KNOWN THE DEFENDANT?

22 A OVER 15 YEARS PROBABLY.

23 Q ARE YOU FRIENDS WITH HIM?

24 A I MEAN, I KNOW HIM. I'M FRIENDS WITH ALL OF THEM. IT
25 AIN'T JUST HIM. I'M FRIENDS WITH ALL OF THEM.

1 Q SO YOU'RE FRIENDS WITH HIM AND ALL THE BOYS THAT WERE OUT
2 THERE THAT DAY, IS THAT CORRECT?

3 A RIGHT. YES, MA'AM.

4 MS. CRUM: I BEG THE COURT'S INDULGENCE JUST A
5 MOMENT.

6 Q MA'AM, DID YOU GIVE THE POLICE A STATEMENT IN THIS CASE?

7 A YES, I DID.

8 Q DID YOU GIVE THEM A WRITTEN STATEMENT?

9 A I THINK THEY WROTE IT. I DIDN'T WRITE NOTHING. I DIDN'T
10 WRITE NOTHING. THEY TALKED TO TARA FIRST, AND THEN TARA
11 SENT THEM TO ME. THEY CAME TO MY HOUSE.

12 Q BUT YOU DON'T RECALL SIGNING A STATEMENT, IS THAT CORRECT?

13 A IT'S BEEN SO LONG AGO, I REALLY DON'T REMEMBER.

14 Q AND YOU WEREN'T LOOKING AT THE GREEN CAR PRIOR TO THE SHOT
15 BEING FIRED, ISN'T THAT CORRECT?

16 A CORRECT, YES.

17 Q YOU WERE TALKING TO MS. EVANS, IS THAT CORRECT?

18 A YES, MA'AM.

19 Q MA'AM, DO YOU HAVE A PRIOR CRIMINAL RECORD?

20 A YES, I DO.

21 Q CAN YOU TELL ME WHAT IT IS?

22 A HOW FAR DO YOU WANT ME TO GO BACK?

23 Q CAN YOU GO BACK ABOUT 10 YEARS?

24 A I'VE GOT A -- I GOT ASSAULT AND BATTERY WHEN I WAS 18. I
25 GOT A HIGH AND AGGRAVATED NATURE WHEN I WAS 20.

1 Q I'M SORRY, CAN YOU REPEAT THAT?

2 A I HAD AN ASSAULT AND BATTERY WHEN I WAS 18. I HAD A
3 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE ABOUT
4 THREE YEARS AGO. AND I HAVE PHONE HARASSMENT. THAT'S ALL
5 THAT I CAN REMEMBER.

6 Q AND YOU WERE CONVICTED OF PHONE HARASSMENT OR PLED GUILTY?

7 A I WAS TRIED IN MY -- WITHOUT IN MY ABSENCE. I WASN'T THERE
8 WHEN THEY TRIED ME ON THEM.

9 Q DO YOU HAVE ANY OTHER CONVICTIONS?

10 A NOT THAT I CAN REMEMBER.

11 MS. CRUM: I HAVE NO FURTHER QUESTIONS. THANK
12 YOU.

13 MR. MYERS: I HAVE NOTHING MORE FROM THIS WITNESS,
14 YOUR HONOR.

15 THE COURT: (TO WITNESS) ALL RIGHT, YOU CAN STEP
16 DOWN AND BE EXCUSED. THANK YOU.

17 MR. MYERS: YOUR HONOR, I'D CALL ROSS BURTON TO
18 THE STAND.

19 THE COURT: ALL RIGHT.
20 (TO WITNESS) COME AND BE SWORN.

21 (WHEREUPON, ROSS A. BURTON, HAVING FIRST BEEN
22 DULY SWORN, TESTIFIES AS FOLLOWS.)

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q MR. BURTON, WHERE ARE YOU CURRENTLY EMPLOYED?

1 A I'M THE PUBLIC DEFENDER FOR LANCASTER COUNTY.

2 Q THANK YOU. AND WHEN DID YOU BEGIN WORKING AS THE PUBLIC
3 DEFENDER FOR LANCASTER?

4 A I BELIEVE IT WAS JUNE, AROUND JUNE 10TH OF 2002.

5 Q AND DID YOU REPRESENT MY CLIENT, LAKEITHON HALL, FOR
6 CRIMINAL CHARGES, INCLUDING THE MURDER OF SHEILA JURY,
7 WHICH OCCURRED ON NOVEMBER 20, 2000?

8 A YES, SIR.

9 Q AND THOSE CHARGES INCLUDED TWO COUNTS OF MURDER, ATTEMPTED
10 ARMED ROBBERY AND POSSESSION OF A FIREARM. DOES THAT SOUND
11 ACCURATE TO YOU?

12 A IT DOES.

13 Q DID YOU THOROUGHLY REVIEW MR. HALL'S FILE AT THE TIME OF
14 YOUR REPRESENTATION OF HIM?

15 A WELL, SOMETIME BEFORE IT WENT FOR TRIAL I DID.

16 Q BEFORE TRIAL WAS COMING, YOU DID REVIEW THE FILE, AND YOU
17 REVIEWED THE FILE TODAY TO SOME EXTENT, MAYBE NOT AS MUCH
18 AS YOU DID DURING THE TRIAL, BUT YOU HAVE REVIEWED THE FILE
19 BEFORE TODAY?

20 A YES, SIR.

21 Q WHEN MR. HALL WAS CHARGED WITH MURDER, HAD YOU EVER
22 REPRESENTED A DEFENDANT CHARGED WITH MURDER BEFORE?

23 A NO, SIR, I HAD NOT.

24 Q AND YOU WERE NEW TO THE PUBLIC DEFENDER'S OFFICE, SO THAT
25 WASN'T UNUSUAL. YOU WERE THE PUBLIC DEFENDER, CORRECT?

1 A I'D SAY SO.

2 Q SO THIS WAS YOUR FIRST MURDER CASE?

3 A IT WAS.

4 Q AND MR. HALL RECEIVED 38 YEARS ON ALL CHARGES?

5 A I BELIEVE THAT'S CORRECT.

6 Q IN YOUR INITIAL REVIEW OF THE FILE OR OVER THE COURSE OF IT

7 UNTIL MR. HALL PLED, DID YOU READ ALL THE STATEMENTS TAKEN

8 BY POLICE OF WITNESSES?

9 A I DID.

10 Q DO YOU RECALL SEEING A STATEMENT OF A TAKEISHA CUNNINGHAM

11 WHO TESTIFIED HERE TODAY?

12 A I DO RECALL SEEING A STATEMENT.

13 Q AND YOU ACKNOWLEDGE SHE WAS AN INDEPENDENT WITNESS. SHE

14 WASN'T A CO-DEFENDANT OR SUSPECT IN THE MURDER?

15 A THAT'S RIGHT.

16 Q DID YOU CONTACT MS. CUNNINGHAM?

17 A WELL I THINK AN EXPLANATION -- THE ANSWER IS NO, BUT LET ME

18 EXPLAIN SORT OF THE PROCEDURE THAT GOES ON IN LANCASTER

19 COUNTY. THE SOLICITOR WILL GIVE -- WE USUALLY HAVE TWO

20 WEEK TERMS OF COURT IN LANCASTER COUNTY, AND THE SOLICITOR

21 GIVES ME A LIST SOMETIME BEFORE COURT, NOT AS LONG BEFORE

22 COURT AS I WOULD LIKE USUALLY, BUT A LIST OF CASES UP FOR

23 TRIAL. AND THERE'S USUALLY ONE OR TWO PRETTY SERIOUS CASES

24 ON THERE THEY WANT TO DISPOSE OF. AND WHAT THEY WILL DO IS

25 THEY WILL OFFER ME AN OFFER GOOD THROUGH MONDAY OF THE

1 FIRST WEEK OF COURT SO THAT I'LL KNOW AND THE SOLICITOR
2 WILL KNOW THAT THERE IS A SERIOUS CASE COMING UP FOR TRIAL
3 THE NEXT WEEK, AND WE WOULD START THAT MONDAY MORNING.

4 IF THE DEFENDANT DOESN'T ACCEPT THAT OFFER, THE OFFER
5 IS WITHDRAWN AND THEY'RE FACING TRIAL ON THE CHARGES AS
6 CHARGED.

7 Q AND THAT WOULD BE THAT FOLLOWING --

8 A THE FOLLOWING TERM OF COURT. NOW, I CAN'T ABSOLUTELY STATE
9 TO YOU THAT THAT'S HOW IT WORKED THAT WEEK, BUT THAT'S
10 GENERALLY HOW IT HAS WORKED.

11 Q SO DO YOU RECALL WHEN THE FOLLOWING TERM OF COURT WOULD
12 HAVE BEEN?

13 A I DON'T HAVE ANY REASON TO BELIEVE THAT IT WAS ANY
14 DIFFERENT THAT TERM OF COURT, SO -- SO WHATEVER -- AT
15 WHATEVER POINT MY CASE PREPARATION WAS AT ON MONDAY, IF HE
16 HAD TURNED DOWN THE OFFER, I WOULD HAVE HAD THAT ENTIRE
17 WEEK. AND A WEEK IN PRIVATE ATTORNEYS' TERMS DOESN'T SOUND
18 LIKE MUCH TIME, BUT IN PUBLIC DEFENDER TERMS, A WEEK IS A
19 LUXURIOUS AMOUNT OF TIME TO PREPARE FOR A CASE. AND I
20 CERTAINLY WOULD HAVE DONE MORE CASE PREPARATION PROBABLY TO
21 INCLUDE THOSE WITNESSES AND OTHER WITNESSES.

22 Q BUT YOU DID NOT ATTEMPT TO CONTACT MS. CUNNINGHAM?

23 A NO, SIR.

24 Q NOT -- YOU DIDN'T CALL HER, LEAVE HER MESSAGE, TELL HER TO
25 COME BY THE OFFICE OR HAVE YOUR SECRETARY SCHEDULE AN

1 APPOINTMENT?

2 A WELL I CAN'T SAY ALL THAT. I CAN SAY THAT UP UNTIL THE
3 POINT THAT HE HAD PLED, I HADN'T TALKED TO THEM.

4 Q WHEN HE PLED, WHEN WAS HIS TRIAL SET FOR?

5 A I CAN'T REMEMBER. I IMAGINE IT WOULD HAVE BEEN THAT MONDAY
6 OF THE FOLLOWING WEEK, BUT I CAN'T STATE THAT WITH
7 CERTAINTY.

8 Q DO YOU KNOW WHAT DAY YOU MET WITH MR. HALL REGARDING
9 WHETHER HE WAS GOING TO PLEAD OR NOT?

10 A I MET WITH HIM SEVERAL TIMES. I THINK THE FIRST TIME I
11 ENCOUNTERED HIM WAS HE WAS OUT ON BOND AND THE SOLICITOR
12 HAD NOTICED ME THAT SOME YOUNG MEN WERE ARRESTED IN
13 RICHLAND COUNTY, AND BECAUSE OF THE CIRCUMSTANCES AROUND
14 THAT ARREST, THE SOLICITOR INTENDED TO MOVE BEFORE THE
15 JUDGE TO REVOKE HIS BOND, AND HE WAS OUT ON BOND AT THAT
16 TIME.

17 Q OKAY, SO YOU DON'T RECALL. YOU BASICALLY DON'T RECALL?

18 A I DON'T.

19 Q IT COULD HAVE BEEN MONDAY. IT COULD HAVE BEEN --

20 A WELL, ACTUALLY I MIGHT HAVE A COPY OF THAT SOLICITOR'S
21 LETTER IN HERE.

22 Q OKAY.

23 A ALL RIGHT, LET'S SEE. THE SOLICITOR TELLS ME THAT THE
24 HEARING FOR THE BOND MATTER WOULD BE FRIDAY, AUGUST 20,
25 2002 AT 10:30 A.M. SO THAT WOULD HAVE BEEN THE FIRST TIME

1 I MET WITH MR. HALL. OF COURSE, ANY TIME UP TO THAT, HE
2 COULD HAVE COME TO THE OFFICE AND MET WITH ME IF WANTED TO.

3 Q SO DID MR. HALL INFORM YOU IN YOUR FIRST MEETING THAT HE
4 WANTED TO PLEAD?

5 A I DON'T REMEMBER.

6 Q SO HE MAY HAVE NOT EVEN TOLD YOU HE WANTED TO PLEAD UNTIL
7 TIME -- UNTIL YOU NOTICED HIM THAT THERE WAS A TRIAL?

8 A POSSIBLY. I DO RECALL -- I DON'T EVER ACTUALLY RECALL MR.
9 HALL SAYING THAT, "I ABSOLUTELY WANT A TRIAL, I WANT TO
10 TAKE THE STAND AND PROVE MY INNOCENCE TO THE JURY." HE
11 DIDN'T WANT TO PLEAD, AND HE DIDN'T WANT TO BE CONVICTED OF
12 MURDER. I REMEMBER THAT. HE ASKED ME, YOU KNOW, "WHAT CAN
13 WE DO TO BEAT THIS CHARGE?", AND SO FORTH, BUT THAT'S
14 DIFFERENT FROM SAYING, "I ABSOLUTELY WANT A TRIAL."

15 Q NOW, YOU'VE HEARD MS. CUNNINGHAM TESTIFY. DO YOU FEEL HER
16 TESTIMONY WAS RELEVANT TO MR. HALL'S CASE?

17 A SURE.

18 Q AND WOULD SHE BE A PERSON THAT YOU MOST CERTAINLY, AFTER
19 HEARING WHAT SHE SAID TODAY, WOULD HAVE CALLED AT TRIAL?

20 A IT'S HARD TO SAY BECAUSE, YOU KNOW, I WOULD HAVE TALKED TO
21 MY CLIENT ABOUT THAT. AND I PROBABLY WOULD HAVE HAD RAP
22 SHEETS RUN, AND I WOULD HAVE DISCOVERED THAT SHE HAD A
23 FORGERY, AND OF COURSE THAT WOULD WEIGH AGAINST HER.

24 Q BUT AN INDEPENDENT WITNESS COULD DO -- COULDN'T DO ANYTHING
25 BUT HELP HIM. I MEAN, IT MAY HAVE SOME -- THE ADVANTAGES

1 ARE PROBABLY GOING TO -- SHE WASN'T IMPLICATED IN THE CRIME
2 AT ALL, CORRECT?

3 A OH, NO.

4 Q SHE WAS -- YOU KNOW, REGARDLESS OF HER CRIMINAL RECORD NOT
5 RELATED TO THIS, SHE DIDN'T -- YOU KNOW, SHE JUST SAW WHAT
6 HAPPENED OR SAW SOMETHING, YOU KNOW, THAT DAY REGARDING THE
7 CRIME SCENE, CORRECT?

8 A WELL, I MEAN, YOUR QUESTION WAS, WOULD I HAVE CALLED HER AS
9 A WITNESS.

10 Q AND YOU'RE SAYING YOU CAN'T SAY FOR CERTAIN?

11 A AND I'M JUST NOT SURE.

12 Q YOU CERTAINLY -

13 MS. CRUM: YOUR HONOR, I'M GOING TO OBJECT AT THIS
14 POINT. HE'S LEADING THE WITNESS, AND I WOULD ASK THAT
15 MY WITNESS BE ALLOWED TO FINISH HIS ANSWER.

16 THE COURT: LET HIM FINISH HIS ANSWER AND TRY NOT
17 TO LEAD.

18 MR. MYERS: CERTAINLY.

19 THE COURT: I KNOW THIS IS KIND OF AN ADVERSE
20 WITNESS, I GUESS.

21 MR. MYERS: CERTAINLY, YOUR HONOR. I UNDERSTAND.

22 THE COURT: IT'S A GREY AREA ON THAT, QUITE
23 FRANKLY, BUT ANYWAY -- UNLIKE YESTERDAY WHERE IT WAS
24 ADVERSE CLEARLY. JUST GO AHEAD, BUT LET HIM FINISH
25 HIS ANSWER.

1 MR. MYERS: OKAY.

2 A WELL, I WOULD HAVE WEIGHED THE PROS AND CONS AND MADE A
3 DECISION ABOUT THAT.

4 Q BASED ON YOUR CONVERSATIONS WITH HER --

5 A I CAN'T ABSOLUTELY SAY I WOULD HAVE CALLED HER, BUT I
6 PROBABLY WOULD HAVE CALLED HER.

7 Q AND YOU WOULD ACKNOWLEDGE THAT MS. CUNNINGHAM DID TESTIFY
8 THAT SHE DID NOT SEE LAKEITHON HALL AT THE SCENE OF THE
9 CRIME? THAT WAS HER TESTIMONY?

10 A SHE TESTIFIED HERE.

11 Q YES.

12 A BUT SHE NEVER SAID IN HER STATEMENT THAT SHE ABSOLUTELY
13 DIDN'T SEE HIM THERE. HE WASN'T ONE OF THE GUYS --

14 Q THAT SHE IDENTIFIED?

15 A BUT THE STATEMENT DOESN'T SAY THAT HE WASN'T THERE, AND IT
16 DOESN'T SAY THAT, "IF HE WAS THERE, I WOULD HAVE KNOWN HE
17 WAS THERE." THAT'S THE -- THE FIRST TIME I HEARD THAT WAS
18 HERE TODAY.

19 Q HER STATEMENT DOES INDICATE SHE SAW SIX INDIVIDUALS THAT
20 DAY?

21 A RIGHT.

22 Q AND AT SOME POINT SHE NAMES ALL SIX OF THOSE INDIVIDUALS?

23 A THAT'S RIGHT.

24 Q AND NONE OF THOSE SIX WERE MR. HALL?

25 A NONE OF THEM MR. HALL.

1 Q THANK YOU. DID YOU INTERVIEW A WITNESS, MS. TARA EVANS,
2 WHO WAS PRESENT HERE TODAY?

3 A I'D GIVE PRETTY MUCH THE SAME ANSWERS TO ALL THREE, IF YOU
4 WANT TO SAVE TIME.

5 Q JUST BASICALLY YOU ACKNOWLEDGE THERE WAS A STATEMENT IN THE
6 POLICE RECORD?

7 A WELL, MS. DUNCAN DIDN'T GIVE A STATEMENT.

8 Q YES, BUT JUST AS TO MS. EVANS?

9 A SURE.

10 Q AND YOU DIDN'T CONTACT HER OR TALK TO HER?

11 A NO.

12 Q AND MS. DUNCAN, WHO DID NOT HAVE A STATEMENT IN THE
13 RECORD -- DID YOU EXAMINE TARA EVANS' STATEMENT AND READ
14 TARA'S STATEMENT?

15 A I DID.

16 Q DID YOU NOTICE THAT CRYSTAL DUNCAN WAS ALSO NAMED AS A
17 WITNESS IN THAT STATEMENT?

18 A YES, SIR.

19 Q DID YOU INTERVIEW CRYSTAL DUNCAN AT ANY POINT?

20 A NO.

21 Q TO THE BEST OF YOUR KNOWLEDGE, DID YOU ATTEMPT TO CALL HER
22 OR CONTACT HER TO GET IN TOUCH WITH HER?

23 A I CAN'T SAY.

24 Q OKAY. WERE THERE MULTIPLE SUSPECTS AND CO-DEFENDANTS
25 IMPLICATED IN THIS CRIME?

1 A YES, SIR.

2 Q SO MULTIPLE PEOPLE WERE CHARGED WITH SIMILAR CRIMES, AND
3 POLICE WERE TRYING TO WEED THEM OUT, SO TO SAY, QUESTION
4 THEM AND TO KIND OF GET TO THE BOTTOM OF, YOU KNOW, WHO DID
5 AND WHO DIDN'T. DID YOU INTERVIEW ANY OF THESE OTHER CO-
6 DEFENDANTS OR SUSPECTS?

7 A WELL, THEY WERE ALL REPRESENTED BY OTHER ATTORNEYS, AND
8 MOST OF THE OTHER ATTORNEYS DIDN'T REALLY WANT ME
9 INTERVIEWING THEIR CLIENTS. I DID GET THE OPPORTUNITY TO
10 TALK WITH CALVIN PEAY, THOUGH.

11 Q YOU DID TALK TO ONE OF THE CO-DEFENDANTS?

12 A RIGHT. HE WAS THE ONLY ONE I CAN RECALL TALKING TO. I
13 INTENDED TO TALK TO ALL OF THEM, BUT THEIR ATTORNEYS
14 WEREN'T TOO KEEN ON ME DOING THAT.

15 Q SURE, I UNDERSTAND. DO YOU RECALL A GUNSHOT RESIDUE TEST
16 BEING GIVEN?

17 A YES, SIR.

18 Q BY OFFICIALS. DO YOU RECALL CALVIN PEAY, WHO YOU
19 QUESTIONED, WAS THE CO-DEFENDANT, TESTED POSITIVE FOR
20 GUNSHOT RESIDUE AFTER THE --

21 A (WITNESS NODDING HEAD).

22 Q AND ALSO A HEYWARD WATTS THAT TESTED POSITIVE FOR GUNSHOT
23 RESIDUE?

24 A THAT'S RIGHT.

25 Q WAS LAKEITHON HALL, MY CLIENT, WAS HE EVER TESTED FOR

1 GUNSHOT RESIDUE?

2 A IF YOU SUGGEST TO ME THAT HE WAS, I WOULDN'T DENY IT, BUT
3 IT SEEMS TO ME THAT HE --

4 THE COURT: HE WASN'T ARRESTED UNTIL NINE DAYS
5 LATER, SO I DOUBT VERY SERIOUSLY HE WAS CHECKED FOR
6 RESIDUE, BUT GO AHEAD. YOU EITHER KNOW OR YOU DON'T
7 KNOW.

8 A I WAS GOING TO REALLY GIVE THE SAME ANSWER THE JUDGE WAS,
9 THAT HE WASN'T IMMEDIATELY ARRESTED, SO ANY GUNSHOT RESIDUE
10 PROBABLY --

11 Q THE TEST WOULD HAVE BEEN PRIOR TO HIM --

12 A RIGHT.

13 Q OKAY. DID YOU INTERVIEW THE SLED AGENT OR TALK TO THE SLED
14 AGENT WHO PERFORMED THE TEST?

15 A NO.

16 Q DID YOU CONSULT AN INDEPENDENT FORENSIC PERSON REGARDING
17 ANY OF THESE GUNSHOT RESIDUE TESTS?

18 A NO, SIR.

19 Q AND BASED ON YOUR VIEW OF THE RECORD, WERE THE ONLY ACTUAL
20 WITNESSES WITH PERSONAL KNOWLEDGE OR ALLEGED PERSONAL
21 KNOWLEDGE OF MR. HALL COMMITTING THE CRIME EITHER CO-
22 DEFENDANTS OR SUSPECTS?

23 A SAY THAT AGAIN.

24 Q THE ONLY PEOPLE WHO ACTUALLY IMPLICATED MR. HALL IN THE
25 CRIME WERE THE CO-DEFENDANTS, THE SUSPECTS, AND I BELIEVE

1 MR. JURY ALSO DID.

2 A RIGHT, MR. JURY.

3 Q BUT THERE WAS NO PERSON THAT WAS COMPLETELY INDEPENDENT
4 THAT IMPLICATED MR. HALL, MEANING THEY WEREN'T A VICTIM AND
5 THEY WEREN'T A SUSPECT OR A DEFENDANT?

6 A I CAN'T RECALL ANY.

7 Q OKAY. DO YOU RECALL WHERE THE MURDER WEAPON WAS FOUND?

8 A I BELIEVE IT WAS FOUND IN CALVIN PEAY'S APARTMENT UNDER A
9 MATTRESS IN A BEDROOM.

10 Q AND HE WAS A CO-DEFENDANT?

11 A HE WAS.

12 Q DO YOU RECALL IF THERE WERE ANY FINGERPRINTS FOUND ON THE
13 MURDER WEAPON?

14 A I DON'T RECALL.

15 Q DID YOU ADVISE MR. HALL OF THE DIFFERENT SENTENCES HE COULD
16 RECEIVE REGARDING IF HE PLED GUILTY?

17 A I'M SURE I DID. I'M SURE I ADVISED HIM THAT HE'D BE FACING
18 LIFE IF HE WAS FOUND GUILTY AT TRIAL OF TWO MURDERS AND
19 THAT CIRCUMSTANCES KIND OF WERE AGGRAVATED. I DIDN'T WANT
20 HIM TO GO TO JAIL FOR 38 YEARS. HE WAS 16 WHEN HE DID
21 THIS. I FELT REAL BAD FOR HIM, BUT I MORE DIDN'T WANT HIM
22 TO GO TO JAIL FOR LIFE.

23 Q DID YOU INFORM HIM THAT HE COULD RECEIVE LESS THAN LIFE?

24 A I'M SURE THAT I DID, BUT I PROBABLY WOULD HAVE ALSO ADVISED
25 HIM THAT BECAUSE OF THE WOMAN AND THE LITTLE BABY THAT --

1 ESPECIALLY CONSIDERING WE HAD JUDGE SHORT -- THAT IT WASN'T
2 LOOKING ALL THAT GOOD.

3 Q SURE, I UNDERSTAND. DID YOU INFORM HIM OF THE GUIDELINES
4 REGARDING PAROLE, WHAT HIS POTENTIAL FOR PAROLE, IF ANY,
5 WOULD BE?

6 A I CAN ONLY TELL YOU THAT I USUALLY DO. CAN I SAY THAT I
7 DID FOR SURE IN THIS CASE? I CAN'T.

8 Q DID YOU INFORM MR. HALL THAT IF HE WENT TO TRIAL, THAT THE
9 JURY COULD BE INSTRUCTED AS TO LESSER INCLUDED?

10 A I'M NOT SURE IF I ADVISED HIM OF THAT OR NOT, ALTHOUGH HE
11 PLED TO A LESSER INCLUDED. OR DID HE? MAYBE HE DIDN'T.

12 Q NO, I DON'T BELIEVE HE DID.

13 A YOU'RE PROBABLY RIGHT.

14 Q DID YOU GIVE HIM ANY INDICATION WHETHER HE SHOULD PLEAD
15 GUILTY OR NOT?

16 A I THOUGHT THE STATE'S CASE WAS PRETTY STRONG AGAINST HIM.
17 WE HAD TOMMY JURY PICKING HIM OUT OF A LINEUP. "THAT'S
18 HIM. I'LL NEVER FORGET THAT FACE." THAT KIND OF THING IS
19 JUST TOUGH TO GET AROUND, AND I DID SPEAK BRIEFLY WITH
20 TOMMY JURY JUST TO VERIFY WHAT HE SAID AND THE STATEMENT
21 WAS REALLY WHAT HE, WHAT HIS WORDS WERE, AND THEY WERE -
22 THAT IT JUST LOOKED LIKE -- IT LOOKED LIKE A JURY WAS GOING
23 TO WANT SOMEBODY TO PAY FOR THAT LITTLE BABY'S LIFE, AND
24 THE ONLY ONE IN THE CROSS-HAIRS WAS HIM. AND THE EVIDENCE
25 WAS STRONG AGAINST HIM, THAT THERE WAS A VERY GOOD CHANCE

1 HE'D BE CONVICTED AND GET A LIFE SENTENCE.

2 SO I PROBABLY DID.

3 MR. MYERS: YOUR HONOR -- I'M SORRY, YOUR HONOR.

4 (OFF-THE-RECORD DISCUSSION)

5 A IF HE HAD ASKED ME MY ADVICE, MY ADVICE THEN AND TODAY ALSO
6 WOULD BE TO, "TAKE WHAT YOU CAN GET AND RUN."

7 Q IRRESPECTIVE OF WHAT YOU'VE HEARD FROM THREE WITNESSES,
8 INDEPENDENT WITNESSES, WHO SAYS HE WAS NOT IN OR AROUND,
9 NOT AT THE VEHICLE AT THAT TIME AND WAS NOT LEAVING THE
10 SCENE AT THAT TIME?

11 A WELL, AGAIN, I'D HAVE TO WEIGH THAT. I CAN'T TELL YOU
12 TODAY THAT THAT MAY NOT HAVE CHANGED MY ADVICE. I DON'T
13 KNOW.

14 Q SO IT MAY HAVE CHANGED YOUR ADVICE THEN?

15 A I WOULD HAVE HAD TO WEIGH THAT TODAY JUST LIKE I WOULD HAVE
16 HAD TO WEIGH IT THEN. BUT AT THE TIME -- YOU KNOW, HE WAS
17 IN THE COURTROOM TALKING TO ME ABOUT THE PLEA. HIS MOTHER
18 WAS THERE. HIS MOTHER WAS IN FAVOR OF THE PLEA. THAT WAS
19 THE DECISION THAT WAS MADE.

20 Q BUT AT THAT TIME, YOU HAD NOT TALKED TO THESE WITNESSES?

21 A NO.

22 Q SO YOU DIDN'T KNOW WHAT THEY WERE GOING TO SAY?

23 A NO, BUT IT'S HARD TO IMAGINE THAT THE JURY WOULD WEIGH
24 THEIR TESTIMONY MORE HEAVILY THAN THEY WOULD WEIGH TOMMY
25 JURY'S.

1 Q WERE ANY OF THE -- YOU MENTIONED HE WAS -- MR. JURY HAD
2 IDENTIFIED HIM. WERE THERE ANY OF THE OTHER CO-DEFENDANTS
3 INCLUDED IN THAT LINEUP?

4 A WELL, I THINK IT WOULD BE POLICE MISCONDUCT IF THEY DID. I
5 WOULD SAY NOT, BUT IF YOU'D LIKE ME TO LOOK AT THE LINEUP,
6 I WILL.

7 Q NO, THAT'S FINE. I'LL TAKE THAT AS YOUR ANSWER. ARE YOU
8 AWARE OF ANY OTHER OF THE CO-DEFENDANTS WHO WERE EVEN
9 PRESENTED IN A LINEUP?

10 A I DON'T KNOW IF THEY WERE OR NOT.

11 Q ISN'T IT POSSIBLE THAT MR. PEAY AND OTHER CO-DEFENDANTS WHO
12 MADE STATEMENTS COULD BE IMPEACHED AT TRIAL BASED, ON
13 CERTAIN EVIDENCE OF THE WITNESSES YOU'VE HEARD, IF THEY
14 TESTIFIED THAT --

15 MS. CRUM: YOUR HONOR, AT THIS POINT I'M GOING TO
16 OBJECT. THIS IS IRRELEVANT FOR PURPOSES OF THIS CASE.
17 HE'S ASKING HIM TO SPECULATE.

18 THE COURT: I KNOW. WE'LL GO AHEAD AND MAKE A
19 FULL RECORD, THOUGH. I'LL ALLOW IT BECAUSE THERE'S NO
20 JURY. IT'S UP TO THE COURT.

21 MS. CRUM: THANK YOU.

22 A YES, SIR, IT IS POSSIBLE.

23 MR. MYERS: I DON'T HAVE ANYTHING ELSE FOR THIS
24 WITNESS AT THIS TIME, YOUR HONOR.

25 CROSS-EXAMINATION

1 BY MS. CRUM:

2 Q MR. BURTON, ISN'T IT TRUE THAT THE FACTS IN THIS CASE WERE
3 THAT THE DEFENDANT PLED GUILTY TO SHOOTING A WOMAN WHO WAS
4 PREGNANT? ISN'T THAT TRUE?

5 A YES, MA'AM.

6 Q AND THE STATE'S THEORY WAS ESSENTIALLY THAT THE VICTIMS HAD
7 MONEY ON THEM. THEY DROVE INTO THIS PARKING LOT AND THEY
8 WERE ACCOSTED BY THE DEFENDANT. ISN'T THAT TRUE?

9 A I DON'T KNOW. THE STATE'S POSITION WAS THAT THEY HAD MONEY
10 ON THEM, BUT THE REST -- THEY IN FACT DID HAVE MONEY ON
11 THEM, BUT I DON'T THINK THAT THEY SUGGESTED HE KNEW THEY
12 HAD MONEY ON THEM. BUT THE REST OF THAT, I WOULD AGREE
13 WITH, YES.

14 Q AND THE DEFENDANT WAS ACTUALLY IDENTIFIED BY THE MALE
15 VICTIM, MR. JURY, AS THE SHOOTER. IS THAT CORRECT?

16 A IT IS.

17 Q AND ISN'T IT TRUE THAT HE PICKED HIM OUT OF THE LINEUP
18 RIGHT AWAY?

19 A I THINK HE IMMEDIATELY POINTED TO HIM AND HE SAID TO THE
20 POLICE, "I'LL NEVER FORGET THAT FACE."

21 Q AND THE WOMAN THAT DIED, SHE WAS PREGNANT. IS THAT
22 CORRECT?

23 A SHE WAS.

24 Q AND DUE TO HER DEATH, HER BABY WAS ALSO -- LATER DIED.
25 ISN'T THAT CORRECT?

- 1 A YES, MA'AM.
- 2 Q HOW LONG HAVE YOU BEEN PRACTICING LAW?
- 3 A 11 OR 12 YEARS.
- 4 Q DID YOU HAVE AN OPPORTUNITY TO GET DISCOVERY IN THIS CASE?
- 5 A YES, MA'AM.
- 6 Q AND DID YOU HAVE AN -- AND YOU REVIEWED ALL THAT DISCOVERY,
- 7 ISN'T THAT CORRECT?
- 8 A YES, MA'AM.
- 9 Q AND DID YOU REVIEW ALL THE AUTOPSY REPORTS IN THIS CASE?
- 10 A YES, MA'AM.
- 11 Q DID YOU REVIEW ALL THE STATEMENTS IN THIS CASE?
- 12 A YES, MA'AM.
- 13 Q DID YOU REVIEW THE GUNSHOT RESIDUE REPORTS, IF THERE WERE
- 14 ANY, IN THIS CASE?
- 15 A YES, MA'AM.
- 16 Q AND THIS CASE, WASN'T, TO YOUR KNOWLEDGE, SET TO GO TO
- 17 TRIAL THE WEEK THAT HE ENTERED A PLEA OF GUILTY. ISN'T
- 18 THAT CORRECT?
- 19 A WELL, LIKE I SAID, I CAN ONLY TELL YOU HOW IT'S NORMALLY
- 20 DONE, AND NORMALLY BECAUSE -- IN A CASE, ESPECIALLY A CASE
- 21 LIKE THIS, WHERE THE SOLICITOR HAS TO SUBPOENA A WHOLE LOT
- 22 OF WITNESSES AND THE DEFENSE HAS TO SUBPOENA A WHOLE LOT OF
- 23 WITNESSES, THEY DON'T WANT TO HAVE THOSE WITNESSES SITTING
- 24 THERE MONDAY OF THE FIRST WEEK IF THEY THINK IT'S GOING TO
- 25 BE A PLEA. SO THEY WON'T SUBPOENA WITNESSES AND THEY'LL

1 GIVE THE DEFENDANT UNTIL MONDAY, THE CLOSE OF BUSINESS THAT
2 DAY, TO DECIDE WHETHER THEY WANT TO PLEA AND TAKE THE
3 OFFER.

4 IF THE OFFER'S REJECTED, THE SOLICITOR THEN GOES AHEAD
5 AND ISSUES THE SUBPOENAS. SO MY FEELING WAS THAT THEY
6 PROBABLY DIDN'T COME ON THAT MONDAY PREPARED TO TRY A
7 MURDER CASE. THEY PROBABLY WERE GOING TO TRY IT THE NEXT
8 TERM OF COURT WHEN THEY WOULD HAVE HAD ALL OF THEIR
9 WITNESSES THERE READY TO TESTIFY.

10 Q AND YOUR TESTIMONY EARLIER WAS THAT IF THE DEFENDANT HAD
11 NOT PLED THAT PARTICULAR DAY, THAT YOU WOULD HAVE DONE SOME
12 OF THESE OTHER THINGS IN PREPARATION FOR THE TRIAL. ISN'T
13 THAT CORRECT?

14 A ABSOLUTELY. I WOULD HAVE -- IF I HAD A MURDER TRIAL, THAT
15 WOULD HAVE BEEN MY ENTIRE FOCUS UNTIL THE MORNING OF TRIAL,
16 24/7 IF NECESSARY. A WEEK MAY NOT SOUND MUCH IN THE LIFE
17 OF ATTORNEYS LIKE MR. SWERLING AND OTHER WELL KNOWN
18 ATTORNEYS, BUT A WEEK IN THE LIFE OF A PUBLIC DEFENDER IS A
19 LOT OF PREPARATION TIME BECAUSE WE HAVE A LOT OF CASES THAT
20 WE HAVE TO PREPARE FOR A TRIAL.

21 Q AND YOU MENTIONED THAT THE APPLICANT WAS FACING OTHER
22 CHARGES IN ANOTHER COUNTY, ISN'T THAT CORRECT?

23 A I BELIEVE HE HAD SOME FAIRLY SERIOUS CHARGES IN CHESTER
24 COUNTY. I BELIEVE HE HAD A BURGLARY IN THE FIRST DEGREE,
25 ARMED ROBBERY AND KIDNAPING, NOT INVOLVED IN ANY WAY WITH

1 THIS.

2 Q IT WAS A SEPARATE INCIDENT, IS THAT RIGHT?

3 A YES.

4 Q AND DO YOU KNOW WHAT HAPPENED TO THOSE?

5 A I DON'T, BUT I'M PRETTY SURE THAT BECAUSE OF THIS PLEA THAT
6 THOSE -- THE STATE IS NOT GOING TO GO FORWARD AND HAS NOT
7 GONE FORWARD ON THOSE CHARGES.

8 Q AND IN THIS CASE, IN ADDITION TO THE VICTIM IDENTIFYING THE
9 APPLICANT, THE CO-DEFENDANT ALSO IMPLICATED THE APPLICANT
10 IN THIS CASE. ISN'T THAT TRUE?

11 A YES, MA'AM.

12 Q DID YOU EVER COERCE THE APPLICANT INTO PLEADING GUILTY?

13 A NO, MA'AM.

14 Q DID YOU TELL HIM THAT HIS SENTENCE ON THE MURDER WOULD BE
15 BETWEEN 30 YEARS AND LIFE?

16 A I THINK WE HAD IT PINNED DOWN FAIRLY CLOSE BECAUSE I RECALL
17 THE SOLICITOR AND I HAVING A PRETRIAL CONFERENCE IN
18 CHAMBERS WITH JUDGE SHORT JUST FOR SOME COMFORT LEVEL THAT
19 JUDGE SHORT DIDN'T SEE IT AS A LIFE SENTENCE, BE IT A PLEA
20 OR NOT. AND I THINK JUDGE SHORT GAVE US, BASED ON A BRIEF
21 RECITATION OF THE FACTS BY THE SOLICITOR AND A BRIEF
22 RECITATION OF MITIGATING CIRCUMSTANCES BY ME IN CHAMBERS --
23 THAT THE JUDGE INTIMATED THAT THE SENTENCE WOULD BE
24 SOMETHING LIKE WHAT IT WAS.

25 Q AND DO YOU RECALL THE SOLICITOR SAID THAT HE WAS

1 RECOMMENDING CONCURRENT SENTENCES?

2 A I DON'T REMEMBER THAT.

3 Q DO YOU RECALL, WHEN HE SAID THAT YOU ALL HAD AGREED ON A
4 SENTENCE, ANYTHING OTHER THAN A LIFE TERM?

5 A THAT WAS THE SOLICITOR'S OFFER, AND I THINK MR. HALL WASN'T
6 COMFORTABLE WITH THAT, AND I WASN'T REALLY COMFORTABLE WITH
7 THAT, AND WE WANTED SOMETHING A LITTLE MORE SPECIFIC.

8 THAT'S WHEN WE HAD THAT PRETRIAL CONFERENCE JUST SO THAT IT
9 WASN'T GOING TO BE 40 YEARS OR 50 YEARS OR SOMETHING LIKE
10 THAT, AND THE JUDGE DID NARROW IT DOWN TO WITHIN A YEAR OR
11 TWO, AND, IN FACT, THAT'S WHAT THE JUDGE'S SENTENCE WAS.

12 Q SO YOU HAD ADVISED THE APPLICANT WHAT THE JUDGE HAD -- THE
13 RANGE THE JUDGE WAS LOOKING AT PRIOR TO HIM PLEADING
14 GUILTY. IS THAT CORRECT?

15 A YES, IT IS.

16 Q AND THE APPLICANT, WAS HE ULTIMATELY SENTENCED IN THAT
17 RANGE?

18 A YES, MA'AM. HE WAS.

19 Q DID YOU ADVISE THE APPLICANT BEFORE HE PLED GUILTY OF THE
20 MANDATORY MINIMUMS AND MAXIMUM SENTENCES ON ALL THESE
21 CHARGES?

22 A I DON'T HAVE THE SPECIFIC RECOLLECTION OF DOING THAT, BUT I
23 CAN TELL YOU THAT I ALWAYS DO THAT.

24 Q AND I BELIEVE YOU STATED EARLIER THAT YOU DIDN'T RECALL
25 ACTUALLY DISCUSSING PAROLE WITH THE APPLICANT, IS THAT

1 CORRECT?

2 A I DON'T EXACTLY REMEMBER DOING THAT, JUST LIKE -- I'M SURE
3 WHEN I STOPPED MY CAR COMING TO THAT HEARING, I PRESSED ON
4 THE BRAKE PEDAL, BUT I CAN'T ACTUALLY REMEMBER DOING THAT,
5 IF YOU SEE WHAT MY POINT IS. THAT IS SOMETHING I'M IN THE
6 HABIT OF DOING, BUT I CAN'T SPECIFICALLY REMEMBER IN THIS
7 CASE, BEING FOUR YEARS OLD, THAT I ACTUALLY DID THAT.

8 Q AND YOU KNOW YOU'RE UNDER NO DUTY TO DO THAT. ISN'T THAT
9 TRUE?

10 A I KNOW, BUT I TRY TO HAVE MY CLIENTS GO IN WITH BOTH EYES
11 OPEN.

12 Q AND YOU KNOW THAT MURDER IS DAY FOR DAY. ISN'T THAT TRUE?

13 A WELL, MY UNDERSTANDING OF MURDER IS THAT IT'S A NO PAROLE
14 OFFENSE, IF THAT MEANS DAY FOR DAY, THEN THAT'S WHAT THAT
15 MEANS. BUT IT'S IN THE STATUTE AS A NO PAROLE OFFENSE.

16 Q SO YOU WOULD TELL YOUR CLIENTS IT'S A NO PAROLE OFFENSE,
17 ISN'T THAT CORRECT?

18 A I'M SURE I WOULD HAVE DONE THAT.

19 MS. CRUM: THANK YOU. I HAVE NO FURTHER
20 QUESTIONS.

21 THE COURT: ANY REDIRECT?

22 MR. MYERS: JUST BRIEFLY, YOUR HONOR.

23 REDIRECT EXAMINATION

24 BY MR. MYERS:

25 Q MR. HALL PLED GUILTY ON DECEMBER 6TH. DOES THAT SOUND

1 FAMILIAR TO YOU?

2 A I MAY HAVE TO LOOK AT THE FILE, BUT I DON'T DOUBT --

3 THE COURT: THAT'S WHAT THE TRANSCRIPT REFLECTS.

4 Q WOULD IT SURPRISE YOU IF A TRIAL DATE WAS SET FOR DECEMBER
5 9TH AND YOU TALKED TO MR. HALL ON DECEMBER 6TH?

6 A NO. IT WOULDN'T.

7 Q SO THAT VERY WELL COULD HAVE HAPPENED?

8 A IT COULD HAVE.

9 MR. MYERS: THAT'S ALL I HAVE FOR THIS WITNESS,
10 YOUR HONOR.

11 MS. CRUM: I HAVE NOTHING FURTHER, YOUR HONOR.

12 THE COURT: (TO WITNESS) YOU MAY STEP DOWN. THANK
13 YOU.

14 (TO COUNSEL) WHY DON'T WE TAKE A REAL SHORT
15 BREAK, JUST A REFRESHER BREAK, AND I KNOW MR. HALL --

16 (TO MR. MYERS) I PRESUME YOU'RE GOING TO CALL HIM
17 TO THE STAND.

18 MR. MYERS: YES, YOUR HONOR.

19 THE COURT: LET'S TAKE A SHORT BREAK BEFORE WE DO
20 THAT.

21 (BRIEF RECESS)

22 THE COURT: (TO MR. MYERS) CALL YOUR NEXT WITNESS.

23 MR. MYERS: YOUR HONOR, I'VE SPOKEN WITH MY
24 CLIENT, AND I HAVE A MOTION TO ADMIT HIS APPLICATION.
25 WE HAVE A -- THE INDICTMENT THAT WAS ISSUED STATES

1 THAT THE TIME OF DEATH FOR SHEILA JURY AND THE UNBORN
2 CHILD OF SHEILA JURY IS NOVEMBER 20, 2000, AND THE
3 DATE OF DEATH AS PER THE MEDICAL EXAMINER'S REPORT IS
4 11/22, TWO DAYS AFTER THE INDICTMENT WAS ISSUED, AND
5 MY CLIENT WISHES TO AMEND HIS APPLICATION, SAYING THE
6 INDICTMENT WAS DEFECTIVE IN THAT IT DIDN'T STATE THE
7 ACCURATE TIME AND PLACE OF THE EVENTS, AND THAT WOULD
8 BE PURSUANT TO 17-19-30, AND ALSO THAT IT WAS NOT
9 PROPERLY FILED WITH THE CLERK OF COURT.

10 THE COURT: WHAT DO YOU MEAN NOT FILED WITH THE
11 CLERK OF COURT?

12 MR. MYERS: WOULD YOU MIND HEARING FROM MR. HALL?
13 I BELIEVE HE --

14 THE COURT: WELL, I PRESUME HE'S GOING TO TESTIFY.

15 MR. MYERS: AND I'LL JUST -- I CAN HAVE HIM
16 TESTIFY --

17 THE COURT: WELL, I WAS GOING TO SAY, WHY DON'T
18 YOU JUST LET HIM TELL THE COURT.

19 MR. MYERS: OKAY. I JUST WANTED TO MAKE THAT --
20 EXCUSE ME, YOUR HONOR. I'M SORRY ABOUT THAT.

21 THE COURT: I WAS GOING TO SAY THEN WE'D HAVE IT
22 UNDER OATH, AND THEN WE'LL UNDERSTAND MORE OF WHAT HE
23 MEANS.

24 MR. MYERS: OKAY. I JUST WANTED TO MAKE IT ON THE
25 RECORD AS FAR AS MY MOTION.

1 THE COURT: ALL RIGHT. I'LL TAKE THAT MOTION
2 UNDER ADVISEMENT.

3 MR. MYERS: I WOULD NOW CALL LAKEITHON HALL TO THE
4 STAND.

5 THE COURT: ALL RIGHT.

6 (WHEREUPON, LAKEITHON M. HALL, HAVING FIRST BEEN
7 DULY SWORN, TESTIFIES AS FOLLOWS.)

8 THE COURT: YOU MAY PROCEED.

9 DIRECT EXAMINATION

10 BY MR. MYERS:

11 Q MR. HALL, PLEASE STATE YOUR FULL NAME FOR THE RECORD.

12 A LAKEITHON MANDRELL HALL.

13 Q WHERE ARE YOU CURRENTLY LIVING?

14 A AS OF RIGHT NOW?

15 Q YES. WHAT PRISON ARE YOU INCARCERATED IN?

16 A LIEBER CORRECTIONAL INSTITUTION.

17 Q NOW YOU'VE HEARD MR. BURTON'S TESTIMONY, AND I'M SURE HE
18 HAD AT LEAST ONE TALK WITH YOU ABOUT YOUR PLEA AND THAT
19 KIND OF THING. DID MR. BURTON ADVISE YOU AS TO ANY
20 MANDATORY SENTENCES OR THE RANGE OF SENTENCES YOU MAY BE --
21 THAT MAY BE APPLICABLE TO YOUR CHARGE?

22 A I DIDN'T QUITE UNDERSTAND THE QUESTION. REPEAT IT FOR ME.

23 Q WHAT DID MR. BURTON SAY IN REGARDS WHEN YOU DISCUSSED
24 PLEADING GUILTY WITH HIM WHAT YOUR SENTENCE MAY BE?

25 A HE STATED MORE PRECISELY THAT IT WAS IN MY BEST INTEREST IF

1 I WERE TO PLEAD GUILTY BECAUSE IF I HAD PROCEEDED TO TRIAL,
2 DUE TO THE FACT THAT A MOTHER AND A CHILD WAS MURDERED,
3 THAT I MOST LIKELY WOULD GET A LIFE SENTENCE.

4 Q HE ADVISED YOU THAT YOU WOULD MOST LIKE GET A LIFE
5 SENTENCE. DID HE GIVE YOU ANY INDICATION OF A LESSER
6 AMOUNT THAN LIFE THAT YOU COULD GET?

7 THE COURT: I THINK WE ARE PROBABLY GOING TO HAVE
8 TO HAVE THE DOORS CLOSED. THIS IS LOUDER THAN I
9 THOUGHT IT WAS GOING TO BE.

10 (OFF-THE-RECORD DISCUSSION)

11 Q I'LL JUST REPEAT THE QUESTION. WHEN MR. BURTON
12 INDICATED -- WHEN YOU DISCUSSED YOUR PLEA WITH HIM, YOU
13 INDICATED JUST A SECOND AGO THAT HE INDICATED THAT YOU
14 WOULD MOST LIKELY GET LIFE. DID HE INFORM YOU OF ANY OTHER
15 RANGES OF SENTENCES YOU COULD POTENTIALLY GET OTHER THAN
16 LIFE?

17 A NO. NO, HE DIDN'T. HE DIDN'T INFORM ME OF ANY OTHER
18 POSSIBLE RANGE OF SENTENCES LIKE A LESSER INCLUDED OFFENSE.
19 I WOULD NOT HAVE PLED GUILTY IF THERE WAS A POSSIBILITY
20 THAT I COULD HAVE RECEIVED LESSER INCLUDED OFFENSE, LESSER
21 TIME FRAME. THEREFORE, I WAS PREJUDICED.

22 Q DID HE INFORM YOU AS TO THE GUIDELINES AS TO PAROLE IN YOUR
23 OFFENSE?

24 A NO, HE DID NOT.

25 Q HE DIDN'T DISCUSS PAROLE WITH YOU?

1 A NO, HE DID NOT.

2 Q DID HE INSTRUCT YOU AS TO -- THAT THE JURY COULD BE
3 INSTRUCTED AS TO LESSER INCLUDED OFFENSES AND YOU COULD BE
4 CONVICTED OF A LESSER INCLUDED OFFENSE THAN THE ONE YOU HAD
5 BEEN INDICTED FOR?

6 A NO, HE DID NOT.

7 Q WHEN HE TALKED TO YOU ABOUT PLEADING GUILTY, DID HE ADVISE
8 YOU TO PLEAD GUILTY?

9 A HE SAID IT WAS IN MY BEST INTEREST. I DID PLEAD GUILTY DUE
10 TO THE FACT OF WHAT I SAID A FEW MINUTES EARLIER, THAT IF I
11 HAD PROCEEDED TO TRIAL, I MOSTLY LIKELY WOULD RECEIVE A
12 LIFE SENTENCE DUE TO THE FACT IT WAS A MOTHER AND A CHILD
13 THAT WAS MURDERED.

14 Q AND YOU HEARD THE TESTIMONY TODAY FROM MS. DUNCAN AND MS.
15 EVANS AND MS. CUNNINGHAM. IF MR. BURTON WOULD HAVE
16 INTERVIEWED THESE WITNESSES AND THEY SAID WHAT THEY SAID
17 TODAY AND YOU WERE AWARE OF WHAT THEIR TESTIMONY WOULD BE,
18 WOULD YOU HAVE PLED GUILTY?

19 A NO, I WOULD HAVE NOT PLEADED GUILTY. I WOULD HAVE INSISTED
20 ON GOING TO TRIAL.

21 Q YOU WOULD HAVE INSISTED ON GOING TO TRIAL?

22 A YES, I WOULD.

23 Q SO KNOWING THAT YOU HAD THREE INDEPENDENT WITNESSES THAT
24 WOULD NOT PLACE YOU AT THE SCENE OF THE CRIME AT THAT TIME,
25 THEN YOU WOULD HAVE FOREGONE PLEADING AND GONE TO TRIAL?

1 A YES, I WOULD HAVE PROCEEDED TO TRIAL.

2 Q NOW, YOU PLED GUILTY ON DECEMBER 6TH, CORRECT?

3 A YES.

4 Q WHEN WAS YOUR TRIAL DATE SET FOR?

5 A DECEMBER 9TH. THAT WAS -- THAT WOULD HAVE BEEN THAT
6 MONDAY.

7 Q THAT WOULD HAVE BEEN MONDAY, SO DECEMBER 6TH WOULD HAVE
8 BEEN A FRIDAY?

9 A YES.

10 Q AND THAT'S WHEN YOU DETERMINED THAT YOU WERE GOING TO PLEAD
11 GUILTY BASED ON YOUR DISCUSSIONS WITH MR. BURTON?

12 A BASED ON MY COUNSEL'S ADVICE, YES.

13 Q BASED ON YOUR COUNSEL'S ADVICE. AND YOU WERE SET TO GO TO
14 TRIAL ON DECEMBER 9TH?

15 A YES.

16 Q AND WAS THIS WHEN YOU WERE FIRST OFFERED A PLEA BY THE
17 SOLICITOR?

18 A YES, THAT I WAS AWARE OF.

19 Q THAT WAS THE FIRST TIME YOU WERE MADE AWARE THAT THERE WAS
20 AN OFFER ON THE TABLE?

21 A YES.

22 Q DO YOU FEEL YOU WERE ADEQUATELY INFORMED REGARDING THE
23 FACTS OF YOUR CASE, POTENTIAL WITNESSES, FORENSIC EXPERTS,
24 THE GUNSHOT RESIDUE TEST MR. PEAY TOOK, AND ALL THE STUFF
25 YOU'VE HEARD US TALK ABOUT TODAY, TO MAKE A DECISION AS TO

1 WHETHER YOU SHOULD PLEAD GUILTY OR NOT?

2 A NO, I DO NOT FEEL LIKE I WAS ADEQUATELY INFORMED. I FEEL
3 LIKE I WAS PREJUDICED BECAUSE I WAS -- IF I WAS INFORMED OF
4 THESE THINGS OR THE EXCULPATORY NATURE OF THE EVIDENCE OR
5 THE FORENSIC REPORTS, THE WITNESSES, THE TESTIMONY THAT WAS
6 INCONSISTENT COULD HAVE POSSIBLY BEEN IMPEACHED, I WOULD
7 NOT HAVE PLED GUILTY. I WOULD HAVE INSISTED ON GOING TO
8 TRIAL.

9 Q NOW, YOU WERE INDICTED FOR THE MURDER OF SHEILA JURY AND
10 HER UNBORN CHILD, AND THE INDICTMENT I HAVE HERE STATES
11 NOVEMBER 20, 2000 AS THE DATE OF DEATH?

12 A YES.

13 Q BASED ON YOUR EXAMINATION OF THE FILE AND THE MEDICAL
14 EXAMINER'S REPORT, DO YOU RECALL WHAT THE DATE OF DEATH IS
15 ON THAT REPORT?

16 A THE DATE OF DEATH SHOULD BE 200, 11/22.

17 Q SO NOVEMBER 22, 2000. THAT WOULD BE TWO DAYS FOLLOWING
18 WHEN THE INDICTMENT STATES THAT THE UNBORN CHILD ACTUALLY
19 DIED?

20 A YES.

21 Q AND YOU'RE OBJECTING TO THAT INDICTMENT AS BEING INVALID,
22 CORRECT?

23 A YES, AND I'D LIKE -- I'M ASKING THAT THAT INDICTMENT BE
24 VACATED DUE TO THE FACT THAT IT IS -- IT IS NOT PROPERLY
25 CONVEYED.

1 Q THAT IT DOESN'T PROPERLY STATE THE TIME AND PLACE OF DEATH?

2 A TIME OR PLACE OF DEATH. IT'S INVALID BY THE CONSTITUTION,
3 NOT ONLY THE CONSTITUTION OF SOUTH CAROLINA BUT THE UNITED
4 STATES CONSTITUTION, WHICH STATES THAT ALL INDICTMENTS MUST
5 STATE THE TIME AND PLACE OF DEATH.

6 Q AND DO YOU ALSO HAVE AN OBJECTION AS TO THE INDICTMENT AS
7 TO IT NOT BEING FILED WITH THE CLERK OF COURT?

8 A YES, I DO. THAT'S A RULE 3 VIOLATION OF THE SOUTH CAROLINA
9 CODES OF CRIMINAL PROCEDURE.

10 Q COULD YOU SPEAK A LITTLE BIT SLOWER, PLEASE?

11 A THAT IS A RULE 3 VIOLATION OF THE SOUTH CAROLINA CODES AND
12 RULES OF CRIMINAL PROCEDURE IN WHICH IT STATES THAT ALL
13 INDICTMENTS MUST BE FILED WITH THE CLERK OF COURT, AND IT'S
14 NOT THE READING OF THIS INDICTMENT, IT IS THE FILING OF AN
15 INDICTMENT THAT GRANTS THE COURT WITH ITS JURISDICTION.
16 THEREFORE THE INDICTMENT WAS NOT FILED. IT WAS THEREFORE
17 INVALID.

18 Q AND DO YOU FEEL THAT IF MR. BURTON WOULD HAVE FURTHER
19 INVESTIGATED YOUR CASE AND TALKED TO POTENTIAL WITNESSES,
20 AND I'M JUST REITERATING WHAT I'VE ALREADY SAID, THAT YOU
21 WOULD NOT PLEAD AND YOU WOULD CHOOSE TO GO TO TRIAL?

22 A YES, I WOULD HAVE CHOSE TO GO ON TO TRIAL IF HE WOULD HAVE
23 INFORMED ME OF THE EXCULPATORY EVIDENCE, LIKE I SAID
24 BEFORE. I WOULD HAVE CHOOSED TO GO TO TRIAL.

25 Q IS THERE ANYTHING ELSE THAT YOU'D LIKE TO SAY TO THE COURT

1 TODAY THAT COULD FURTHER YOUR CASE IN YOUR P.C.R.
2 APPLICATION?

3 A NOT THAT I CAN RECALL.

4 MR. MYERS: THAT'S ALL I HAVE AT THIS TIME, YOUR
5 HONOR.

6 THE COURT: (TO MS. CRUM) CROSS?

7 CROSS-EXAMINATION

8 BY MS. CRUM:

9 Q SIR, YOU SHOT AND KILLED A PREGNANT WOMAN. ISN'T THAT
10 TRUE?

11 A (NO RESPONSE).

12 Q YOU SHOT AND KILLED A PREGNANT WOMAN, ISN'T THAT TRUE?

13 A NO, I DID NOT KILL ANYBODY.

14 Q BUT YOU TOLD JUDGE SHORT THAT YOU KILLED THIS WOMAN AND HER
15 BABY, ISN'T THAT CORRECT?

16 A THAT WAS ON THE ADVICE OF MY COUNSEL.

17 Q DIDN'T YOU TELL JUDGE SHORT THAT YOU WERE GUILTY AND THAT
18 YOU DID COMMIT THESE CRIMES?

19 A YES. THAT ALSO WAS ON ADVICE OF MY COUNSEL.

20 Q SIR, MY QUESTION TO YOU WAS DID YOU TELL JUDGE SHORT THAT
21 YOU COMMITTED BOTH OF THESE CRIMES?

22 A YES.

23 Q SO DID YOU TELL THE TRUTH TO JUDGE SHORT?

24 A I PLED ON THE ADVICE OF MY COUNSEL.

25 Q DID YOU TELL THE TRUTH TO JUDGE SHORT?

1 A NO, I DID NOT.

2 Q YOU LIED TO JUDGE SHORT?

3 A YES, I DID.

4 MS. CRUM: MAY I APPROACH, YOUR HONOR?

5 THE COURT: YES, MA'AM.

6 Q (COUNSEL HANDING DOCUMENT TO WITNESS). SIR, I'M GOING TO
7 SHOW YOU THE MURDER INDICTMENT FOR THE BABY. CAN YOU TELL
8 US, AT THE TOP OF THAT, IF THERE'S SOMETHING CALLED A
9 DOCKET NUMBER, ON THE FRONT AT THE VERY TOP? IS THERE
10 SOMETHING CALLED A DOCKET NUMBER?

11 A YES.

12 Q CAN YOU READ THAT FOR US?

13 A 2001-GS-29-0346.

14 Q SO THE CLERK GAVE YOUR CASE A DOCKET NUMBER, IS THAT
15 CORRECT?

16 A YES.

17 MS. CRUM: MAY I APPROACH, YOUR HONOR?

18 THE COURT: YES, MA'AM.

19 Q AND YOU KNEW THAT YOU WERE CHARGED WITH SHOOTING MS. JURY,
20 ISN'T THAT CORRECT?

21 A I COULDN'T HEAR YOU.

22 Q YOU KNEW THAT YOU WERE CHARGED WITH SHOOTING SHEILA JURY,
23 ISN'T THAT CORRECT?

24 A YES.

25 Q AND YOU KNEW AT THE TIME YOU PLED GUILTY THAT YOU WERE ALSO

1 CHARGED WITH KILLING HER UNBORN CHILD, ISN'T THAT CORRECT?

2 A WHAT DO YOU SAY, NOW?

3 Q DIDN'T YOU KNOW THAT YOU WERE ALSO CHARGED WITH KILLING A
4 BABY?

5 A YES.

6 Q SO YOU WERE AWARE THAT YOU WERE PLEADING GUILTY TO TWO
7 MURDERS, ISN'T THAT CORRECT?

8 A YES. ON MY COUNSEL'S ADVICE, I WAS.

9 Q AND YOU HAD TALKED WITH MR. BURTON ABOUT -- YOU KNEW THAT
10 THE BABY HAD DIED AT THE HOSPITAL, ISN'T THAT CORRECT?

11 A NO, I DID NOT. HE DID NOT INFORM ME OF THESE THINGS.

12 Q YOU DIDN'T KNOW WHEN THE BABY DIED. IS THAT WHAT YOU'RE
13 TELLING US?

14 A I DID NOT KNOW BECAUSE HE DIDN'T EVEN INFORM ME OF NOTHING.

15 Q YOU WERE FACING MURDER AND MR. BURTON -- YOU'RE TELLING
16 THIS COURT THAT MR. BURTON DIDN'T DISCUSS THE FACTS OF THIS
17 CASE WITH YOU?

18 A NO, HE DID NOT.

19 Q HE DIDN'T DISCUSS THE EVIDENCE WITH YOU?

20 A NO, HE DID NOT BECAUSE IF HE WOULD HAVE, I WOULD HAVE
21 PROCEEDED TO TRIAL.

22 Q THE VICTIM IN THIS CASE, THE OTHER VICTIM, IDENTIFIED YOU
23 AS THE PERSON WHO SHOT HIS WIFE. ISN'T THAT TRUE?

24 A WOULD YOU BE MORE PRECISE? WHO IS THE OTHER VICTIM?

25 THE COURT: MR. JURY, THE DEAD WOMAN'S HUSBAND.

1 MR. JURY WAS IN THE CAR AT THE TIME, IS WHAT SHE'S
2 ASKING.

3 Q DID MR. JURY IDENTIFY YOU AS THE PERSON WHO SHOT HIS WIFE?

4 A THAT'S WHAT IT SAYS IN DISCOVERY.

5 Q AND YOUR CO-DEFENDANT ALSO SAID YOU WERE THE ONE WHO DID
6 IT, ISN'T THAT TRUE?

7 A THAT'S WHAT IT SAYS IN THE DISCOVERY.

8 Q AND YOU HAVE A PRIOR RECORD FOR RECEIVING STOLEN GOODS, IS
9 THAT TRUE?

10 A YES, THAT'S WHAT IT SAYS.

11 Q AND THE JUDGE TOLD YOU THAT YOU WERE FACING 30 YEARS TO
12 LIFE ON THESE MURDER CHARGES, ISN'T THAT CORRECT?

13 A I CAN'T RECALL.

14 MS. CRUM: I BEG THE COURT'S INDULGENCE.

15 THE COURT: IT'S IN THERE. I'VE ALREADY LOOKED AT
16 IT.

17 MS. CRUM: THANK YOU, YOUR HONOR. I HAVE NO
18 FURTHER QUESTIONS.

19 THE COURT: ANY REDIRECT?

20 MR. MYERS: NO REDIRECT, YOUR HONOR.

21 THE COURT: (TO WITNESS) YOU MAY STEP DOWN. THANK
22 YOU. DO YOU HAVE ANY BRIEF STATEMENT YOU WANT TO
23 MAKE?

24 MR. MYERS: IF I COULD JUST SPEAK TO MY CLIENT ONE
25 SECOND AND SEE IF HE HAS ANYTHING TO ADD -

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1 MS. CRUM: I'M SORRY, I'M JUST GOING TO HAVE A
2 FOLLOWUP WITNESS.

3 THE COURT: OH, OKAY, I'M SORRY. SINCE HE'D
4 ALREADY TESTIFIED -

5 (WHEREUPON, ROSS A. BURTON, HAVING PREVIOUSLY
6 BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

7 (TO WITNESS) COME ON BACK UP, MR. BURTON. YOU
8 ARE STILL UNDER OATH, OF COURSE.

9 DIRECT EXAMINATION

10 BY MS. CRUM:

11 Q MR. BURTON, DID YOU HAVE AN OPPORTUNITY TO GO OVER THE
12 EVIDENCE YOU RECEIVED IN THIS CASE WITH THE DEFENDANT?

13 A I DID, YES.

14 Q DID YOU GO OVER THE AUTOPSY RESULTS WITH HIM?

15 A MAYBE NOT VERBATIM, BUT I'M SURE THAT I SUMMARIZED THE
16 AUTOPSY RESULTS FOR HIM.

17 Q WERE YOU AWARE THAT THE BABY -- OR WHEN THE BABY DIED?

18 A IT SEEMS TO ME THAT -- I GUESS IT SORT OF DEPENDS ON WHAT
19 YOU MEAN BY "DIED" BECAUSE THE BABY -- APPARENTLY WHEN THEY
20 PERFORMED THE C-SECTION, THE BABY -- THERE WERE NO VITAL
21 SIGNS, AND I THINK THEY LATER RESUSCITATED THE BABY, AND
22 THEN THE BABY LATER DIED. BUT CLEARLY FROM THE AUTOPSY,
23 WHEN MS. JURY'S HEART STOPPED BEATING WHEN THE BULLET
24 STRUCK IT, THAT DEPRIVED THE BABY OF ANY OXYGEN AND THERE
25 WAS NO BRAIN ACTIVITY. SO I GUESS IT'S SORT OF ARGUABLE

1 BUT --

2 MR. MYERS: OBJECTION, YOUR HONOR. HE'S NOT A
3 MEDICAL PROFESSIONAL.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 Q MR. BURTON, WERE YOU AWARE THAT THE DEFENDANT WAS CHARGED
6 WITH SHOOTING BOTH MS. JURY AND ALSO KILLING HER UNBORN
7 CHILD?

8 A OH, ABSOLUTELY. AND I'M SURE I WOULD HAVE GONE OVER, YOU
9 KNOW, THAT ISSUE WITH THE UNBORN CHILD. EVEN IF YOU
10 ASSUMED THE JURYS MIGHT HAVE BEEN IN PARDUE STREET
11 APARTMENTS FOR SOME SPECIOUS REASON, THAT LITTLE BABY
12 WASN'T.

13 Q DID YOU BELIEVE THAT YOU WERE SUFFICIENTLY ON NOTICE OF ALL
14 THESE CHARGES?

15 A I DID.

16 Q AND DID YOU SEE ANY REASON TO MAKE A PRETRIAL MOTION TO
17 QUASH THESE INDICTMENTS?

18 A WELL, WE NEVER QUITE GOT THAT FAR BECAUSE UNLESS YOU GO TO
19 TRIAL, THERE'S REALLY NO NEED FOR PRETRIAL MOTIONS.

20 Q AND HAD YOU MADE SUCH A MOTION, DO YOU BELIEVE THAT HE
21 WOULD HAVE JUST BEEN REINDICTED OR DO YOU KNOW?

22 A THAT WOULD BE UP TO THE SOLICITOR, BUT IT'S HARD TO IMAGINE
23 IF THE INDICTMENTS WERE QUASHED THAT THE SOLICITOR WOULDN'T
24 BRING IT UP.

25 MR. MYERS: OBJECTION.

1 THE COURT: I'LL SUSTAIN THE OBJECTION.

2 Q DO YOU RECALL WHETHER THESE INDICTMENTS WERE IN THE CLERK
3 OF COURT'S FILE?

4 A WELL, THAT'S WHERE INDICTMENTS ARE KEPT SO I'M CERTAIN THEY
5 WERE.

6 MS. CRUM: I HAVE NO FURTHER QUESTIONS. THANK
7 YOU.

8 THE COURT: CROSS?

9 CROSS-EXAMINATION

10 BY MR. MYERS:

11 Q MR. BURTON, DO YOU RECALL REVIEWING A REPORT FROM THE CHIEF
12 MEDICAL EXAMINER TITLED "CAUSE OF DEATH"?

13 A I IMAGINE.

14 Q WOULD IT ASSIST YOU IF I ALLOWED YOU TO SEE THIS?

15 A IT PROBABLY WOULD.

16 MR. MYERS: MAY I BE ALLOWED TO APPROACH, YOUR
17 HONOR?

18 THE COURT: CERTAINLY.

19 Q DOES THAT DOCUMENT, BASED ON YOUR REVIEW, INVOLVE THE DEATH
20 OF SHEILA JURY'S UNBORN CHILD?

21 A THAT SAYS "MATERNAL DEATH BY GUNSHOT WOUND", SO I'M NOT
22 EXACTLY SURE WHAT IT IS.

23 Q DO YOU SEE "DATE OF DEATH" HERE ON THE RIGHT-HAND SIDE?

24 A RIGHT.

25 Q WHAT WOULD THAT DATE OF DEATH BE?

1 A 11/22/00 AT 6:35 P.M.

2 Q AND BASED ON THAT DOCUMENT, CAN YOU SAY THAT THAT'S
3 INDICATING THE CAUSE OF DEATH OR TIME OF DEATH OF THE CHILD
4 INVOLVED IN THIS?

5 A IT CLEARLY SAYS THE TIME OF DEATH AND IT SEEMS TO SUGGEST
6 THE CAUSE OF DEATH ALTHOUGH --

7 Q THANK YOU. AS FAR AS THE INDICTMENTS THAT WERE ISSUED
8 AGAINST MR. HALL, WERE THOSE INDICTMENTS ISSUED STATING THE
9 MURDER OF BOTH SHEILA JURY AND THE UNBORN CHILD OCCURRED ON
10 NOVEMBER 20, 2000?

11 A I'D HAVE TO TAKE YOUR WORD FOR IT OR SEE THE INDICTMENTS.
12 THIS INDICTMENT SAYS THAT LAKEITHON HALL DID IN LANCASTER
13 COUNTY ON OR ABOUT NOVEMBER 20, 2000 KILL ONE SHEILA [REDACTED]
14 J [REDACTED] WHO I BELIEVE IS THE UNBORN CHILD. YES, IT IS.

15 Q THANK YOU VERY MUCH.

16 THE COURT: ANYTHING ELSE?

17 MR. MYERS: NO.

18 MS. CRUM: NOTHING, YOUR HONOR.

19 THE COURT: (TO WITNESS) YOU MAY STEP DOWN.

20 (TO MS. CRUM) IS THAT IT FROM THE STATE?

21 MS. CRUM: YES, YOUR HONOR. THE STATE RESTS.

22 THE COURT: (TO MR. MYERS) TAKE A MINUTE TO TALK
23 TO YOUR CLIENT. THEN I'LL BE GLAD TO HEAR FROM YOU.

24 MR. MYERS: THANK YOU. YOUR HONOR, I HAVE ONE
25 ADDITIONAL THING WHEN YOU'RE READY TO PROCEED.

1 THE COURT: WE'RE READY.

2 MR. MYERS: MR. HALL WOULD JUST LIKE TO MAKE ONE
3 BRIEF STATEMENT. HE JUST WANTS TO BRING TO THE
4 COURT'S ATTENTION A COUPLE OF THINGS.

5 THE COURT: ALL RIGHT, MR. HALL.

6 MR. HALL: EARLIER MS. CRUM STATED THAT IT'S
7 NOT --

8 THE COURT: YOU NEED TO RAISE YOUR VOICE A LITTLE
9 BIT.

10 MR. HALL: I SAY EARLIER MS. CRUM STATED THAT IT
11 WAS NOT MY COUNSEL'S DUTY TO ADVISE ME OF MY PAROLE
12 ELIGIBILITY, BUT I HAVE A CASE, HINSON V. STATE.
13 HINSON V. STATE'S CITE NUMBER IS 377 S.E.2d 338. IT
14 STATES THAT IN HIS POST-CONVICTION HEARING, HINSON
15 CONTENDS THAT HIS TRIAL ATTORNEY ERRED IN HIS ADVICE
16 CONCERNING PAROLE AND RENDERED HIS PLEA INVALID. WE
17 AGREE AND WE REVERSE IT AND DENY THE POST-CONVICTION
18 RELIEF. THEREFORE, IT DOES STATE THAT HIS LAWYER MUST
19 ADVISE AND MUST INFORM HIM OF PAROLE ELIGIBILITY. IF
20 NOT, IT IS REVERSIBLE ERROR.

21 THE COURT: ALL RIGHT.

22 MR. HALL: AND EARLIER YOU SAID YOU WASN'T QUITE
23 FAMILIAR THAT IT WAS REQUIRED THAT --

24 THE COURT: NO, YOU SAID THERE WERE SENTENCING
25 GUIDELINES, AND WHAT I SAID IS I DIDN'T UNDERSTAND

2
3 HAD BEEN THROWN OUT BY THE UNITED STATES SUPREME
4 COURT. SO I WAS JUST A LITTLE IN THE DARK AS TO WHAT
5 YOU WERE TALKING ABOUT.

6 MR. HALL: OH, OKAY. I UNDERSTAND. YOU SAID --
7 WHAT DID YOU JUST SAY? IT WAS THROWN OUT?

8 THE COURT: I DON'T THINK WE'VE EVER HAD
9 SENTENCING GUIDELINES IN SOUTH CAROLINA. IF WE DID,
10 IT WENT RIGHT OVER MY HEAD.

11 MR. HALL: THIS RIGHT HERE IS CRIMINAL LAW. THIS
12 IS 404 AND IT STATES THAT MAXIMUM -- MAXIMUM/MINIMUM
13 SENTENCE AFFECTS THE GUILTY PLEA -- GUILTY PLEA RULES
14 SPECIFIC -- SPECIFIES THAT A DEFENDANT MUST BE
15 INFORMED OF A MANDATORY MINIMUM SENTENCE.

16 THE COURT: IT SEEMS TO ME THAT JUDGE -- WELL,
17 I'LL TAKE THAT UNDER ADVISEMENT, BUT I -- FROM THE
18 TRANSCRIPT, IT LOOKS LIKE JUDGE SHORT TOLD YOU THAT IT
19 WAS 30 YEARS TO LIFE ON BOTH MURDERS, AND I'LL CHECK
20 THAT AGAIN, THOUGH.

21 MR. HALL: HE TOLD ME ON BOTH MURDERS, BUT HE DID
22 NOT INFORM ME OF THAT ON THE ARMED ROBBERY NOR ON THE
23 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
24 VIOLENT CRIME.

25 THE COURT: I'LL TAKE A LOOK AT THOSE. THANK YOU.

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63

THAT OUR STATE HAD EVER ADOPTED SENTENCING GUIDELINES

1

MR. MYERS: THANK YOU, YOUR HONOR.

2

THE COURT: ALL RIGHT.

3

(WHEREUPON, THE HEARING WAS CONCLUDED AT 10:45

4

A.M.).

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE

I, NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER AND
OFFICIAL COURT REPORTER FOR THE SIXTH JUDICIAL CIRCUIT OF THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS
A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
HEARING HELD IN THE ABOVE-CAPTIONED MATTER ON MARCH 21, 2006 IN
FAIRFIELD COUNTY, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
INTEREST TO ANY PARTY HERETO.


NANCY M. MONTEITH, C.V.R.
RESIDENT COURT REPORTER
SIXTH JUDICIAL CIRCUIT

COLUMBIA, SOUTH CAROLINA

NOVEMBER 10, 2006

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

C.A. No.: 03-CP-29-960

Lakeithon M. Hall,
 S.C.D.C. No. 289440

Applicant,

vs.

State of South Carolina,

Respondent.

ORDER

FILED
 OFFICE OF CLERK
 OF COURT
 2006 MAR 16 A 9:18
 LANCASTER COUNTY, S.C.

This matter came before the court on Respondent's Motion to Return and Dismiss and was set for hearing on March 01, 2006 at the Fairfield County Courthouse in Winnsboro, South Carolina. Respondent was represented by Molly Crum, Esquire. Van Myers, Esquire appeared on behalf of the Applicant.

The Applicant is presently incarcerated with the South Carolina Department of Corrections. The Applicant was indicted at the February 2001 term of General Sessions for the Lancaster County Grand Jury for two counts of murder (2001-GS-29-71 and 2001-GS-29-346), attempted armed or alleged robbery (01-GS-29-72), and possession of a firearm during the commission of a violent crime (01-GS-29-73). Ross A. Burton, Esq., represented the Applicant on the charge. On December 9, 2002, the Applicant pled guilty as indicted. The Honorable Paul E. Short, Jr. sentenced the Applicant to confinement for thirty-eight (38) years. Applicant did not appeal his guilty plea or sentence.

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

[Handwritten signature]

1. Ineffective Assistance of Counsel; and
2. Involuntary Guilty Plea.

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermine the proper functioning of the adversarial process that the trial cannot be relief upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.C. 2052.

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

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

per #2

In his allegation the Applicant alleges that he did not plead guilty freely and voluntarily. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Nevertheless, a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

The Court finds that Applicant was fully advised of his rights and under oath affirmed that he knew and understood the charges to which he was pleading guilty and the penalties applicable to the charges. (T. at p. 6, l. 22 through T. at p. 9, l.13). Applicant confirmed that trial counsel had done all Applicant had asked of him (T. at p. 12, ll. 10-18) and that he understood the Court's questions and did not desire further

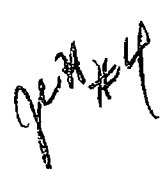
p. 26 #3

explanation of his rights, the charges against him and the penalties to which he was exposed. (T. at p. 12, ll. 19-24). Also, Applicant confirmed, under oath, the underlying facts as to his commission of the murder of Mrs. Sheila Jury and her unborn child. (T. at p. 13, l. 224 through T. at p. 22, l. 8).

Applicant complains that he was not informed as to his parole eligibility, the existence of lesser included offenses and "sentencing guidelines." Of course, South Carolina has not adopted sentencing guidelines. Parole is a collateral effect of a sentence a defendant need not be advised as to the collateral consequence(s) of a sentence before a guilty plea. Smith v. State, 328 S.C. 280, 494 S.E.2d 626 (1997). Applicant points to no obligation of trial counsel to advise a defendant as to the existence of the possibility of lesser included offenses. Consequently, Applicant has failed to carry his burden of proof and is not entitled to relief on his post conviction relief as to this allegation.

Applicant also alleges trial counsel was ineffective for failing to properly investigate and interview witnesses. Trial counsel testified that he obtained and reviewed discovery, spoke with one co-defendant (a Mr. Peay) and talked to the adult victim's surviving spouse. Trial counsel also discussed the case with Applicant and did not coerce applicant to plea. As such, Applicant's assertion that counsel was ineffective in failing to properly investigate and interview witnesses is without merit.

Lastly, at his hearing Applicant asked to amend his application to allege a defect in the indictment as to the date of the victim's death. Applicant has presented no evidence to support this allegation save his testimony that the death certificate shows a different date of death. If any defect did exist, it had to be revised prior to his plea. State v. Gentry, 363 S.C. 93; 610 S.E.2d 494 (2004).



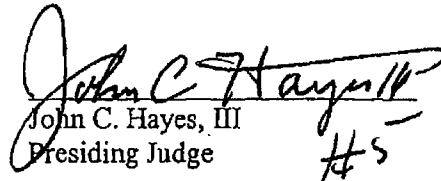
Applicant further asked to amend his application and seek relief based on his indictments not being filed with the Clerk of Court. Applicant offered no evidence on this issue.

The Court allows Applicant to amend his complaint to include the two grounds above, but both are dismissed as meritless.

Wherefore, Respondent's motion to dismiss is hereby granted and Applicant's application for post-conviction relief denied.

Applicant has thirty (30) days to seek Certiorari from the South Carolina Supreme Court after receipt of this Order.

IT IS SO ORDERED!


John C. Hayes, III
Presiding Judge
#5

March 9th, 2006
Winnsboro, South Carolina

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

John C. Hayes, III, Circuit Court Judge

LAKEITHON M. HALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Attorney

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ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Trial counsel erred in failing to investigate into and develop a third party guilt defense in the case.

STATEMENT

Petitioner Lakeithon M. Hall pled guilty to attempted armed robbery, possession of a firearm during the commission of a violent crime, and two counts of murder during the December 2002 term of the Lancaster County General Sessions Court before the Honorable Paul E. Short, Jr., Judge. Petitioner was sentenced to imprisonment for a period of thirty-eight years. App. pp. 1 – 20. Petitioner did not appeal his guilty pleas or sentences.

Subsequent to the filing of a PCR application by petitioner (App. pp. 21 – 25), a hearing was convened on March 21, 2006, at the Lancaster County Courthouse before the Honorable John C. Hayes, III, Judge. App. pp. 26 – 90. On March 2, 2006, Judge Hayes filed an order in the case therein denying and dismissing petitioner's PCR application. App. pp. 92 – 96.

Petitioner appealed Judge Hayes' order. This petition follows.

ARGUMENT

Trial counsel erred in failing to investigate into and develop a third party guilt defense in the case.

In the case at bar, apparently the state alleged that petitioner approached Mr. Jury's car asking for money and when Jury responded that he had no money and tried to drive off, the state alleged petitioner fired shots into the car therein killing Mr. Jury's wife and the unborn child she carried. App. p. 8, line 16 – p. 9, line 25.

During the PCR hearing, petitioner presented witnesses in support of his third party guilt claim. For example, Takeisha Cunningham testified that she witnessed the shooting, that she saw two to six people approach Jury's car and that petitioner was not in the group of men who approached. App. p. 30, line 4 – p. 35, line 24. Tara Evans testified that she witnessed the killing and that she saw a group of guys (six to eight) fleeing from the car, one of whom was Martinio Stevens and another who was a light-skinned male, but that petitioner was not in the group of perpetrators. App. p. 36, line 10 – p. 39, line 14; App. p. 40, lines 18 – 22; App. p. 42, line 12 – p. 43, line 6. Crystal Duncan testified that she too witnessed the crimes and that she saw a light skinned male and another male running from the car after shots were fired at the car and that she did not see petitioner run from the group. App. p.44, line 10 – p. 47, line 10.

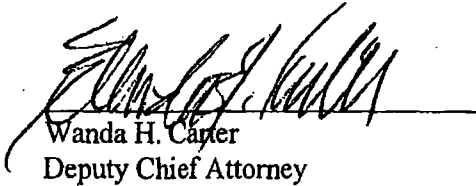
Trial counsel testified at the hearing. Counsel admitted that he did not contact Cunningham, nor Evans, nor Duncan to discuss the case with them prior the plea. App. p. 53, line 24 – p. 54, line 3; App. p. 58, lines 1 – 23; App. p. 63, line 11 – p. 64, line 14. Note that petitioner testified that had he known what the testimony of the women would have been, he would not have pled guilty to the state's charges. App. p. 75, line 7 – p. 78, line 1.

As a rule, a defendant has a right to present third party guilt evidence as a defense and claim his innocence in his case. Holmes v. South Carolina, 547 U.S. 319 (2006). Also, counsel has a duty to adequately prepare the case and investigate into matters of defense and potential witnesses. Savino v. Murray, 82 F.3d 593 (4th Cir. 1996); McGraw v. United States, 106 F.3d 391 (4th Cir. 1997). Here, we have three witnesses who did not place petitioner at the crime scene and two witnesses who identified the perpetrator(s) as someone other than petitioner. Trial counsel erred in failing to investigate into and develop a third party guilt defense in the case in violation of petitioner's right to effective assistance of counsel in violation of Hill v. Lockhart, 484 U.S. 52 (1985), and the sixth and fourteenth amendments to the United States Constitution and article 1 § 14 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Attorney

ATTORNEY FOR PETITIONER

This 14th day of March, 2007.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO LANCASTER COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 03-CP-39-960

Lakeithon M. Hall #289440 Petitioner,

v.

State of South Carolina, ... Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED

1. **Did the PCR Court correctly dismiss the claims of ineffective assistance of counsel for failure to investigate third party guilt?**

STATEMENT OF THE CASE

Petitioner is currently incarcerated in the South Carolina Department of Corrections. Petitioner was indicted by the Lancaster County Grand Jury in February 2001 for two (2) counts of Murder (01-GS-29-71, 346), Attempted Armed Robbery (01-GS-29-72), and Possession of a Firearm (01-GS-29-73). Petitioner was subsequently indicted by the Chester County Grand Jury for Burglary, First Degree, Armed Robbery, and Kidnaping. Petitioner was represented by Ross Burton, Esquire. He pled guilty to the Lancaster charges on December 6, 2002. The Chester indictments were *not proessed* pursuant to the plea agreement. Petitioner was sentenced by the Honorable Paul E. Short, Jr. to thirty-eight (38) years for Murder, twenty (20) years for Attempted Armed Robbery, and five (5) years for Possession of a Firearm on December 9, 2002. These sentences were to be served concurrently. Petitioner did not appeal his conviction or sentence.

Applicant subsequently filed this PCR application on October 11, 2003. Respondent made its Return on July 14, 2004. A hearing was convened before the Honorable John C. Hayes, III, on March 1, 2006. By Order dated March 2, 2006, Judge Hayes denied Petitioner's Application for PCR. This appeal follows.

STANDARD OF REVIEW

The proper standard of review of a post conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. The PCR Court correctly dismissed the claims of ineffective assistance of counsel for failure to investigate third party guilt.

The testimony at the PCR hearing shows that counsel was diligent in the preparation and presentation of the case. Trial counsel reviewed discovery, including Petitioner's witness's statements, autopsy reports, and gun shot residue tests (App. 66, Ln. 6-13)). He also spoke to the victim's husband (App. 6, Ln. 21). Trial counsel also spoke to Petitioner's co-defendant who implicated him in the murders (App. 68, Ln. 9).

Trial counsel also testified that, had Petitioner decided not to plead guilty, he would have done further investigation (App. 57, Ln. 15). As the Court noted in Strickland v. Washington, the reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based . . . on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. at 2066.

Petitioner's statement that had he known the testimony of the women he would not have pled guilty is questionable. Petitioner lacks credibility. Under oath, at the PCR hearing he testified that he lied while he was under oath during his guilty plea (App. 80, Ln. 3).

Petitioner admitted, under oath, the underlying facts as to his commission of the murder of the two victims (App. 95). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.C. 63, 97 S. Ct 1621 91977). Therefore, statements made during a guilty plea should be considered

conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. US, 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). Petitioner has failed to present a valid reason why the Court should depart from the truth of this statements during his guilty plea.

Respondent submits it is unlikely that Petitioner would have proceeded to trial had trial counsel investigated the three (3) witnesses. Trial counsel testified that he is not sure he would have even called the three (3) women to testify had he investigated their statements and the case had gone to trial. (App. 55, ln. 20). He stated that it is "hard to imagine that the jury would weigh their testimony more heavily than they would weigh Tommy Jury's." (App. 63, Ln. 23). Mr. Jury was seated in the drivers seat of the car when Petitioner shot into the car killing his wife and their unborn baby (App. 9, ln. 16). He positively identified Petitioner in a photo-lineup, stating "that's him. I'll never forget that face." (App. 63, ln. 16). Petitioner's three (3) witnesses were twenty (20) to forty (40) feet away from the incident (App. 31, ln. 3; 37 ln. 19). All of Petitioner's witnesses had criminal records that could have used to impeach their testimony at trial. Trial counsel testified that the State had a strong case against Petitioner which included Mr. Jury's testimony and identification and the testimony of his co-defendant implicating him in the murder (App.62, Ln. 16).

The PCR court correctly found that trial counsel was not ineffective for failing to investigate witnesses Cunningham, Evans, and Duncan.

CONCLUSION

For the reasons stated above, this Court should affirm the PCR Court's Order and deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, the Respondent asks permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

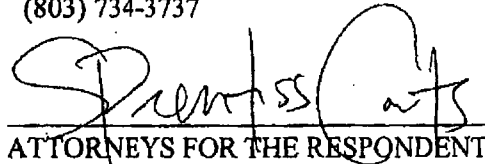
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By:


ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina
June 28, 2007.

The Supreme Court of South Carolina

RE: TRANSFER OF CASES FROM SOUTH CAROLINA
SUPREME COURT TO COURT OF APPEALS

ORDER

Pursuant to Rule 227(l), SCACR, the following post-conviction relief cases are hereby transferred to the Court of Appeals:

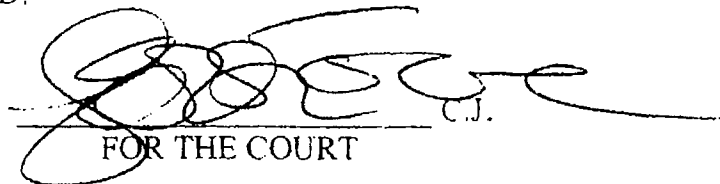
- ~~Al~~^{Al} Alvarado, Gustavo v. The State – 200637741
- Anderson, Enoch v. The State – 200636010
- Anderson, Tron v. The State – 200636678
- ✓ ~~Pr~~^{Pr} Ballenger, Terry v. The State – 200636015
- ✓ ~~Pr~~^{Pr} Baneulos, Eduardo Ibarra v. The State – 200635741
- ✓ ~~Pr~~^{Pr} Bannister, Henry T. v. The State – 200635740
- ✓ ~~Pr~~^{Pr} Bates, Marco Delaney v. The State – 200640914
- Bell, Corlas Lamon v. The State – 200636153
- Bell, Derrick v. The State – 200635107
- Bellamy, Antrea LaBert v. The State – 200637619
- ✓ ~~Pr~~^{Pr} Binney, Jonathan Kyle v. State – 200750819
- Blackmon, Dana Gaston v. The State – 200636843
- Boyd, Tampa v. The State – 200634377
- Bradley, Freddie v. The State – 200641861
- Bragg, Christopher v. The State – 200533557
- Brisson, Daniel E. v. The State – 200636683
- Brown, Troy v. The State – 200635283
- Cato, Gary v. The State – 200641863
- Chronister, Alan Dale v. The State – 200637620
- ✓ ~~Pr~~^{Pr} Cleofas, Luis Francisco v. The State – 200636660
- Clifton, Vashon L. v. The State – 200635677
- ✓ ~~Pr~~^{Pr} Cohen, Shannon Decarlos v. The State – 200636558
- Conyers, Jim D. v. The State – 200636464
- Coulter, Ronald v. The State -- 200637740
- Cullum, John v. The State – 200635598
- Darnell, Robert Lynn v. The State – 200635611

6 PCK Hpp
PC

- ✓ MC Degree, Jeffrey v. The State – 200636462
- Donaldson, Jermaine v. The State – 200636770
- Duncan, Gene Mitchell v. The State – 200636193
- Epps, Jesse v. The State – 200642379
- Folks, Leon v. The State – 200635578
- ✓ MC Glenn, Tavo Tarrell v. The State – 200635794
- Goins, Earl Eugene v. The State – 200635606
- ✓ PC Hall, Lakeithon M. v. The State – 200635044
- Hamilton, William (1) v. The State – 200636229
- Hammond, Curtis, Jr. v. The State – 200636777
- Harper, Willie James v. The State – 200635005
- ✓ MC Helms, Melvin v. The State – 200635526
- MC Henson, Billy Ray v. The State – 200636152
- Howell, Bruce Wayne v. The State – 200634412
- Hunt, William R. v. The State – 200636329
- Husk, Johnny R. v. The State – 200636535
- Hutto, Randolph v. The State – 200744541
- ✓ PC Jamerson, Steve R. v. The State – 200641879
- Jennings, Thomas R. v. The State – 200636726
- Johnson, Alexander Santee v. The State – 200636559
- Johnson, Herbert v. The State – 200634675
- Johnson, Larry D. v. The State – 200636940
- Jones, Charles v. The State – 200636769
- Jones, Jeffrey Levon v. The State – 200635451
- Jones, Jessica Nicole v. The State – 200637623
- Ladson, Tamara C. v. The State – 200636677
- Leneau, Calvin v. The State – 200635714
- Liberte, Aubin v. The State – 200640900
- Linen, John v. The State – 200635509
- Luckett, Leroy v. The State – 200636459
- Major, Clarence v. State – 200531510
- Massey, Sergio v. The State – 200642619
- Mathis, Donald Ray v. The State – 200635305
- McCoy, Melvin v. The State – 200635973
- Miller, Zachary Vincent v. The State – 200635576
- Montague, Phyllis v. The State – 200638079
- Moore, Kenneth L. v. The State – 200634092
- Moore, Michael Lewis v. The State – 200636266
- Oliphant, Anthony v. The State – 200635541
- Orange, Edward v. The State – 200635433
- Orr, Roderick v. The State – 200634679

- ✓ Pate, Henry v. The State – 200635944
- ✓ Porcher, Iceen Jamel v The State – 200636676
- ✓ Raysor, Stacy v. The State – 200636575
- ✓ Richardson, Roman v. The State – 200636674
- ✓ Robinson, Gary L. v. The State – 200533834
- ✓ Robinson, Quizell v. The State – 200641679
- ✓ Rogers, Calvin Jerome v. The State – 200635892
- ✓ Sabb, Bobby A. v. The State – 200641740
- ✓ Samuel, Eric A. v. The State – 200634537
- ✓ MC Scruggs, Sonny v. The State – 200635850
- ✓ Sibert, Ernest B. v. The State – 200635372
- ✓ Sims, William H., Jr. v. The State – 200634579
- ✓ Singleton, Paul v. The State – 200641659
- ✓ Sisk, Steve Alvin v. The State – 200634985
- ✓ Starks, Michael James v. The State – 200641739
- ✓ Storey, Andrew Lagrand v. The State – 200636076
- ✓ Thomas, Doris Kirby v. The State - 200636398
- ✓ Thompson, Clifford v. The State – 200634916
- ✓ Tisdale, Antonio v. The State – 200636443
- ✓ Tucker, Kendra v. The State – 200636811
- ✓ Tucker, Willie v. The State – 200635468
- ✓ PL Turner, Richard Latroy v. The State – 200636637
- ✓ Ulm, Robert C. v. The State – 200635442
- ✓ Walker, Dontrell v. The State – 200635316
- ✓ Walker, Patrick v. The State – 200635570
- ✓ Washington, Vernon Lee v. The State – 200636012
- ✓ Watford, Perry Lee v. The State – 200636491
- ✓ Wells, Christopher v. The State – 200637439
- ✓ Wells, Robert v. The State – 200635080
- ✓ Whitworth, William v. The State – 200532312
- ✓ Wilson, Sentrell v. The State – 200642220
- ✓ Wright, Sandra v. The State – 200746040
- ✓ Wright, Wayne v. The State – 200634770

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

December 19, 2007

cc: Deputy Chief Attorney Wanda H. Carter
Appellate Defender Robert M. Pachak
Appellate Defender Kathrine H. Hudgins
Appellate Defender M. Celia Robinson
Appellate Defender Lanelle C. Durant
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Robert L. Brown
Assistant Attorney General Sabrina Todd
Assistant Attorney General Lance S. Boozer
Assistant Attorney General Molly Crum
Assistant Attorney General Ashley McMahan
Assistant Attorney General Karen Ratigan
Assistant Attorney General Colleen E. Dixon
Assistant Attorney General Paula S. Magargle
Assistant Attorney General Julie Thames
Assistant Attorney General Daniel E. Grigg
Assistant Attorney General S. Prentiss Counts
Assistant Attorney General Jeanette Van Ginhoven
Tara Shurling, Esquire
Joshua Kendrick, Esquire
Trent Neuell Pruett, Esquire
The Honorable Kenneth A. Richstad

The South Carolina Court of Appeals

Lakeithon M. Hall,

Petitioner

v.

State of South Carolina,

Respondent

ORDER

This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. The petition for a writ of certiorari is denied.

Thomas E. Huff

John H. Hedges

H. Bruce

Columbia, South Carolina

May 22, 2008

FILED

May 22, 2008



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11639
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29101
TELEPHONE (803) 734-1839
FAX (803) 734-1839
www.sccourts.org

June 9, 2008

REMITTITUR

The Honorable Jeff L. Hammond
104 N Main St
PO Box 1809
Lancaster, SC 29721-1809

Re: Hall, Lakeithon M. v. The State
2003-CP-29-00960

Dear Mr. Hammond:

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

Sincerely,

A handwritten signature in cursive script that reads "V. Claire Allen".

V. Claire Allen
Deputy Clerk of Court

VCA/lm

cc: Deputy Chief Attorney Wanda H. Carter
Lakeithon M. Hall #289440
Assistant Attorney General Prentiss Counts

RECEIVED
USDC CLERK, COLUMBIA, SCPETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY
2008 JUL -8 AM 11:33

United States District Court		District of South Carolina	
Name (under which you were convicted): Lakeithon M. Hall		Docket or Case No.: 03-CF-39-960	
Place of Confinement: Lieber Correctional Institution		Prisoner No.: #289440	
Petitioner (include the name under which you were convicted) Lakeithon M. Hall		Respondent (authorized person having custody of petitioner) v. McKither Bodison, Warden	
The Attorney General of the State of South Carolina, Henry McMaster			

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Lancaster County General Sessions
- (b) Criminal docket or case number (if you know): 01-GS-29-71, 72, 73, 346
- (a) Date of the judgment of conviction (if you know): December 9, 2002
- (b) Date of sentencing: same as above
- Length of sentence: 38 years aggregated
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case:
two counts murder, one count of attempted armed robbery,
and one count of possession of firearm during the commission
of a violent crime.
- (a) What was your plea? (Check one)

(1) Not guilty ☐	(3) Nolo contendere (no contest) ☐
(2) Guilty ☒	(4) Insanity plea ☐
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?
N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

N/A

(1) Docket or case number (if you know): _____

Page 4

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Lancaster County Court of Common Pleas

(2) Docket or case number (if you know): 03-CP-39-960

(3) Date of filing (if you know): MOctober 11, 2003

(4) Nature of the proceeding: post conviction relief

(5) Grounds raised: Ineffective assistance of counsel, and involuntary plea

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: denied

(8) Date of result (if you know): March 2, 2006

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: South Carolina Supreme Court

(2) Docket or case number (if you know): unknown

(3) Date of filing (if you know): unknown

(4) Nature of the proceeding: petition for writ of certiorari

(5) Grounds raised: Trial Counsel erred in failing to investigate into and develop a third party guilt defense in the case

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

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12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Petitioner was denied his constitutionally guaranteed right to the effective assistance of counsel

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): see attached supplemental issues and facts in support

Petitioner has addressed 4 separate issues concerning ineffective assistance of counsel, but has addressed them as one due to the facts of one encompassing the other

- (b) If you did not exhaust your state remedies on Ground One, explain why: exhausted

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: no direct appeal was taken, these grounds were raised via

post conviction relief

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post conviction relief application

Name and location of the court where the motion or petition was filed: Lancaster County Court of Common Pleas

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Docket or case number (if you know): 03-CP-39-960Date of the court's decision: March 2, 2006Result (attach a copy of the court's opinion or order, if available):
unavailable

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

South Carolina Supreme CourtDocket or case number (if you know): unknownDate of the court's decision: May 22, 2008Result (attach a copy of the court's opinion or order, if available):
unavailable(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

N/AGROUND TWO: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Page 9

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

N/A

GROUND THREE: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
N/A

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

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(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

N/A

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: Ross Burton Esquire, Lancaster Bar

(c) At trial: N/A

(d) At sentencing: Ross Burton Esquire, Lancaster Bar

(e) On appeal: N/A

(f) In any post-conviction proceeding: Govant T. Myers III, Esquire

(g) On appeal from any ruling against you in a post-conviction proceeding: Wanda H. Carter, South Carolina Appellate Defense

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

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(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: hold an evidentiary hearing to allow Petitioner to present his meritorious issues to sufficiently develop his entitlement to relief
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 7-7-08 (month, date, year).

Executed (signed) on 7-7-08 (date).

Lutwidge M. Hill
Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Page 16

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
DIVISION OF COLUMBIA

LAKEITHON HALL #289440.....PETITIONER,

-VS-

McKITHER BODISON; WARDEN
OF LIEBER CORRECTIONAL INSTITUTION RESPONDENT,

SUPPLEMENTAL ISSUES AND
FACTS IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS

Respectfully Submitted,

/s/ Lakeithon M. Hall

Lakeithon Hall #289440

STATEMENT OF CASE AND
PROCEDURAL HISTORY

Petitioner was indicted at the Lancaster County Grand Jury February 2001 term of Court for two counts of murder (01-GS-29-71 and 01-GS-29-346); attempted armed robbery (01-GS-29-72) and possession of a firearm during violent crime (01-GS-29-73). Petitioner was represented by Ross Burton Esquire.

On December 9, 2002 Petitioner pled guilty as indicted and the Honorable Paul E. Short sentenced Petitioner to an aggregated 38 years confinement. No direct appeal was taken.

Petitioner subsequently filed for post conviction relief CA/No. 03-CP-39-960 . On March 1, 2006 an evidentiary hearing was convened at the Lancaster County Courthouse before the Honorable John C. Hayes, III Judge. In the post conviction relief application Petitioner alleged ineffective assistance of counsel as grounds for relief, as well as Petitioner's plea being involuntarily given due to counsel's erroneous advice. On March 2, 2006 Judge Hayes filed an order of dismissal denying Petitioner post conviction relief.

Petitioner appealed Judge Hayes' denial of Petitioner's application to the South Carolina Supreme Court. Petitioner was appointed Ms. Wanda H. Carter esq. from the South Carolina Office of Appellate Defense. Ms. Wanda Carter perfected Petitioner's

writ of certiorari raising [only one] issue addressing "third party guilt". Ms. Carter then filed the petition as a meritorious brief, therefore Petitioner was unable to and prevented from presenting the remaining issues he raised in his post conviction relief application and properly addressed at the PCR hearing for discretionary review to the South Carolina Supreme Court. Petitioner's writ of certiorari was ultimately denied May 22, 2008. The issues (A)(B)(C)(D) presented herein have been properly exhausted. This Petition for Writ of Habeas Corpus is as follows:

ISSUES PRESENTED

ISSUE (A) WAS PETITIONER DENIED HIS CONSTITUTIONALLY GUARANTEED RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO ADEQUATELY INVESTIGATE PETITIONER'S CASE?

ISSUE (B) WAS PETITIONER DENIED HIS CONSTITUTIONALLY GUARANTEED RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO INVESTIGATE AND INTERVIEW CRUCIAL WITNESSES?

ISSUE (C) WAS PETITIONER GUILTY PLEA, INVOLUNTARILY, UNKNOWNLY AND UNINTELLIGENTLY ENTERED WHEN COUNSEL FAILED TO DO ANY REASONABLE PRETRIAL INVESTIGATION AND IN FAILING TO DO SO PREJUDICED PETITIONER INTO PLEADING GUILTY?

ISSUE (D) WAS PETITIONER DENIED HIS CONSTITUTIONALLY GUARANTEED RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO INVESTIGATE INTO AND DEVELOP A PLAUSIBLE THIRD PARTY GUILT DEFENSE?

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
DIVISION OF COLUMBIA

LAKEITHON HALL #289440

PETITIONER,

-Y-

McKITHER BODISON; WARDEN

OF LIEBER CORR. INST.

RESPONDENT,

INDICT. No. 01-GS-29-71; 346;

1) 72 and 73

) PETITION FOR WRIT OF

) HABEAS CORPUS BROUGHT

) PURSUANT TO 28 U.S.C. §2254

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COMES NOW, Lakeithon Hall, pro-se, seeking relief in this Court pursuant to 28 U.S.C. §2254, claiming that his constitutional rights were violated in a number of ways to include but not limited to his Sixth and Fourteenth Amendment rights that are protected by the federal constitution.

Respectfully Submitted,

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Lakeithon Hall #289440

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TO SAVE THE COURT'S TIME PETITIONER WILL ADDRESS THESE ISSUES TOGETHER SINCE THE FACTS OF ONE ENCOMPASS THE OTHER.

FACTS

The State's theory of the case was that Petitioner had allegedly approached Mr. & Mrs. Jury's vehicle in an attempt to obtain money and when Mr. Jury affirmed in the negative that

there was no monies in the car, the State alleged that Petitioner had fired a single shot into the vehicle striking Mrs. Jury as she leaned forward in the seat apparently looking for a Happy Meal Toy that had fallen to the floor board. [App.p.9, L.4-19]. And ultimately killing Mrs. Jury and her unborn child. Petitioner ultimately plead guilty and the Honorable Judge Short sentenced Petitioner to 38 years in the South Carolina Department of Corrections. [App.p.28, L.10-11].

During Petitioner's PCR hearing Takeisha Cunningham (Takeisha) testified she has known Petitioner all his life. [App.p.30, L.4-9]. She further testified that she was present when the victim Shelia Jury (Jury) was shot. [App.p.30, L.10-11]. Takeisha also testified that she initially gave a statement to the police about what she had seen. [App.p.30, L.21-23].

The gist of Takeisha's testimony was that she was approximately 20 to 25 feet away when a car came up and turned around. The car stopped and as Takeisha could remember, two people approached the victim's car. It wasn't a minute later and (6) six people were present at the car. [App.p.31, L.4-19]. Takeisha further testified that Petitioner (Hall) was not near the car, nor did she witness Petitioner at the crime scene. [App.p.31, 20-26][App.p.32, L.1-2]. (emphasis added).

Takeisha also testified that Petitioner's Counsel Burton [never] contacted her regarding the incident, or what she had witnessed. [App.p.31, L.6-16]. She stated that when she wrote the statement for the police she told the "names" of the individuals she had seen at the scene. [App.p.33, L.3]. She testified that

she was looking at the victim's car, but didn't know who actually fired the shot. [App.p.33, L.7-9]. Further Takeisha candidly admitted to being convicted of (3) assault & batteries and (1) count of forgery. [App.p.34, L.1-25][App.p.35, L.1-3].

Tara Evans (Tara) also testified at the PCR hearing. Tara testified that she knows Petitioner through his family. [App.p.37, L.2-6]. She also testified that she was also present at the scene of the incident in question. Tara further testified that she was approximately 40 feet away. And that she did in fact give the police a statement regarding the incident. [App.p.37, L.10-25]. Tara testified that she and her cousin were sitting in the car talking when they seen people passing by, but they weren't paying too much attention, but a car had stopped. [App.p.38, L.1-11]. When the car stopped a couple of people ran to the car and then they heard a gunshot. Tara stated that she ducked and when she looked up and she seen 4 or 5 boys running away. [App.p.38, L.12-23]. Tara testified that she did not see Petitioner at the scene or running from the scene. She also testified that Counsel Burton did not ever speak to her regarding the incident or what she had witnessed. She also testified that Burton never attempted to contact her either. [App.p.39, L.1-14]. Tara did identify one of the individuals that was running from the scene as Martinio Stevens. [App.p.40, L.20-25]. She also admitted that she could not identify any of the other suspects fleeing the scene. [App.p.41, L.1-6]. Tara also admitted to being convicted of one count of forgery. [App.p.41, L.15-25]. And she

adamantly testified that she did not see Petitioner at the scene, nor did she see Petitioner run from the scene. [App.p.42, L.12-25].

Crystal Duncan (Crystal) also testified at the PCR hearing. She testified that she has known Petitioner approximately 15 years. [App.p.45, L.8-13]. Crystal testified that she was beside the vehicle talking to Tara Evans when the incident occurred. When she turned to see where the shot came from she witnessed a light skinned dude and another dude running from the victim's car. [App.p.45, L.17-25]. Crystal was positive that Petitioner was neither of the individuals she had seen running from the scene, with 100% certainty. [App.p.47, L.2-10]. Crystal also testified that Petitioner's Counsel Burton never attempted to nor did he ever contact her regarding the incident that had occurred. [App.p.47, L.11-13]. She further testified that she did give the police an oral statement. The police initially interviewed Tara first and Tara sent the police to Crystal's house. [App.p.49, L.6-11]. Crystal candidly admitted to being convicted of assault & battery approximately 10 years ago. [App.p.49, L.19-25] and ABHAN approximately 3 years ago. [App.p.50, L.1-5].

Petitioner's Counsel Ross Burton (Burton) testified at the PCR hearing as well. Burton admitted to the Court that this was his first homicide case. [App.p.51, 21-24]. Burton also recalled seeing the "statements" by the police, and that he did remember seeing Takeisha's statement. [App.p.52, L.2-12]. Burton was asked if he'd ever contacted Takeisha concerning what she'd seen and

Burton candidly said..."Well I think an explanation...the answer is NO. [App.p.52, L.16-17].

Burton was further asked if he even attempted to contact or at least phone her, leave her a message, tell her to come by the office, or have his secretary schedule an appointment. [App.p.53, L.22-25]. Burton simply stated..."Well I can't say all that. I can say that up until the point that he pled. I hadn't talked to them". [App.p.54, L.1-3].

Burton testified he'd met with Petitioner a couple of times while Petitioner was out on bond and that the Solicitor intended to move before the court to revoke Petitioner's bond. [App.p.54, L.10-25]. Burton was further asked if Petitioner informed him if he wanted to plead guilty and Burton testified that he couldn't remember, Burton did state..."I don't ever actually recall Mr. Hall (Petitioner) saying that "I absolutely want a trial, I want to take the stand and prove my innocence to the jury. He didn't want to plead, and he didn't want to be convicted of murder. I remember that..He asked me, you know, what can we do to beat this charge, and so forth, but that's different from saying I absolutely want a trial". [App.p.55, L.6-14]. Burton was questioned about Takeisha's statement, wherein her statement she specifically states that she seen (6) six individuals at the scene and she names all six of the individuals and none of them were Petitioner. [App.p.57, L.2-25].

Burton was then questioned as to whether or not he interviewed Tara Evans, wherein Burton simply stated..."I'd give

pretty much the same answers to [all] three if you want to save time". [App.p.58, L.1-3]. Burton did acknowledge seeing the statements but also admitted he never contacted Tara or Crystal at any point. [App.p.58, 5-23]. Burton also admitted that he was aware of Calvin Peay who was an alleged co-defendant who tested positive for gun-shot residue; further Heyward Witts, also tested positive for gun-shot residue as well. [App.p.59, L.18-24]. It should be noted that neither Calvin Peay, nor Heyward Witts testified at the plea hearing or at the PCR hearing. Further it should also be noted that Petitioner was never tested for GSR due to the time frame of (9) nine days lapsing in Petitioner's arrest. [App.p.60, L.2-7].

Burton candidly admitted that "no one" completely and independently implicated Petitioner as a suspect, victim or a defendant. [App.p.61, L.3-6]. (EMPHASIS ADDED).

Burton was also questioned as to whether he had indicated that Petitioner should plead guilty or not and Burton acknowledged in the affirmative. Burton also acknowledged that the weapon was found in Calvin Peay's apartment under a mattress. [App.p.61, L.7-8]. Burton had stated that he thought the State's case against Petitioner was pretty strong and it looked as though a jury was going to want someone to pay for that little babies life and the only one in the cross hairs was Petitioner. And the evidence was fairly strong to the point Petitioner could get convicted and get life. [App.p.62, L.14-25][App.p.63, L.1-2].

Burton was again asked that at that time he had not talked

to these witnesses and he stated "NO". [App.p. 63, L.20-21].

Petitioner also took the stand at the PCR hearing and testified that Counsel never informed him of any possible ranges of a lesser included offense. Nor did Counsel advise Petitioner he was pleading to a "no parole" offense. [App.p.74, L.11-25][App.p.75, L.1-6].

Petitioner also testified that Burton had advised him it would be in his best interest to plead guilty due to the fact that "if I proceeded to trial I most likely would receive a life sentence due to the fact it was a mother and her child that died." [App.p.75, L.7-13]. Petitioner further testified that had Burton interviewed the (3) three witnesses "Takeisha, Tara and Crystal", Petitioner would not have plead guilty but would have insisted on on going to trial. [App.p.75, L.14-25].

Petitioner also testified that he was not adequately informed of the exculpatory nature of the evidence, the witnesses, and testimony that was inconsistent that could have been impeached. Clearly Petitioner was prejudiced by this deficient performance and absent this deficient performance Petitioner would have insisted on going to trial. [App.p.77, L.2-8]. During cross-examination Petitioner refuted the idea that he killed anyone. [App.p.79, L.13], Furthermore Petitioner candidly admitted that he plead guilty before the Honorable Judge Short "only" upon Counsel's advice. [App.p. 79, L.19]. Petitioner also admitted that he lied to Judge Short when he plead guilty. [App.p.80, L.2-3]. Petitioner admitted that accept for Counsel's

deficient performance of Counsel's erroneous advice Petitioner would not have plead guilty but would have insisted on going to trial.

DISCUSSION

In the instant case it cannot be said that Petitioner was clearly denied his constitutionally guaranteed right to the effective assistance of counsel at a critical stage of the proceeding. Counsel himself admitted that he did absolutely no pretrial investigation. It is elementary that at a minimum counsel has an obligation to familiarize himself with the essential facts of a case in order to make a reasonable and tactical decision. Especially in the event of a homicide it would appear to be critical to at least attempt to interview "eye witnesses".

Burton testimony at the PCR hearing was very clear that Petitioner "did not" want to plead guilty yet Burton did absolutely nothing in order to investigate Petitioner's version of events. Petitioner was a very, very young age at the time of incident therefore, Petitioner could not be attributable to make a conscience decision of whether to plead guilty or proceed to trial, in such Petitioner had absolutely no understanding of the nature of the proceedings which were deemed necessary. Burton even testified with certainty that "no one" independently and

completely implicated Petitioner as a suspect, victim or a defendant. [App.p.61, L.3-6]. (emphasis added).

Emphasis should be given to Petitioner's contentions especially since Counsel Burton himself submitted omission after omission that he did absolutely nothing to aide Petitioner. Yet, Burton testified that the evidence the State had was strong against Petitioner. In comparing such a statement to Burton's entire testimony it is simply a farce and a smoke screen to cover up counsel's tug on his not to do his job and in doing so denied Petitioner his constitutionally guaranteed right to the effective assistance of counsel at a very critical stage. Burton's testimony has taken the tail off a donkey and pinned it to an elephant and still tried to call it a donkey. This is simply not what the Sixth Amendment envisioned in the effective assistance of counsel guarantee. Very simply, a stringent review of record reveals that Counsel did no pretrial investigation, in such that the record is conclusive and replete with Counsel's own omissions that Counsel was aware of the potential witnesses and their statements and "none" of the statements or eye witnesses implicated Petitioner. Had these facts been placed before a reasonable jurist, no reasonable jurist would have convicted Petitioner.

Furthermore, the State has misapplied their application of Strickland in Petitioner's case. The State has relied on an unreasonable determination of the facts in dispute and this

dispute is sufficiently supported by the evidence in the record. From strigently reviewing the record and the evidence presented it would be logical to conclude that Petitioner was not the perpetrator of the crime. Third party guilt surely has surfaced throughout the record. Ample enough to warrant such consideration. As was noted in the record, "no one" implicated Petitioner, no one testified against Petitioner at the plea hearing or the PCR hearing. Counsel himself admitted that no one implicated Petitioner. So clearly this would have warranted some type of investigation.

CONCLUSION

WHEREFORE, Petitioner believes that through the issues presented and the facts relied on in support of this Petition, that should these facts be placed before a jury, no reasonable jurist would have convicted Petitioner and quite the contrary the scales of not guilty verdict would have been more appropriate. Furthermore, if these contentions along with these facts were placed before a reasonable jurist there is a strong possibility that a reasonable jurist would clearly find that Petitioner was denied his constitutionally guaranteed right to the effective assistance of counsel.

Respectfully Submitted,

/s/ Lakeithon M. Hall

Lakeithon Hall #289440

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
DIVISION OF COLUMBIA

CERTIFICATE OF SERVICE

LAKEITHON HALL #289440, V. MCKITHER BODISON, WARDEN,

I, Lakeithon Hall, do hereby swear under the penalty of perjury that I have mailed the original and (1) one copy of the enclosed 28 USC §2254 Application and attached Supplemental Issues and Facts in Support of the enclosed Application to the United States District Court Clerk, Mr. Larry Propes, 901 Richland St., Columbia, SC. 29201. This was done by placing the aforesaid in a properly addressed, sufficient postage fixed envelope and placed in the U.S. Mailroom here at Lieber Correctional Institution in Ridgeville, SC. 29472.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7 DAY OF July, 2008

[Signature]
NOTARY PUBLIC
MY COM. EXPIRES 8/2/2011

Respectfully Submitted,
/s/ Lakeithon M. Hall
Lakeithon Hall #289440

Lakeithon Hall #289440
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC. 29472

7-7, 2008

RE: 28 USC §2254 application & attached supplemental issues and facts in support of application

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Dear Mr. Propes,

Enclosed for filing with your office, please find the original and (2) two copies of the above captioned.

Could you please clock stamp one of the copies and return it to me for my files please.

I truly thank you very much for your time and consideration in this matter.

Kindest Regards,

/s/ Lakeithon M. Hall
Lakeithon Hall #289440

LAKEITHON M. HALL
289440 COOPER-A-1
LIEBER CORR. INST.
P.O. BOX 205
RIDGEVILLE, SC 29472

8:08-cv-02468-RBH Date Filed 07/10/08 Entry Number 1-4 Page 1 of 2

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Lakeithon M. Hall, #289440,	)	C/A No. 8:08-2468-HMH-BHH
	)	
Petitioner,	)	
	)	
v.	)	RETURN AND MEMORANDUM
	)	IN SUPPORT OF MOTION
McKither Bodison, Warden, Lieber	)	FOR SUMMARY JUDGMENT
Correctional Institution,	)	
	)	
Respondent.	)	
	)	

Respondent, by and through the Attorney General of South Carolina, hereby makes Return to the Rule to Show Cause filed by the Honorable Bruce Howe Hendricks, United States Magistrate Judge, to the *pro se* petition for habeas corpus filed July 7, 2008. Respondent would show this Court there is no genuine issue of material fact and Respondent is entitled to judgment as a matter of law pursuant to Rule 56, F.R.C.P. In support of its motion, Respondent would show the Court as follows:

PROCEDURAL BACKGROUND

The records before the Court show that Petitioner is currently incarcerated at the Lieber Correctional Institution pursuant to orders of commitment of the Clerk of Court for Lancaster County. Petitioner was indicted at the February 2001 term of General Sessions for the Lancaster County Grand Jury for *two counts of murder* (2001-GS-29-71) and (2001-GS-29-346), *attempted armed robbery* (2001-GS-29-72), and *possession of a firearm during the commission of a violent crime* (2001-GS-29-73). Petitioner was subsequently indicted by the Chester County Grand Jury for burglary first degree, armed robbery, and kidnaping, unrelated to the Lancaster County murder

charges.¹ Ross A. Burton, Esquire represented Petitioner on the charges. Douglas A. Barfield, Jr. represented the State.

On December 6, 2002, Petitioner *pled guilty* as charged to *two (2) counts of murder, attempted armed robbery, and possession of a weapon during a violent crime* (the Lancaster County charges). The Chester County indictments were *not prosed* pursuant to the plea agreement.² (App. pp. 67-68). On December 9, 2002, the Honorable Paul E. Short, Jr., Circuit Court Judge, sentenced Petitioner to confinement for thirty-eight (38) years for each murder, twenty (20) years for attempted armed robbery, and five (5) years for the possession of a weapon charge. These sentences were ordered ~~to~~ run concurrently. Not surprisingly, Petitioner did not appeal his guilty pleas or sentences.

¹In the Chester County cases, Petitioner was charged with the burglary of a home which occurred on August 12, 2002 in which 14 guns were stolen. According to the burglary warrant, two of the stolen guns were found in a vehicle Petitioner was operating and the vehicle matched the description of a vehicle Petitioner was operating on August 9, 2002 when he came to the victim's residence asking for directions. Petitioner was also charged with the separate armed robbery and kidnaping of a nightclub owner as he was closing his business. Apparently, when Petitioner was stopped in the above car by police, the car contained ski masks and gloves similar to those worn in the robbery of the nightclub owner. (Per interview with Investigator Fred Stewart of the Chester County Solicitor's Office and based on his recollection of the events surrounding this charge).

²This was also a negotiated plea with regard to the Lancaster County charges. In exchange for the plea of guilty the State agreed that the sentences on the four indictments would run concurrently and Petitioner would be sentenced under the statutory scheme for murder but *not to life in prison*. (Tr. Dec. 6, p. 2). Petitioner was approximately 16 at the time of the Lancaster crimes. He was charged as an adult due to the nature of the charges. Petitioner was 19 at the time of his plea. Prior to the plea, defense counsel and the Solicitor met privately with the sentencing judge and obtained a potential range of sentence. This potential range was communicated to Petitioner, which Petitioner accepted. (App. p. 69). Petitioner was ultimately sentenced in that range. (App. p. 69). The Solicitor agreed to dismiss the Chester charges as a result of Petitioner pleading to these serious charges and due to the strength of the Chester cases. (Per. conv. with Solicitor Doug Barfield and see also indictments attached).

The Facts

On November 20, 2000, the victim, *Sheela* Jury, who was approximately eight (8) months pregnant, and her husband Thomas Jury were riding in their motor vehicle in Lancaster County. Mr. Jury was driving. Mr. Jury stated to police after the murders that he and his wife had just cashed an insurance check, put the majority of the cash in the bank, and then paid a bill. Mr. Jury took a short cut through a bad part of town and decided to turn around. When he did, he stated his path was blocked by a vehicle. Petitioner approached the car and attempted to rob the victims with a handgun. Petitioner fired a shot into the car which struck the victim Mrs. Jury in the shoulder. She died from blood loss. Her unborn, but viable baby, *Sheela J. [REDACTED]* died several days later after an emergency c-section was performed the day of the shooting due to the mother's death.

Police questioned an eyewitness/co-defendant of Petitioner, Calvin Peay. Peay eventually related to police that the victim's husband was attempting to purchase drugs in the bad part of town when Petitioner decided to rob the family instead of selling drugs to the husband. Peay admitted he handed Petitioner the revolver immediately before the murders. Peay also related that Petitioner fired the handgun into the victim's car and the victim's husband sped away. Ballistics revealed that the gun Petitioner fired did in fact fire the bullet that was recovered from the victim, Mrs. Jury's body. Mr. Jury also positively identified Petitioner from a photographic line-up as the person who murdered his wife and baby girl. Petitioner was charged with both murders as well as the attempted armed robbery and possession of a weapon during a violent crime.³ Through further

³The above facts are taken from the guilty plea transcript that is attached to this Return and Memorandum. Respondent has also attached police investigation reports and witness' statements that go into more detail, some varying from the Solicitor's recitation, but not significantly. After the Solicitor recited the facts surrounding the murders and Petitioner's participation, Petitioner, under oath, agreed with the Solicitor's recitation. Petitioner admitted he committed the murders and attempted to rob the victims. (Tr. Dec. 6, p. 16-22). Petitioner also apologized to the victim's family for what he had done. (Tr. Dec. 9, p. 9).

investigation and additional interrogation of Petitioner's co-defendants, police were able to obtain statements from two of Petitioner's friends and co-defendants. Brandon Cunningham and Haywood Watts both eventually gave statements to police in which they admitted to being present at the time of the murders and witnessing Petitioner shoot the victim Sheila Jury.⁴ At his guilty plea, under oath, Petitioner admitted he committed the murders.

The Post-Conviction Relief Action

Petitioner filed an application for post-conviction relief (PCR) October 14, 2003 (2003-CP-29-960). The State filed its Return and moved to dismiss all allegations of the application except ineffective assistance of counsel. Petitioner was represented in this action by Van Myers, Esquire. Respondent was represented by Assistant Attorney General Molly Crum, of the South Carolina Attorney General's Office. In his application for PCR, Petitioner alleged the following grounds:

1. Ineffective assistance of counsel

- (a) Counsel was ineffective inasmuch as he failed to adequately investigate my case.
- (b) Prior to my plea, counsel was ineffective inasmuch he failed to investigate and interview crucial witnesses.
- (c) Prior to my plea, counsel was ineffective inasmuch he failed to adequately investigate exculpatory evidence of forensic reports to build possible defense to my case.

2. Involuntary Guilty Plea- My guilty plea was involuntarily, unknowingly, and unintelligently entered inasmuch counsel pre-trial investigation of my case was inadequate, unreasonable, and prejudice me into pleading guilty.

⁴Cunningham, like Peay, initially told police he did not know anything about the murders. It is unknown by Respondent what Watts initially told police. All three eventually admitted Petitioner was the shooter. Peay also admitted he gave the gun to Petitioner prior to the shooting. Peay later tried to recant that he actually handed the gun to Petitioner, however police did not accept or believe this later statement. This is included in the police file.

On March 1, 2006, a hearing was held at the Fairfield County Courthouse in Winnsboro, South Carolina on Respondent's Motion to Dismiss. The Honorable John C. Hayes, III. was the presiding judge. On March 2, 2006, the PCR Court granted Respondent's Motion to Dismiss Petitioner's allegation of involuntary guilty plea and denied Petitioner's application for post-conviction relief with prejudice.

The Order Denying Relief

In its Order denying relief, the PCR Court noted that Petitioner alleged he was being held in custody unlawfully for the following reasons: (1) Ineffective assistance of counsel; and (2) Involuntary guilty plea.

The Court noted that in a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. *Citing Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Quoting Strickland v. Washington*, 466 U.S. 668, 104 S.C. 2052 (1984).

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

The PCR Court noted that a reviewing court applies to a two-pronged test in evaluating

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

The Court noted that in his allegations Petitioner alleged he did not plead guilty freely and voluntarily. The Court pointed out that to be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. *Citing Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969). The Court also pointed out that in determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Citing Harris v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984). The Court noted that nevertheless, a guilty plea is a solemn judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Citing Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, the Court pointed out, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. *Citing Crawford v. U.S.*, 519 F.2d 317 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

The PCR Court also pointed out that a defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. *Citing Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).

The Court found and concluded that Petitioner was fully advised of his rights and under oath affirmed that he knew and understood the charges to which he was pleading guilty and the penalties applicable to the charges. (Ref. T. at p. 6, l. 22 -T. at p. 9, l. 13). Petitioner confirmed that trial counsel had done all that Petitioner had asked him to do. (Ref. T. at p. 12, ll. 10-18) and that he understood the Court's questions and did not desire further explanation of his rights, the charges against him, and the penalties to which he was exposed. (Ref. T. at p. 12, ll. 19-24). Also, the PCR Court noted Petitioner confirmed, under oath, the underlying facts as to his commission of the murder of Mrs. Sheila Jury and her unborn child. (Ref. T. at p. 13, l. 224 through T at p. 22, l. 8). The Court noted that Petitioner complained that he was not informed as to his parole eligibility, the existence of lesser included offenses, and "sentencing guidelines." The Court immediately pointed out that South Carolina has not adopted sentencing guidelines. The Court also pointed out that parole is a collateral effect of a sentence and a defendant need not be advised as to the collateral consequence(s) of a sentence before the guilty plea. *Smith v. State*, 328 S.C. 280, 494 S.E.2d 626 (1997). The Court also noted that Petitioner pointed to no obligation of trial counsel to advise a defendant as to the existence of the possibility of lesser included offenses. Consequently, the Court found and concluded that Petitioner had failed to carry his burden of proof and was not entitled to relief on his post-conviction relief application on these allegations.

The Court noted that Petitioner also alleged trial counsel was ineffective for failing to properly investigate and interview witnesses. Trial counsel testified that he obtained and reviewed discovery, spoke with one co-defendant (Mr. Peay) and talked to the adult victim's surviving spouse. Trial counsel also discussed the case with Petitioner and did not coerce Petitioner to plead guilty.⁵ The PCR Court found and concluded, given the above, Petitioner's assertion that counsel was ineffective in failing to properly investigate and interview witnesses was without merit.⁶

Lastly, the Court noted that at his hearing Petitioner asked to amend his application to allege a defect in the indictment as to the date of the victim's death. The Court found Petitioner had presented no evidence to support this allegation save his testimony that the death certificate shows a different date of death. The Court found and concluded, that if any defect did exist, it had to be revised [objected to or corrected] prior to his plea. *Citing State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2004).

The Court also noted that Petitioner further asked to amend his application and seek relief based on his indictments not being filed with the Clerk of Court. The Court found Petitioner offered no evidence on this issue.

Therefore, the PCR Court allowed Petitioner to amend his complaint to include the two

⁵In its Order Denying Relief the PCR Court implicitly found trial counsel credible and Petitioner was not. This is clear because Petitioner testified at the PCR that counsel did not review the evidence in the case with him prior to his plea. Counsel testified to the opposite. Counsel testified he did review the evidence or discovery with Petitioner prior to his guilty plea.

⁶In its Order Denying Relief, the PCR Court did not specifically address the testimony of the three witnesses Petitioner offered at PCR, nor did the Court make a specific finding regarding any failure to pursue a "third party guilt" defense. The Court did state counsel testified he reviewed the discovery and discussed the case with Petitioner. Two of the witnesses offered at PCR did give statements to police and those were reviewed by counsel prior to the plea. One of those witnesses named the third witness in her statement, so counsel and Petitioner would have been aware of the third witness through the discovery process. Counsel testified he reviewed the evidence with Petitioner. (App. p. 83).

grounds immediately above, but found and concluded both were merit-less and dismissed them. With regard to the remaining allegations, the Court granted Respondent's motion to dismiss and Petitioner's application for post-conviction relief was denied. Petitioner was notified he had thirty (30) days to seek certiorari from the South Carolina Supreme Court after receipt of this Order. The Order was filed March 16, 2006.

The Appeal from the Denial of Post-Conviction Relief

Petitioner appealed from the dismissal of his PCR application by way of a Petition for Writ of Certiorari to the South Carolina Supreme Court. Petitioner raised only one issue on appeal:

(1) Trial counsel erred in failing to investigate into and develop a third-party guilt defense in the case?⁷

The State filed a Return to Petition for Certiorari in response. The case was transferred to the South Carolina Court of Appeals by Order of the South Carolina Supreme Court. On May 22, 2008, the South Carolina Court of Appeals denied the Petition for Writ of Certiorari. The Remittitur was filed on June 9, 2008. This habeas petition followed.

ATTACHMENTS

Appendix, John C. Hayes, III.

Incident reports & Witness Statements

Warrant/Indictments/Sentencing Sheets

Transcript of Guilty Plea (December 6, 2002)

Transcript of Sentencing (December 9, 2002)

⁷This specific allegation as worded is not mentioned in Petitioner's PCR application. Nor is there any mention of "failing to investigate into and develop a third-party guilt defense" in the PCR Court's Order Denying Relief.

Petition for Certiorari

Return to Petition for Certiorari

Order of South Carolina Supreme Court transferring case to S.C. Court of Appeals

Order of South Carolina Court of Appeals Denying Petition for Certiorari

Remittitur

Warrant/Indictments (Chester County charges)

FEDERAL HABEAS ACTION

Ground One: Petitioner was denied his constitutionally guaranteed right to the effective assistance of counsel.

Supporting Facts: (See Attached Issues A through B)

(Attached)

Issue A: Failure to Adequately Investigate Petitioner's Case.

Issue B: Counsel Failed to Investigate and Interview Crucial Witnesses

Issue C: Petitioner's plea was involuntary, unknowing, and unintelligent when counsel failed to do any reasonable pretrial investigation and in failing to do so prejudiced petitioner into pleading guilty.

Issue D: Counsel was ineffective when counsel failed to investigate into and develop a plausible third-party guilt defense.

APPLICABILITY OF THE AEDPA

Petitioner filed this habeas action on July 7, 2008. Accordingly, the provisions of the Antiterrorism and Effective Death Penalty Act ("AEDPA") apply to this case. Lindh v. Murphy, 521 U.S. 320 (1997). Under the AEDPA, claims adjudicated on the merits in a state court proceeding cannot be a basis for federal habeas corpus relief unless the decision was "contrary to, or involved an unreasonable application of "clearly established federal law as decided by the United States Supreme Court, or the decision "was based on an unreasonable determination of the

facts in light of the evidence presented in the state court proceeding.” 28 U.S.C. Section 2254(d). State court factual findings are presumed to be correct and the Petitioner has the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. Section 2254(e)(1).

EXHAUSTION

The record supports a finding of exhaustion. Petitioner pled guilty. Petitioner did not appeal his guilty pleas or sentences. Petitioner filed a PCR action. That action was dismissed by the PCR Court. Petitioner appealed. The appeal was dismissed. The record supports a finding of exhaustion, however, Petitioner did not properly exhaust his claims and they are procedurally barred on habeas review. (See discussion *infra*).

STATUTE OF LIMITATIONS

Petitioner did not appeal his convictions or sentences. This convictions were final on December 18, 2002, ten (10) days after he was sentenced. The AEDPA statute of limitations began to run on December 19, 2002. It ran until October 14, 2003, when Petitioner filed an application for post-conviction relief (PCR). At that time, nine (9) months, and twenty-five (25) days had expired on the AEDPA statute of limitations. Petitioner still had two (2) months and five (5) days in which to timely file this action. The PCR action remained pending until the Remittitur was filed on June 9, 2008. This habeas action was filed July 7, 2008. Since Petitioner still had two (2) months and five (5) days remaining on the AEDPA statute of limitations, this habeas petition is not in violation of the AEDPA one-year statute of limitations.

PROCEDURAL BAR AND DEFAULT

Any ground that Petitioner is attempting to raise here other than the ineffective assistance of counsel claim he raised on appeal from the denial of PCR is procedurally barred because it was

procedurally defaulted in state court. Coleman v. Thompson, 501 U.S. 722 (1991) (issue not properly raised to the state's highest court, and procedurally impossible to raise there now, is procedurally barred from review in federal habeas); Mathews v. Evatt, 105 F.3d 907 (4th Cir. 1997).

The only issue raised on appeal from the denial of post-conviction relief was:

“Trial counsel erred in failing to investigate into and develop a third party guilt defense in the case.”

(See Petition for Writ of Certiorari, p. 2). Any other issue that Petitioner attempts to assert on habeas review is procedurally barred. Id. Issues A, B, and C, to the extent they attempt to raise any claim other than the one raised on appeal from the denial of post-conviction relief, are procedurally barred and should be dismissed with prejudice.

Additionally, the ground raised on appeal from the denial of post conviction relief, was not specifically addressed in the PCR Court's Order Denying Relief and collateral counsel made no Rule 59(e) Motion to Alter or Amend the Judgment to have the PCR Court specifically address this specific issue.⁸ Failure to file such a Rule 59 (e) Motion results in the issue not being preserved for appellate review. Marlar v. State, Shearhouse Advance Sheets, Opinion No. 26391 (filed November 1, 2007). In Marlar, the South Carolina Supreme Court clarified that if a PCR court's order summarily dismisses grounds without making factual findings and conclusions of law as required by S.C. Code Ann. Section 17-27-80 (2003), and collateral counsel does not make a SCRCPC Rule 59(e) Motion to correct the error in the Order, then the issues are not preserved for appeal. Id., citing Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992)(issue must be raised to and

⁸Per Respondent's conversation with Lee Ann Neal of the Lancaster County Clerk's Office on December 5, 2008.

ruled on in the court's order to be preserved for appellate review) *other citations omitted*. Petitioner's collateral counsel made no such Rule 59(e) Motion to correct this Order, therefore there were not sufficient findings regarding this specific issue under Section 17-27-80. Respondent submits this issue is also procedurally barred under Marlar and Wainwright v. Sykes, 433 U.S. 72, 87 (1977)(failure to preserve issue under state law results in procedural bar on habeas review).⁹

Cause and Prejudice

Any other ground other than the one asserted on appeal from the denial of post-conviction relief is procedurally barred under Coleman and Murray absent a showing of cause and actual prejudice, or actual innocence. Wainwright v. Sykes, 433 U.S. 72, 87 (1977); Mathews v. Evatt, 105 F.3d 907 (4th Cir. 1997). Additionally, the issue asserted on appeal is procedurally barred under Marlar and Wainwright absent a showing of cause and actual prejudice, or actual innocence. Id.

The existence of cause must ordinarily turn on whether the prisoner can show some objective factor external to the defense impeded counsel's or his efforts to comply with the State's procedural rule. Murray v. Carrier, 477 U.S. 478, 488 (1986). Petitioner expresses no particular cause for procedurally defaulting on any other ground. *Failure of his PCR counsel to preserve grounds for appeal cannot constitute cause.* Ellis v. Armenakis, 222 F.3d 627, 633 (9th Cir. 2000);

⁹As previously stated, Petitioner's PCR application alleges a failure to investigate but not "a failure to investigate into and develop a third party guilt defense." The Order does not address this specific allegation, but a failure to investigate and interview witnesses. Petitioner called three witnesses who testified they saw a group of boys running from the victim's car after the gunshot and Petitioner was not one of the boys. The trial judge does not mention these three witnesses or discuss the failure to investigate into or develop a third party guilt defense in his Order denying relief. Respondent submits this issue was procedurally defaulted in state court by the failure to amend the PCR application to include this specific ground raised on appeal and by failing to file a Rule 59(e) Motion to have the PCR Court address these witnesses testimony and this specific "third party guilt" issue.

Sidebottom v. Delo, 46 F.3d 744, 751 (8th Cir. 1995); Lowe-Bey v. Goose, 28 F.3d 816, 820 (8th Cir. 1994); Caswell v. Ryan, 953 F.2d 853, 862 (3rd Cir. 1992) *emphasis added*. Petitioner pled guilty, failed to file a direct appeal, had a PCR hearing; he failed to raise the issues he raises here, raise them properly, or preserve these issues for habeas review. As noted above, Petitioner cannot establish cause and prejudice, because he consistently abandoned opportunities to preserve these issues.

In the alternative Petitioner must show a miscarriage of justice. In order to demonstrate a miscarriage of justice Petitioner must show he is actually innocent. Actual innocence is defined as factual innocence not legal innocence. Bousley v. United States, 523 U.S. 614, 622, 118 S.Ct. 1604 (1998).

Petitioner cannot establish that the constitutional error he complains of probably resulted in the conviction of an innocent person. Schlup v. Delo, 513 U.S. 298, 327 (1995). In order to pass through the actual innocence gateway, a petitioner's case must be "truly extraordinary." Id. A defendant convicted by a jury comes before the federal court with a "strong—and in the vast majority of cases conclusive—presumption of guilt." Id. at 326 n.42. How much more so a defendant who pled guilty.

The record would make an assertion of actual innocence, incredible. Petitioner admitted at his guilty plea that he was guilty of the murders, attempted armed robbery, and possession of a weapon during a violent crime. Petitioner apologized to the surviving victim, Mr. Jury. Petitioner's co-defendant, Calvin Peay, identified Petitioner as the murderer of Mrs. Jury and her unborn child. Mr. Jury positively identified Petitioner from a photographic line-up as the person who murdered his wife and unborn child. Two other friends of Petitioner identified Petitioner to

police as the person who murdered Mrs. Jury. The procedural bar should be applied without exception. Murray, supra. Furthermore, actual innocence is not a claim but merely lifts the procedural bar, if established, and allows consideration of the habeas petition on the merits. Bousley v. United States, supra. Petitioner cannot establish actual innocence. The procedural bar should not be lifted. Issues A, B, and C, to the extent they raise any issue other than that raised on appeal from the denial of PCR, should be dismissed with prejudice. Issue D. should be dismissed because collateral counsel failed to properly preserve this specific issue under Marlar and Wainwright.

THE MERITS

The Standard of Review

The standard of review to be applied in habeas is “quite deferential to the rulings of state courts.” Burch v. Corcoran, 273 F.3d 577 (4th Cir. 2001). Petitioner cannot prevail before this Court on the merits of this claim.

To prevail on an ineffective assistance of counsel claim, Petitioner must show (1) that his trial counsel’s performance fell below an objective standard or reasonableness, and (2) that a reasonable probability exists that but for counsel’s error, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 694 (1985). Petitioner bears the burden of proving an error and prejudice in his ineffective assistance of counsel claim. Id.

He also bears the burden of showing he is entitled to habeas corpus relief. Smith v. North Carolina, 528 F.2d 807, 809 (4th Cir. 1975). To obtain habeas relief, Petitioner must show the relevant state court unreasonably applied federal law, as determined by the United States Supreme Court, or show by clear and convincing evidence that the relevant state court made “an

unreasonable determination of the facts in light of the evidence presented in the state court proceedings.” 28 U.S.C. Section 2254(d); Carey v. Musladin, 127 S.Ct. 649, 653-54 (2007). Here, Petitioner has shown neither. The PCR judge did not unreasonably apply clearly established federal law, as decided by the United States Supreme Court, nor has Petitioner shown by clear and convincing evidence that the factual determination of the PCR Court was unreasonable in light of the facts and evidence before it.

To establish an unreasonable application of federal law, Petitioner must show more than “..an incorrect or erroneous application of federal law.” Williams v. Taylor, 529 U.S. 362,413 (2000). Thus, “a federal court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather that application must also be ‘unreasonable’ for habeas relief to be granted. This is a substantially higher threshold.” Id. at 410. Petitioner has failed to overcome this substantially higher threshold.

The Lack of Merit of Petitioner’s Allegation

To the extent this Court finds Petitioner’s sole ground is not procedurally barred, there is no merit to it whatsoever. Petitioner has not shown deficient performance or prejudice under Hill v. Lockhart given the facts of the record.

Petitioner’s sole ground centers around an allegation that counsel was ineffective in failing to conduct pre-trial investigation. The PCR Court found that Petitioner had failed to establish ineffective assistance of counsel and Petitioner had failed to establish his guilty plea was involuntary. The decision of the PCR Court is entitled to deference. Wilson v. Ozmint, 352 F.3d 847, 858-859(4th Cir. 2003); Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993). That decision

is supported by the record.

The testimony at the PCR hearing established that counsel was diligent in the preparation and presentation of Petitioner's case and defense. Trial counsel reviewed discovery, including two of Petitioner's witness' statements, autopsy reports, and gunshot residue tests. (App. p. 66). He also spoke to the victim's husband who was an eyewitness to the crimes in Lancaster County. (App. p. 6). Counsel also spoke to Petitioner's co-defendant, Calvin Peay, who implicated Petitioner in the murders and told police Petitioner gave him the gun after the murders, where the murder weapon was placed, and how it was hidden after the murders. (App. p. 11, 68).¹⁰ Counsel attempted to speak with other co-defendants of Petitioner, however he was rebuffed by their attorneys.

Trial counsel also testified that, had Petitioner decided not to plead guilty, he would have done further investigation. (App. p. 57, ln. 15). As the Court noted in Strickland v. Washington, the reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based ...on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. Strickland v. Washington, 466 U.S. at 691.

Petitioner's statement that had he known the testimony of the three women he offered at PCR he would not have pled guilty is simply not credible. Petitioner's allegation that counsel was ineffective in not investigating and developing a third-party guilt defense is based on the testimony

¹⁰Peay initially told police Petitioner and he ran to his bedroom after the shooting and Petitioner asked him to hold the gun, and Petitioner placed it under Peay's mattress. Peay later admitted to police that Petitioner handed him the gun in his bedroom and he actually placed it under the mattress. (See police investigation reports).

of three female witnesses Petitioner called at PCR; Takeisha Cunningham, Tara Evans, and Crystal Duncan. Ms. Cunningham's existence was no secret to Petitioner prior to his guilty plea. While Petitioner denied it at PCR, trial counsel testified that he reviewed the discovery in the case with Petitioner. Ms. Cunningham had given a statement to police in which she stated there were six individuals around the victim's car prior to the shooting and none of the six were Petitioner. (See Attached statement of Takeisha Cunningham).¹¹ So Petitioner was aware of her alleged exculpatory statement. Tara Evans also gave a statement to police. Again, trial counsel testified he reviewed Ms. Cunningham's and Ms. Evans' statements prior to the plea and he reviewed the evidence in the case with Petitioner. In her statement, Ms. Evans states she was outside the third female witness' (Crystal Duncan's) apartment and she was talking to Crystal Duncan. She was sitting in a car. She was not looking at the victim's car when the shooting occurred and only turned around after the shooting occurred and after she asked Crystal Duncan what that noise was and Crystal said the noise was a gunshot. Evans told police she saw 6 to 8 boys running. They looked like teenagers. She stated *she knew some of them, but not by name*, and could identify approximately four or more of them if she saw them again. She said they ran toward the first set of Apartments (where Peay lived and Petitioner disposed of the gun). If Ms. Evans' testimony at PCR is to be believed, she had known Petitioner for several years and was a friend, so Petitioner would have known based on her statement to police that she did not identify him, because she states the boys she recognized she did not know by name. Trial counsel testified under oath that he reviewed

¹¹Ms. Cunningham's non-identification of Petitioner is suspect. Initially she told police she saw six boys around the victim's car. She told police she could only identify 4 of the 6. At the police station she said she believed the other two were Rico Stevens and Haywood Watts. The police officer involved in this subsequent identification noted on his report that Ms. Cunningham saw these two individuals, Stevens and Watts, while she was there at the station to be interviewed.

the discovery and reviewed the evidence in the case with Petitioner. (App. p. 83, ll. 11-13). Petitioner was well aware of this witness and the existence of Ms. Duncan as a witness through Ms. Evans statement.

Furthermore, as trial counsel testified at the PCR hearing, these witnesses' testimony was suspect. Each had criminal records with which they were impeached at the PCR. Two of the witnesses had prior convictions for forgery. Each admitted that they were friends with Petitioner or with his family and had been for some time. Furthermore, they were some distance removed from the actual shooting itself and were not as close as the other four witnesses who identified Petitioner as the shooter. Additionally, at least two of these witnesses testified they were not even looking at the victim's car at the time of the shooting and only looked up after hearing the shot and ducking or asking a question of the other witness.

Petitioner's assertion he would not have pled guilty if he had known of these witnesses' testimony lacks credibility. Petitioner lacked any credibility at the PCR hearing. Under oath, at the same hearing, Petitioner testified and claimed that he lied while he was under oath during his guilty plea. (App. p. 80, ln. 3). When he pled guilty, Petitioner admitted he was the murderer of Ms. Jury and her unborn child. He also admitted he attempted to rob them.

At his plea, Petitioner admitted under oath the underlying facts as to the commission of the murder of the two victims. (App. p. 95). Petitioner apologized to the victim's family for his criminal acts. (See Tr. Dec. 9, p. 9).

As previously noted, a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea, is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore,

statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of those statements. Crawford; Edmonds. Petitioner has failed to present a valid reason why the Court should depart from the truth of his statements during his guilty plea:

The Court: Mr. Hall, are you pleading guilty of your own free will and accord?

Mr. Hall: Yes, Sir.

The Court: And are you guilty?

Mr. Hall: Yes, sir.

The Court: Did you commit the two offenses of murder, as stated in the indictment?

Mr. Hall: Yes, sir.

The Court: Did you do that?

Mr. Hall: Yes, sir.

(See Tr. of Guilty Plea p. 11, 16-25). After the Solicitor recited the facts regarding how Petitioner murdered Mrs. Jury and her baby, Petitioner made the following statements:

The Court: All right, Sir.

All right, Mr. Hall, Did you hear the Solicitor recite into the record the facts as the (sic) alleges that they occurred in this case?

Mr. Hall: Yes, Sir.

The Court: Do you agree or disagree?

Mr. Hall: Yes, Sir.

The Court: You agree

Mr. Hall: Yes, Sir.

The Court: Is that what happened?

Mr. Hall: Yes, Sir.

The Court: Is that what you did?

Mr. Hall: Yes, Sir.

(Tr. of Guilty Plea pp. 21, ln. 21 - 22, ln. 8).

Additionally, Petitioner cannot show prejudice under Hill. Petitioner would not have proceeded to trial in this case if counsel had interviewed the three witnesses. Trial counsel testified at the PCR hearing that he is not even sure he would have called these witnesses had Petitioner gone to trial. (App. pp. 55, ln. 20). Trial counsel testified that it is “hard to imagine that the jury would weigh their testimony more heavily than they would weigh Tommy Jury’s.” (the surviving husband)(App. p. 63, ln. 23). Mr. Jury was seated in the driver’s seat of the car when Petitioner shot into the car killing his wife and their unborn baby. (App. p. 9, ln. 16). He positively identified Petitioner in a photographic line-up, stating “that’s him, I’ll never forget that face.” (App. p. 63, ln. 16). Petitioner’s three witnesses were twenty (20) to forty (40) feet away from the incident. (App. p. 31, ln. 3; 37, ln. 19). All of Petitioner’s witnesses had criminal records that impeached their testimony at the PCR hearing and some could have been used to impeach their testimony at trial.

Trial counsel testified that the State had a strong case against Petitioner. This testimony is supported by the record. The State had Mr. Jury’s testimony and identification of Petitioner as the shooter. Mr. Jury was just a matter of a few feet from Petitioner when the shooting occurred. The State also had the testimony of Petitioner’s co-defendant, Mr. Peay, implicating Petitioner as the shooter in this double murder. (App. p. 62, ln. 16). Peay not only implicated Petitioner but implicated himself in the crimes by admitting in one statement that he handed the gun to Petitioner

immediately prior to Petitioner murdering the victims. Peay was also in close proximity to Petitioner when the crime was committed. The State had two other witnesses, who initially denied any knowledge of the murder, but eventually told police that Petitioner was the trigger-man. Both were friends of Petitioner and present when the murders occurred. (See attached police investigation reports regarding Brandon Cunningham and Haywood Watts).¹² Furthermore, the gun used by Petitioner to commit the murders was forensically matched to the bullet taken from the victim's body. The PCR Court correctly found that trial counsel was not ineffective for failing to investigate witnesses Cunningham, Evans, and Duncan. The evidence against Petitioner was strong and convincing with or without Petitioner's three witnesses. See Savino v. Murray, 92 F.3d 593, 599 (4th Cir. 1996)(if there exists no reasonable probability that a possible defense would have succeeded at trial, the alleged error in failing to disclose or *pursue it* cannot be prejudicial).

Petitioner was nineteen years old at the time of his guilty plea. Petitioner was faced with strong and convincing evidence of his guilt. Petitioner was facing a sentence of life without the possibility of parole on each murder charge, and as counsel testified, given the facts in this case, there was a significant likelihood, if found guilty by a jury, Petitioner could have been sentenced to life in prison. The State made a plea offer to Petitioner to allow him to plead guilty to the Lancaster County charges and in exchange the State would recommend concurrent sentences and that Petitioner not be sentenced to life without parole. Additionally, the trial judge gave counsel an indication in a pre-plea conference that he would sentence Petitioner somewhere in the range of

¹²Watts came forward to police with his attorney Lionel Lofton, Esq. and gave a detailed statement to police that Petitioner murdered Ms. Jury and her unborn child. Watts told police he was just a few feet away and saw Petitioner near the driver's side door of the victim's car. He saw Petitioner raise his arm and they Watts heard a gunshot. Watts said the victim's car then sped away. Watts said he could not see the gun because he believed another co-defendant's body was blocking his view. Watts said Petitioner and others near the car then fled. (See attached statement).

thirty-eight (38) years, not forty (40) to fifty (50) years, and this was communicated to Petitioner. Finally, Petitioner was facing additional serious charges in Chester County, which included burglary first degree, armed robbery, and kidnaping for which he could receive a life sentence or substantial prison time. These charges were eventually dismissed in part as part of his pleas to the Lancaster County charges. Because of these factors, even if counsel had interviewed these three witnesses and obtained detailed statements from them, there is no reasonable probability that Petitioner would not have pled guilty. Hill v. Lockhart.

Respondent submits that the record reflects that Petitioner's pleas to two counts of murder, attempted armed robbery and possession of a weapon during a violent crime were knowingly and voluntarily entered according to the mandates of Boykin v. Alabama, 395 U.S. 238 (1969) and later cases developing that doctrine. *See for example* Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). The transcript of Petitioner's guilty plea clearly shows that Petitioner understood the charges to which he was pleading and the possible sentences he could receive. There is no doubt that Petitioner was aware of the consequences of his plea. The plea judge recited on the record the maximum sentences Petitioner could receive for the various charges. Petitioner acknowledged that he wanted to plead guilty and *that he was in fact guilty of the crimes*. At his later sentencing, Petitioner asked the victim's husband, Mr. Jury, to forgive him for what he had done. Petitioner received a substantial benefit for himself, by these pleas, and he has not shown anything that would overcome the "strong-presumption of veracity" carried by his statements at the guilty plea hearing of a voluntary decision to plead guilty. *See* United States v. Morrow, 914 F.2d 608 (4th Cir. 1990).

Petitioner was informed that by pleading guilty he would waive and give up his right to remain silent, to make the State prove him guilty, the right to confront witnesses, and put up his

own defense. Petitioner was also carefully examined on the record about waiving and giving up his right to a trial by jury. Petitioner understood all that the judge had told him and asked him during the plea. Petitioner never asked the judge to explain anything, even though he was  instructed by the plea judge to do so if he had any questions. Petitioner admitted on the record that his plea was his decision and he made it of his own free will. Petitioner stated that he was satisfied with his attorney's representation of him. There simply is no merit to this habeas claim by Petitioner, and he is not entitled to any relief. Id.; Unites States v. Marquez, 909 F.2d 738, 742 (2nd Cir. 1990)(a defendant's plea is not rendered involuntary because he enters it to save himself many years in prison).

CONCLUSION

For the above stated reasons, Respondent's Motion for Summary Judgment should be granted and the petition for habeas corpus dismissed with prejudice.

Respectfully submitted,

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December 8, 2008

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Lakelthon M. Hall, #289440

Petitioner,

v.

McKither Bodison, Warden
of Lieber Correctional Institution,

Respondent.

Civil Action No.8:08-2468-HMH-BHH

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

The petitioner, a state prisoner, seeks relief pursuant to Title 28, United States Code, Section 2254. This matter is before the Court on the respondent's motion for summary judgment. (Dkt. # 15.)

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(c), D.S.C., this magistrate judge is authorized to review posttrial petitions for relief and submit findings and recommendations to the District Court.

The petitioner brought this habeas action on July 7, 2008.¹ On December 8, 2008, the respondent moved for summary judgment. By order filed December 9, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment dismissal procedure and the possible consequences if he failed to adequately respond to the motion. On February 11, 2009, the petitioner filed a response opposing the respondent's summary judgment motion.

¹This filing date reflects that the envelope containing the petition was date stamped as having been received on July 7, 2008, at the Lieber Correctional Institution mailroom. (Pet. Attach. # 4.) *Houston v. Lack*, 487 U.S. 266 (1988)(holding prisoner's pleading is considered filed when filed with prison authorities for forwarding to the district court).

PROCEDURAL HISTORY

The petitioner is currently incarcerated in the Lieber Correctional Institution. In February 2001, the petitioner was indicted in Lancaster County for two counts of murder, attempted armed robbery, and possession of a firearm during the commission of a violent crime. The petitioner was also subsequently indicted in Chester County for first degree burglary, armed robbery, and kidnaping. These charges were unrelated to the Lancaster County charges. Attorney Ross A. Burton represented the petitioner on the charges. On December 6, 2002, the petitioner pled guilty as charged to two counts of murder, attempted armed robbery, and possession of a weapon during a violent crime. The Chester County indictments were nol prossed pursuant to the plea agreement. (App. 67-68.) On December 9, 2002, the Honorable Paul E. Short, Jr., sentenced the petitioner to thirty-eight (38) years for each murder, twenty (20) years for the attempted armed robbery, and five (5) years for the possession of a weapon charge. These sentences were ordered to run concurrently. The petitioner did not appeal his guilty pleas or sentences.

On October 14, 2003, the petitioner filed an application for post-conviction relief ("PCR") raising the following grounds:

1) Ineffective assistance of counsel

(a) Counsel was ineffective inasmuch as he failed to adequately investigate my case.

(b) Prior to my plea, counsel was ineffective inasmuch he failed to investigate and interview crucial witnesses.

(c) Prior to my plea, counsel was ineffective inasmuch he failed to adequately investigate exculpatory evidence of forensic reports to build possible defense to my case.

2) Involuntary Guilty Plea- My guilty plea was involuntarily, unknowingly, and unintelligently entered inasmuch counsel pre-trial investigation of my case was inadequate, unreasonable, and prejudice me into pleading guilty.

On March 1, 2006, a hearing was held before the Honorable John C. Hayes, III. On March 2, 2006, the Judge Hayes denied the petitioner's application for post-conviction relief with prejudice.

The petitioner appealed from the denial PCR raising only one issue on appeal: whether "trial counsel erred in failing to investigate into and develop a third-party guilt defense in the case?" The case was transferred to the South Carolina Court of Appeals by Order of the South Carolina Supreme Court. On May 22, 2008, the South Carolina Court of Appeals denied the Petition for Writ of Certiorari. The Remittitur was filed on June 9, 2008.

In this habeas action, the petitioner raises the following grounds for relief, quoted verbatim:

Ground One: Petitioner was denied his constitutionally guaranteed right to the effective assistance of counsel.

Issue A: Was petitioner denied his constitutionally guaranteed right to the effective assistance of counsel when counsel failed to adequately investigate Petitioner's case?

Issue B: Was petitioner denied his constitutionally guaranteed right to the effective assistance of counsel when counsel failed to investigate and interview crucial witnesses?

Issue C: Was petitioner guilty plea involuntary, unknowing and unintelligently entered when counsel failed to do any reasonable pretrial investigation and in failing to do so prejudiced petitioner into pleading guilty?

Issue D: Was petitioner denied his constitutionally guaranteed right to the effective assistance of trial counsel when counsel failed to investigate into and develop a plausible third party guilt defense ?

(Pet. at 6; Supp. to Pet. at 3.)

APPLICABLE LAW

Summary Judgment Standard

Rule 56 of the Federal Rule of Civil Procedure states as to a party who has moved for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Accordingly, to prevail on a motion for summary judgment, the movant must demonstrate that (1) there is no genuine issue as to any material fact; and (2) that he is entitled to summary judgment as a matter of law. As to the first of these determinations, a fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Rather, the non-moving party must demonstrate that specific, material facts exist which give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the petitioner's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252.

Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985).

HABEAS STANDARD OF REVIEW

Since the petitioner filed his petition after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), review of his claims is governed by 28 U.S.C. § 2254(d), as amended. *Lindh v. Murphy*, 521 U.S. 320 (1997); *Breard v. Pruett*, 134 F.3d 615 (4th Cir.1998). Under the AEDPA, federal courts may not grant habeas corpus relief unless the underlying state adjudication:

1. resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States; or
2. resulted in a decision that was based on an unreasonable application of the facts in light of the evidence presented at the state court proceeding. 28 U.S.C. § 2254(d)(1)(2).

Federal habeas corpus relief may not be granted unless the relevant state-court adjudication "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings," 28 U.S.C.A. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 398 (2000). "[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Id.* at 410.

EXHAUSTION AND PROCEDURAL BAR

Exhaustion and procedural bypass are separate theories which operate in a similar manner to require a habeas petitioner to first submit his claims for relief to the state courts.

The two theories rely on the same rationale. The general rule is that a petitioner must present his claim to the highest state court with authority to decide the issue before the federal court will consider the claim.

A. Exhaustion

The theory of exhaustion is based on the statute giving the federal court jurisdiction of habeas petitions. Applications for writs of habeas corpus are governed by 28 U.S.C. § 2254, which allows relief when a person "is in custody in violation of the Constitution or laws or treaties of the United States." The statute states in part:

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court, shall not be granted unless it appears that

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is either an absence of available State corrective process; or

(ii) circumstances exist that render such process, ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

This statute clearly requires that an applicant pursue any and all opportunities in the state courts before seeking relief in the federal court. When subsections (b) and (c) are read in conjunction, it is clear that § 2254 requires a petitioner to present any claim he has to the

state courts before he can proceed on the claim in this court. The United States Supreme Court has consistently enforced the exhaustion requirement.

In South Carolina, a person in custody has two primary means of attacking the validity of his conviction. The first avenue is through a direct appeal and, pursuant to state law, he is required to state all his grounds in that appeal. SCAR 207; *Blakeley v. Rabon*, 221 S.E.2d 767 (S.C. 1976). The second avenue of relief is by filing an application for PCR. S.C. Code Ann. § 17-27-10 et seq. A PCR applicant is also required to state all of his grounds for relief in his application. S.C. Code Ann. § 17-27-90. Strict time deadlines govern direct appeal and the filing of a PCR in the South Carolina Courts. A PCR must be filed within one year of judgment, or if there is an appeal, within one year of the appellate court decision. S.C. Code Ann. § 17-27-45.

When the petition for habeas relief is filed in the federal court, a petitioner may present only those issues which were presented to the South Carolina Supreme Court through direct appeal or through an appeal from the denial of the PCR application, whether or not the Supreme Court actually reached the merits of the claim. If any avenue of state relief is still available, the petitioner must proceed through the state courts before requesting a writ of habeas corpus in the federal courts. *Patterson v. Leeke*, 556 F.2d 1168 (4th Cir. 1977); *Richardson v. Turner*, 716 F.2d 1059 (4th Cir. 1983).

B. Procedural bypass

Procedural bypass is the doctrine applied when the person seeking relief failed to raise the claim at the appropriate time in state court and has no further means of bringing that issue before the state courts. If this occurs, the person is procedurally barred from raising the issue in his federal habeas petition. The United States Supreme Court has clearly stated that the procedural bypass of a constitutional claim in earlier state proceedings forecloses consideration by the federal courts, *Smith v. Murray*, 477 U.S. 527,

533 (1986). Bypass can occur at any level of the state proceedings, if a state has procedural rules which bar its courts from considering claims not raised in a timely fashion. The two routes of appeal in South Carolina are described above, (i.e., direct appeal, appeal from PCR denial) and the South Carolina Supreme Court will refuse to consider claims raised in a second appeal which could have been raised at an earlier time. Further, if a prisoner has failed to file a direct appeal or a PCR and the deadlines for filing have passed, he is barred from proceeding in state court.

If the state courts have applied a procedural bar to a claim because of an earlier default in the state courts, the federal court honors that bar. State procedural rules promote . . . not only the accuracy and efficiency of judicial decisions, but also the finality of those decisions, by forcing the defendant to litigate all of his claims together, as quickly after trial as the docket will allow, and while the attention of the appellate court is focused on his case. *Reed v. Ross*, 468 U.S. 1, 10-11 (1984).

Stated simply, if a federal habeas petitioner can show (1) cause for his failure to raise the claim in the state courts, and (2) actual prejudice resulting from the failure, a procedural bar can be ignored and the federal court may consider the claim. Where a petitioner has failed to comply with state procedural requirements and cannot make the required showing of cause and prejudice, the federal courts generally decline to hear the claim. *Murray v. Carrier*, 477 U.S. 478, 496 (1986).

C. Inter-relation of Exhaustion and Procedural Bypass

As a practical matter, if a petitioner before this court has failed to raise a claim in state court, and is precluded by state rules from returning to state court to raise the issue, he has procedurally bypassed his opportunity for relief in the state courts and in federal court. A federal court is barred from considering the filed claim (absent a showing of cause and actual prejudice). In such an instance, the exhaustion requirement is technically met

and the rules of procedural bar apply. *Matthews v. Evatt*, 105 F.3d 907 (4th Cir. 1997)(citing *Coleman v. Thompson*, 501 U.S. 722, 735 n. 1 (1991); *Teague v. Lane*, 489 U.S. 288,297-98 (1989); and *George v. Angelone*, 100 F.3d 353,363 (4th Cir. 1996).

D. Cause and Actual Prejudice

The requirement of exhaustion is not jurisdictional and this court may consider claims which have not been presented to the South Carolina Supreme Court in limited circumstances. *Granberry v. Greer*, 481 U.S. 129, 131 (1987). In order to have such claims considered, a petitioner must show sufficient cause for failure to raise the claim and actual prejudice resulting from the failure, *Coleman*, 501 U.S. at 750, or that a "fundamental miscarriage of justice" has occurred. *Murray*, 477 U.S. 478. A petitioner may prove cause if he can demonstrate ineffective assistance of counsel relating to the default, show an external factor which hindered compliance with the state procedural rule, or demonstrate the novelty of a particular claim. *Id.* Absent a showing of "cause," the court is not required to consider "actual prejudice." *Turner v. Jabe*, 58 F.3d 924 (4th Cir. 1995). However, if a petitioner demonstrates sufficient cause, he must also show actual prejudice in order to excuse a default. *Murray*, 477 U.S. at 492. To show actual prejudice, the petitioner must demonstrate more than plain error. He is required to prove that specific errors infected the trial and were of constitutional dimensions. *United States v. Frady*, 456 U.S. 152 (1982).

DISCUSSION

Procedurally Barred Claims

The respondent contends that all the grounds that the petitioner are procedurally barred. The respondent contends that the only issue raised on appeal from the denial of post-conviction relief was whether: "Trial counsel erred in failing to investigate into and develop a third party guilt defense in the case." (Pet. for Writ of Cert. at 2). He then argues

that because the PCR court did not rule on this issue and the petitioner did not file a Rule 59 motion, this issue is also procedurally barred.

As set out above, issues which are procedurally defaulted in state court cannot be considered on habeas review. *Coleman v. Thompson*, 501 U.S. 722 (1991)(failure to properly appeal issue to state appellate court results in procedural bar on habeas review). The respondent argues that the issue which the petitioner raised in his appeal of the denial of PCR was not specifically addressed in the PCR court's order and the petitioner did not file a Rule 59(e) motion to alter or amend the judgment. The respondent contends that in his PCR application, the petitioner alleged a failure to investigate but not "a failure to investigate into and develop a third party guilt defense." Further, the respondent argues that the PCR court did not address this specific allegation, but rather addressed the issue of whether trial counsel was ineffective for failing to investigate and interview witnesses. The petitioner presented three witnesses at his PCR hearing who testified they saw a group of boys running from the victim's car after the gunshot and the petitioner was not one of the boys. As the respondent argues, in the order, the PCR court trial judge does not specifically mention these three witnesses or the alleged failure of trial counsel to investigate a third party's guilt defense. However, the PCR court did hold that trial counsel was not ineffective for failing to properly investigate and interview witnesses. (App. 95.) Accordingly, the undersigned declines to find this issue is procedurally barred and will address the merits of this issue.

The other issues raised in this habeas petition, however, are procedurally barred. When a state prisoner has defaulted his claims in state court, habeas review of the claim is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 750. The

petitioner has not shown cause and prejudice as to these claims, or that he is actually innocent of the crimes for which he was sentenced.

Ineffective assistance of counsel claims may be asserted in limited circumstances where the petitioner has entered a plea of guilty. A guilty plea generally precludes the petitioner from challenging defects in the process which occurred prior to the plea. He "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within he must demonstrate that the advice was not within the range of competence demanded of attorneys in criminal cases. *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). When such a claim is raised, the voluntariness issue is subsumed within the claim of effectiveness of the attorney's assistance. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

In order to prevail on a claim of ineffective assistance of counsel pertaining to a guilty plea, a petitioner must show that his lawyer's performance was incompetent, i.e., the first prong of the *Strickland* test. Under this prong, counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. The prejudice prong of the *Strickland* test is modified and the petitioner must show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59. "This is an objective inquiry, and dependent on the likely outcome of a trial had the defendant not pleaded guilty." *Meyer v. Branker*, 506 F.3d 358, 369 (4th Cir. 2007). If, however, there exists no reasonable probability that a possible defense would have succeeded at trial, the alleged error of failing to disclose or pursue it cannot be prejudicial. *Savino v. Murray*, 82 F.3d 593, 599 (4th 1996) (citing *Hill*, 474 U.S. at 59).

An attorney has a duty to make a reasonable factual and legal investigation to develop appropriate defenses. *Sneed v. Smith*, 670 F.2d 1348 (4th Cir. 1982). The

reasonableness of the investigation is evaluated by the totality of the circumstances facing the attorney at the time. *Bunch v. Thompson*, 949 F.2d 1354 (4th Cir. 1991). The Courts recognize limits to investigation based on time, resources, and relevance and conclude that "*Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998). A decision not to investigate a particular avenue of defense is assessed by the same standard of "reasonableness in all the circumstances" by which an attorney's performance is measured in other areas. *Strickland*, 466 U.S. 690-91. A petitioner asserting a claim of ineffectiveness of counsel in failing to investigate must make a showing that the failure was prejudicial.

On November 20, 2000, the victim, Sheela Jury, who was 37 weeks pregnant, and her husband Thomas Jury were riding in their car in Lancaster County with Mr. Jury driving. Mr. Jury stated that he had attempted to take a short cut through a bad part of town and decided to turn around. When he did, he stated his path was blocked by a vehicle. The Jury's car was surrounded by six to eight men. Mr. Jury stated the petitioner approached the car and attempted to rob the victims with a handgun. He stated that the petitioner fired a shot into the car which struck the victim Mrs. Jury in the shoulder. She died from blood loss that day and her baby, who had been delivered by an emergency c-section, died several days later.

Co-defendant, Calvin Peay, told police that he had handed the petitioner the gun immediately before the murders. He stated that the petitioner had fired the gun into the victim's car. Peay later tried to recant that he actually handed the gun to the petitioner. However, police did not accept or believe this later statement. Mr. Jury also positively identified the petitioner from a photographic line-up as the person who murdered his wife and baby.

Brandon Cunningham and Haywood Watts both eventually gave statements to police in which they admitted to being present at the time of the murders and witnessing the petitioner shoot the victim. The petitioner admitted at his guilty plea that he was guilty of the murders, attempted armed robbery, and possession of a weapon during a violent crime and apologized to Mr. Jury.

At the PCR hearing, three witnesses, Takeisha Cunningham, Tara Evans, and Crystal Duncan, testified that they witnessed the shooting but did not see the petitioner among the group of six to eight men who had surrounded the victim's car. (App. 29-50.) Cunningham and Evans had given statements to the police.

In her statement, Cunningham initially told police she saw six boys around the victim's car. She told police she could only identify four of the six boys. At the police station she said she believed the other two were Rico Stevens and Haywood Watts. The police officer involved in this subsequent identification noted on his report that Cunningham saw these two individuals, Stevens and Watts, while she was there at the station to be interviewed.

In her statement, Evans stated that she was outside of Crystal Duncan's apartment sitting in a car. She stated that she was not looking at the victim's car when the shooting occurred and only turned around after the shooting occurred and after she asked Duncan what that noise was and Duncan said the noise was a gunshot. Evans told police she saw six to eight boys running. They looked like teenagers. She stated she knew some of them, but not by name, and could identify approximately four or more of them if she saw them again.

At the PCR hearing, trial counsel testified that he reviewed discovery, including the statements from Cunningham and Evans, autopsy reports, and gunshot residue tests. (App. 66.) He testified that he also spoke to Mr. Jury who had positively identified the petitioner.

(App. 6.)² Trial counsel stated that he also spoke to the petitioner's co-defendant Peay who had told police the petitioner had given him the gun after the murders and how it was hidden after the murders. (App. 11; 68.) Trial counsel testified that he attempted to speak with the other co-defendants, but he was rebuffed by their attorneys.

Trial counsel testified at the PCR hearing that he was not sure that he would have called the three witnesses who testified at the PCR hearing had the petitioner gone to trial. (App. 55.) Trial counsel testified that these witnesses' testimony was suspect as each had criminal records with which they could be impeached. Further, each admitted that they were friends with the petitioner or with his family and had been for some time. Furthermore, he noted that they were some distance from the actual shooting itself and were not as close as the other four witnesses who had identified the petitioner as the shooter. Additionally, two of these witnesses testified they were not even looking at the victim's car at the time of the shooting and only looked up after hearing the shot. Trial counsel testified that it is "hard to imagine that the jury would weigh their testimony more heavily than they would weigh [Mr.] Jury's" positive identification of the petitioner. (App. 63.)

Furthermore, at his guilty plea, the petitioner professed his actual guilt and apologized to the family. In evaluating a post-guilty plea claim of ineffective assistance, statements made previously under oath during the original plea hearing are binding on the petitioner absent "clear and convincing evidence to the contrary." *Fields v. Attorney General of Md.*, 956 F.2d 1290, 1297-99 (4th Cir. 1995) (citing *Blackledge v. Allison*, 431 U.S. 63,

²In his supplemental petition, the petitioner states that trial counsel stated that "no one" completely and independently implicated Petitioner as a suspect, victim, or defendant." (Pet. Supp. at 11.) However, what trial counsel actually testified to was that "no person that was completely independent [] implicated [the petitioner], meaning they weren't a victim and they weren't a suspect or a defendant." The petitioner uses this statement to argue that "no one implicated [him]". (*Id.* at 14.) (See also *id.* at 12-14.) Notwithstanding the other obvious flaws with this argument, certainly the victim's identification of the petitioner is strong evidence which cannot be ignored or discounted simply because he was not completely independent of the crime.

74-75 (1977)). "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland*, 466 U.S. at 689 (internal quotation marks and citation omitted); see also *Fields v. Attorney General of Maryland*, 956 F.2d 1290, 1297-99 (4th Cir. 1992).

Based on the foregoing, the undersigned concludes that the record supports the state PCR court's holding that trial counsel was not ineffective and it is not contrary to clearly established federal law nor is it an unreasonable determination of the facts in light of the evidence in the state court proceedings. The petitioner has failed to meet his burden to show error.

CONCLUSION

Wherefore, it is RECOMMENDED that the Respondent's Motion for Summary Judgment (Dkt. # 15) be GRANTED; and the habeas petition DISMISSED with prejudice.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

June 11, 2009
Greenville, South Carolina

The petitioner's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 10768
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Lakeithon M. Hall,

Petitioner,

v.

McKither Bodison,

Respondent,

Civil Action No.: 8:08-cv-2468-RBH

ORDER

Petitioner, proceeding *pro se*, brought this petition seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Pending before the court is Respondent's [Docket Entry #15] motion for summary judgment with the Report and Recommendation [Docket Entry #23] of Magistrate Judge Bruce Howe Hendricks filed on June 11, 2009.¹ In her Report, the Magistrate Judge recommended that Respondent's motion for summary judgment be granted and the instant petition dismissed with prejudice. Petitioner timely filed Objections [Docket Entry #27] to the Magistrate's Report and Recommendation on July 10, 2009.

Standard of Review

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the

¹ This matter was referred to Magistrate Judge Hendricks pursuant to 28 U.S.C. § 636(b)(1)(B), and Local Civil Rules 73.02(B)(2)(c) and (e).

recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

Discussion

On November 20, 2000, Sheela Jury, who was 37 weeks pregnant, and her husband Thomas Jury, were riding in their car in Lancaster County. Mr. Jury stated that he had attempted to take a short cut through a bad part of town and decided to turn around. When he did, he stated his path was blocked by a vehicle. The Jury's car was then surrounded by six to eight men. Mr. Jury stated the Petitioner then approached their car and attempted to rob them. Petitioner then fired a shot into the car which struck Sheela Jury in the shoulder. She died from blood loss that day and her baby, who had been delivered by emergency c-section, died several days later.

Petitioner, represented by counsel, pled guilty to two counts of murder, attempted armed robbery, and possession of a firearm during the commission of a violent crime and was sentenced to a thirty-eight (38) year term of imprisonment. In the current habeas petition, Petitioner seeks relief from the state court judgment generally alleging that his trial counsel was ineffective for failing to investigate and interview witnesses. As a result of his trial counsel's alleged failure to investigate and interview witnesses, Petitioner also contends that his

guilty plea was rendered involuntary. The state court rejected Petitioner's involuntary guilty plea and ineffective assistance of counsel claims.

Under 28 U.S.C. § 2254(d), a district court may only grant federal habeas relief for state prisoners when state court proceedings:

- 1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- 2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d); *see also Evans v. Smith*, 220 F.3d 306, 312 (4th Cir. 2000) (Federal habeas relief will not be granted on a claim adjudicated on the merits by the state court unless it resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented).

To obtain relief based on ineffective assistance of counsel, Petitioner must show that:

- (1) counsel's performance was so deficient that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment; (2) the deficient performance prejudiced the defense;² and
- (3) specific acts or omissions of counsel were not the result of reasonable professional judgment. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). There is a strong presumption

² If the ineffective assistance of counsel claim is more easily disposed of under the second prong (prejudice inquiry) of *Strickland*, the first inquiry - whether counsel's performance was so deficient that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment - may be by-passed. *Strickland*, 466 U.S. at 697.

that counsel's conduct was within the wide range of reasonable professional assistance, and the court must be highly deferential in scrutinizing counsel's performance. *Id.* at 688-89. To establish prejudice, Petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* "Reasonable probability" is probability sufficient to undermine confidence in the outcome. *Jeffers v. Leeke*, 835 F.2d 522, 525 (4th Cir. 1987). In the context of a guilty plea, counsel's deficient performance is prejudicial only if "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Meyer v. Branker*, 506 F.3d 358, 369 (4th Cir. 2007) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). This is an objective inquiry and dependent on the likely outcome of the trial had the defendant not pleaded guilty. *Meyer*, 506 F.3d at 369.

In this case, the evidence of Petitioner's guilt is overwhelming. Petitioner was identified as the shooter by co-defendant, Calvin Peay, who told police that he handed Petitioner the gun and that Petitioner then fired a single shot into the victim's car. Petitioner was also identified as the person who shot the victim by Brandon Cunningham and Haywood Watts, who both admitted to being present at the time of the murders. Finally, Thomas Jury identified Petitioner from a photographic line-up as the person who murdered his wife and unborn child.

To support Petitioner's contention that his trial counsel was ineffective and that Petitioner would have insisted on going to trial absent his trial counsel's alleged ineffectiveness, at the PCR hearing, Petitioner introduced the testimony of three witnesses, Takeisha Cunningham, Tara Evans, and Crystal Duncan, who each testified that they witnessed

the shooting, but did not see the Petitioner among the group of six to eight men who surrounded the victim's car. However, trial counsel at the PCR hearing indicated that each of the three witnesses had a criminal record and had been friends with Petitioner or his family, and were further away from the scene than the four witnesses who identified Petitioner as the person who fired the gun.

Petitioner has failed to establish prejudice from his trial counsel's alleged failure to investigate and interview witnesses. An objective review of the record indicates that if Petitioner had not pled guilty and had insisted on going to trial, the likely outcome would have been a conviction for double murder, attempted armed robbery, and unlawful use of a firearm. Petitioner has not demonstrated that he would have insisted on going to trial if his trial counsel investigated and interviewed witnesses to his satisfaction. Accordingly, this court concludes that the state court's rejection of Petitioner's ineffective assistance of counsel claim was not contrary to, or an unreasonable application of, clearly established federal law, nor was its decision to reject the ineffective assistance of counsel claims based on an unreasonable determination of the facts in light of the evidence presented at the PCR hearing.

As to the voluntariness of Petitioner's guilty plea, the Supreme Court has stated that habeas relief should be especially rare when the petitioner stated, upon entering the guilty plea, that he or she did so knowingly and voluntarily. *Blackledge v. Allison*, 431 U.S. 63, 73, (1977); *see also*, *United States v. DeFusco*, 949 F.2d 114, 119 (4th Cir. 1991) (statements by petitioners at the time of pleading that they are doing so voluntarily amounts to strong, formidable evidence thereof), *cert. denied*, 503 U.S. 997, 112 S.Ct. 1703, 118 L.Ed.2d 412 (1992). The Fourth Circuit has further declared that, when a defendant is represented by

counsel when making his guilty plea, that plea is strongly presumed to be valid in subsequent habeas proceedings. *Sargent v. Waters*, 71 F.3d 158, 162 (4th Cir. 1995); *United States v. Custis*, 988 F.2d 1355, 1363 (4th Cir. 1993), *aff'd*, 511 U.S. 485, 114 S.Ct. 1732, 128 L.Ed.2d 517 (1994). "Absent clear and convincing evidence to the contrary, a defendant is bound by the representations he makes under oath during a plea colloquy." *Fields v. Attorney General of State of Maryland*, 956 F.2d 1290, 1299 (4th Cir. 1992). A review of the guilty plea transcript indicates that Petitioner stated on the record that he was pleading guilty freely and voluntarily. [Guilty Plea Transcript, at pg. 11, Docket Entry #16-5]. Petitioner was represented by counsel and advised of the charges he was facing, the potential sentence, and the constitutional rights he was waiving, including the right to remain silent, right to a jury trial, and right to confront his accuser. *Id.* at 6-11. Petitioner also stated that he was satisfied with the services of his trial counsel. *Id.* at 12. When the Assistant Solicitor summarized the factual background of the incident, Petitioner agreed with the Solicitor's summary of the facts. *Id.* at 21-22. At the sentencing hearing, Petitioner again admitted his crimes and apologized to the victims' family. [Sentencing Transcript, at pg. 9, Docket Entry #16-6]. Petitioner has presented no evidence that suggests that his representations under oath were untruthful or involuntary. As stated, Petitioner has failed to come forward with credible evidence that he was prejudiced by his trial counsel's alleged failure to investigate and interview witnesses or otherwise prepare a defense. Likewise, Petitioner has failed to come forward with credible evidence that any alleged lack of preparation by his trial counsel resulted in an involuntary guilty plea. Accordingly, this habeas petition is due to be dismissed.

Conclusion

For the reasons stated above and for the reasons stated by the Magistrate Judge, the court overrules Petitioner's objections and adopts and incorporates by reference the Report and Recommendation [Docket Entry #23] of the Magistrate Judge. Respondent's [Docket Entry #15] motion for summary judgment is **GRANTED**. This case is hereby **DISMISSED** with prejudice.

IT IS SO ORDERED.

July 31, 2009
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LANCASTER	)	DOCKET NO.: 2001-GS-29-71, 72, 73, 346
State of South Carolina,	)	
Plaintiff,	)	
v.	)	MOTION PURSUANT TO
	)	RULE 29(b), SCRCrimP
Lakeithon M. Hall,	)	
	)	
Defendant,	)	
	)	

FILED
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LANCASTER, SC

COMES NOW Defendant, through his undersigned attorney, and moves before this Court based upon after discovered evidence pursuant to Rule 29(b), SCRCrimP. Defendant submits that the attached Affidavits of Brandon R. Cunningham and Calvin Peay amount to after discovered evidence under Rule 29(b), SCRCrimP, and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999).

PROCEDURAL HISTORY

During the February 2001 term of the Lancaster County Grand Jury, Defendant was indicted on two counts of Murder (Indictment No.: 2001-GS-29-71, 346), one count of Attempted Armed Robbery (Indictment No.: 2001-GS-29-72), and one count of Possession of a Firearm during a Violent Crime (Indictment No.: 2001-GS-29-73). On December 9, 2002, Defendant appeared in front of the Honorable Paul E. Short at the Lancaster County Courthouse and entered a plea of guilty as indicted. Defendant was represented by Ross Burton, Esquire. The State was represented by Douglas A. Barfield, Jr., Senior Assistant Solicitor. The Honorable Paul E. Short sentenced Defendant to a total term of thirty-eight (38) years. A direct appeal was not filed on Defendant's behalf.

On October 14, 2003, Defendant filed an Application for Post Conviction Relief in Lancaster County (Docket No.: 2003-CP-39-960). On March 1, 2006, an evidentiary


COPY

was held at the Lancaster County Courthouse in front of the Honorable John C. Hayes, III. Defendant was represented by Govan T. Meyers, Esquire. The State was represented by Molly R. Crum, Assistant Attorney General. On March 2, 2006, the Honorable John C. Hayes, III, issued an Order denying the Application for Post Conviction Relief.

Defendant timely filed a Notice of Intent to Appeal in the South Carolina Supreme Court, and his appeal was perfected by Wanda H. Carter, Esquire, from the Division of Appellate Defense. On May 22, 2008, the South Carolina Supreme Court denied Certiorari, and the Remittitur was issued on June 9, 2008.

On July 7, 2008, Defendant filed a pro-se Petition for Writ of Habeas Corpus. (Docket No.: 09-7543). On December 8, 2008, the State moved for Summary Judgment. After the Honorable Bruce Howe Hendricks issued his Report and Recommendation granting the State's Motion for Summary Judgment, the Honorable R. Bryan Harwell adopted the Report and Recommendation on July 31, 2009.

On August 14, 2009, Defendant filed a Notice of Appeal seeking a Certificate of Appealability in the Fourth Circuit Court of Appeals. On January 21, 2010, the Fourth Circuit Court of Appeals denied and dismissed Defendant's appeal. A timely Petition for Rehearing was submitted, which was denied on March 5, 2010.

On May 17, 2010, Defendant filed a pro-se Petition for Writ of Certiorari in the Supreme Court of the United States (Docket No.: 10-5259). On October 4, 2010, an Order denying Petition for Writ of Certiorari was entered.

SUMMARY OF THE LAW

By way of this Motion, Defendant is alleging after discovered evidence that warrants a new trial. To prevail on this claim a defendant “must show that the after-discovered evidence: 1) is such that it would probably change the result if a new trial were granted; 2) has been discovered since the trial; 3) could not in the exercise of due diligence been discovered prior to trial; 4) is material; and 5) is not merely cumulative or impeaching.” State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); See Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

ARGUMENT

By way of this Motion, Defendant is alleging after discovered evidence based upon the Affidavits of Brandon R. Cunningham and Calvin Peay, a copy of each is attached. As is affirmed by way of his attached Affidavit, Defendant submits that this evidence was not known to him at the time of his guilty plea and that in the exercise of due diligence this evidence could not have been discovered as it has been discovered within the last year. Defendant further submits that he would not have accepted a plea and would have proceeded to trial if this information was known to him. Finally, Defendant submits that the information contained in the Affidavits amount to a confession by the perpetrators of the crime at issue and an exoneration of Defendant; therefore, such evidence is not merely cumulative or impeaching and would affect the outcome of a trial. Regarding confessions, the Supreme Court of the United States has held:

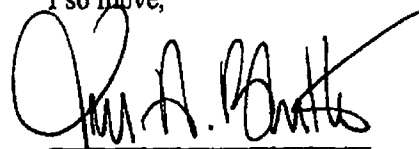
A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.

Arizona v. Fulminante, 499 U.S. 279, 296, 111 S.Ct. 1246, 1257 (1991) (Internal citations and punctuation omitted). See Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Pleicones, J., dissenting). As a result, Defendant is requesting a new trial.

CONCLUSION

For the above stated reasons, Defendant would respectfully request that this Court allow Defendant to proceed to a hearing on the matter and provide appointed counsel at such hearing to advise Brandon R. Cunningham and Calvin Peay regarding their rights before testifying at said hearing.

I so move,



Tricia A. Blanchette
Attorney for Defendant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

July 17, 2013
Columbia, SC

AFFIDAVIT OF CALVIN PEAY

On November 20, 2000, I, Calvin Lamar Peay was present during the time of an attempted armed robbery of Mr. & Mrs. Jury in which Mrs. Jury lost her life. I am giving this statement because I lied about Lakeithon Hall's involvement in this crime. Mr. Hall was not out there when the crime took place. I lied and by me lying I allowed an innocent man to be charged, convicted and sent to prison. The statement I am giving is that Mr. Hall did not attempt to rob nor kill Mrs. Jury because he was not there, I did not see him out there. Mr. Hall did not do it; I lied because I was afraid of going to prison so I said the first name that came to my mind. The statement that I am giving today is that Mr. Hall is innocent and this is the truth.

Signature: x Calvin PEAYDate: 6-11-13 8:30 PMWitness Signature: x Sherricka CawthonDate: 10-11-13SWORN to before me this 11 day of
JUNE, 2013.John R. Stickman

Notary Public for South Carolina

My Commission Expires: DEC 10, 2020

On November 20, 2000 I Brandon R Cunningham was present during the time of an attempted armed robbery of Mr. & Mrs. Jury in which Mrs. Jury loss her life I am giving this statement because I lied about Lakeithon Hall's involvement. Mr. Hall was not even out there when the crime took place. I only said his name because I heard someone else mention his name that's how I came up with the name to give the police. And when the time came to go to court for the charges Solicitor Barfield made me a deal that if I testify that he would give me time served and probation so I agreed to testify against Mr. Hall. Mr. Barfield told me that if Mr. Hall did not go to trial and pled to the charges he would still give me probation and time served because of the deal that we made. I received probation for the charges and Mr. Hall went to prison for a crime he did not commit. If not for the promise of the solicitor's office of the offer of probation and time served I Brandon R Cunningham would have not agreed to testify to send an innocent man to prison. The statement that I Brandon R Cunningham is giving today that Lakeithon M Hall is innocent of all charges and I Brandon R Cunningham was coerced into giving false testimony in order for Solicitor Barfield to get a conviction of Mr. Hall and this statement is true. The reason I am giving this statement is because my testimony allowed an innocent man to go to prison and the truth of the matter is Montinyo Stevens is the one who attempted to rob Mr. & Mrs. Jury and this led to Mrs. Jury's death.

Signature: *Brandon Cunningham*
 Witness Signature: *Shemicka Cauther*

Date: 1-28-13

Date: 1/28/13

Jessica T. Johnson



JESSICA T JOHNSON
 NOTARY PUBLIC
 SOUTH CAROLINA
 MY COMMISSION EXPIRES
 NOVEMBER 8, 2022

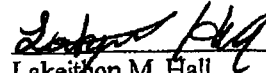
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER) DOCKET NO.: 2001-GS-29-71, 72, 73, 346

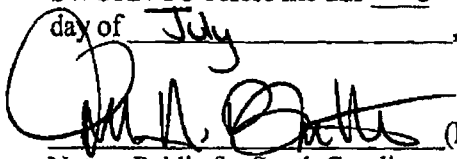
State of South Carolina,)
Plaintiff,)
v.) AFFIDAVIT
Lakeithon M. Hall,)
Defendant,)

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LANCASTER, SC

PERSONALLY appeared before me, Lakeithon M. Hall, who being duly sworn, deposes and says:

1. I am the Defendant in the above captioned case.
2. I affirm that evidence contained in the Affidavit of Brandon Cunningham dated January 28, 2013 and the Affidavit of Calvin Peay dated June 11, 2013 was not known to me at the time of my guilty plea on December 9, 2002.
3. I affirm that I have exercised all possible due diligence to obtain this evidence and that this evidence has been discovered within the last year.
4. I submit that I would not have entered a guilty plea if I would have known of this evidence, and I would have proceeded to trial.
5. I submit that this evidence is not merely cumulative or impeaching and would have impacted the outcome of said trial.


Lakeithon M. Hall

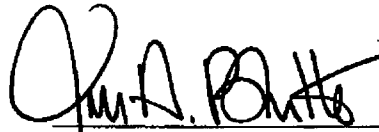
SWORN TO before me this 16th
day of July, 2013.
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 4/12/2016

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER) DOCKET NO.: 2001-GS-29-71, 72, 73, 346

State of South Carolina,)
Plaintiff,)
v.) CERTIFICATE OF SERVICE
Lakeithon M. Hall,)
Defendant,)

I, Tricia A. Blanchette, Attorney for Defendant, hereby certify that I placed in the mail this 17th day of July 2013, a copy of a Motion Pursuant to Rule 29(b), SCRCrimP, to Douglas Barfield of the 6th Circuit Solicitor's Office, at:

6th Circuit Solicitor's Office
ATT: Douglas Barfield, Esquire
PO Box 607
Lancaster, SC 29721



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

July 17, 2013

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LANCASTER, SC

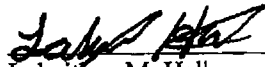
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LANCASTER	)	DOCKET NO.: 2001-GS-29-71, 72, 73, 346
State of South Carolina,	)	
Plaintiff,	)	
v.	)	AFFIDAVIT
	)	
Lakeithon M. Hall,	)	
	)	
Defendant,	)	
_____	)	

PERSONALLY appeared before me, Lakeithon M. Hall, who being duly sworn, deposes and says:

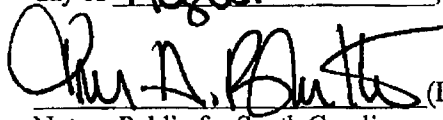
1. I am the Defendant in the above captioned case.
2. I affirm that on or around January 27, 2013, I received information from Tony Hall regarding my co-defendant Brandon Cunningham. As a result, it was my understanding that Tony Hall was informed by Brandon Cunningham on or about that same day that Mr. Cunningham's statement provided to law enforcement implicating myself in the robbery and shooting of Mr. & Mrs. Jury was a lie and was the result of a threat of a life sentence and the promise of time served and probation in exchange for his testimony. Thereafter, Shemicka Cauthen assisted in obtaining the Affidavit of Mr. Cunningham dated January 28, 2013.
3. I affirm that on or around July 23, 2012, I received information from Mario Buchanon regarding my co-defendant Calvin Peay. As a result, it was my understanding that Mr. Buchanon was informed by Calvin Peay that I was locked up for a crime I did not commit. Furthermore, Mr. Peay's statement provided to law enforcement implicating myself in the robbery and shooting of Mr. & Mrs. Jury was

a lie. Thereafter, Shemicka Cauthen and Pete Skidmore, private investigator, assisted in obtaining the Affidavit of Mr. Cunningham dated June 11, 2013.

4. I affirm that I have exercised all possible due diligence to obtain this evidence and that this evidence has been discovered within the last year.


Lakeithon M. Hall

SWORN TO before me this 22
day of August, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/12/2016

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2000-GS-29-71 thru 73 and 246
5
6 State of South Carolina
7 vs.
8 Lakeithon Hall
9
10
11 Lancaster, South Carolina
12 August 30, 2013
13 Before the Honorable Brian Gibbons
14
15 APPEARANCES
16 For the State: Doug Barfield
17 For the Defendant: Tricia Blanchette
18
19 Reported by: Michael C. Watkins
20 Official Court Reporter
21
22
23
24
25

1 Motion Hearing: 3

2 Certificate: 38

3

4 NO EXHIBITS

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1 MR. BARFIELD: Your Honor, this is Ms. Blanchette's
2 motion on a case from way back and I'll let her set it up
3 for you.

4 THE COURT: All right. Ms. Blanchette, if you would
5 please introduce the case for me and I'll be glad to hear
6 from you.

7 MS. BLANCHETTE: Thank you, Your Honor. We're here
8 today on the State versus Lakeithon Hall which was docketed
9 at 2000-GS-29-71, 72, 73 and 346. Does Your Honor have a
10 copy of the motion or would you like me to provide it to
11 you?

12 THE COURT: I do not. Would you hand it up to me?
13 Okay.

14 MS. BLANCHETTE: Your Honor, I have prepared a packet
15 for your review which includes the guilty plea
16 transcript, the sentencing transcript, the PCR application,
17 the PCR evidentiary hearing transcript, the PCR order, the
18 petition for writ of certiorari and the return for petition
19 for writ of certiorari and I have provided a copy of these
20 documents to the State.

21 THE COURT: Okay.

22 MS. BLANCHETTE: Your Honor, at this time if you would
23 like I could provide a procedural history of how we are here
24 today.

25 THE COURT: Please do that. Because obviously with

1 this much stuff I'm not going to be able to rule this
2 morning so I would like you to give me some type of basis
3 before I start reviewing everything. Go ahead.

4 MS. BLANCHETTE: Yes. Thank you, Your Honor. During
5 the 2001 February term of the Lancaster County grand jury
6 the defendant was indicted for two counts of murder, one
7 count of armed robbery, one count of possession of a firearm
8 during a violent crime. On December 9th of 2012 he appeared
9 before the Honorable Paul E. Short here at the Lancaster
10 County Courthouse and entered a plea of guilty as indicted.
11 He was represented by Ross Burton at the time and the State
12 was represented by Douglas Barfield. The Honorable Paul E.
13 Short sentenced the defendant to a total term of 38 years
14 and a direct appeal was not filed on his behalf. On
15 October 14th, 2003, he filed his application for post
16 conviction relief and a hearing was held on March 1st of
17 2006 in front of the Honorable John C. Hayes. The Honorable
18 John C. Hayes issued an order denying the application for
19 post conviction relief on March 2nd of 2006. The defendant
20 timely filed a notice of intent to appeal, which was
21 perfected by the Office the Appellate Defense and Wanda H.
22 Carter represented him. The South Carolina Supreme Court
23 denied certiorari on May 2, 2008. Thereafter he filed a
24 petition for writ of habeas corpus, he sought and a
25 certificate of appealability in the 4th Circuit Court of

1 Appeals and his petition for habeas corpus action ended on
2 October 4th of 2010, the detailed history of that is in the
3 motion pursuant to rule 29B. We are here today pursuant to
4 this motion and pursuant -- and specifically pursuant to two
5 affidavits that are attached, one of Calvin Peay and the
6 second of Brandon Cunningham which were both co-defendants
7 of my client. We intended to have both Mr. Cunningham and
8 Mr. Peavy here today to testify. Judge Kinard issued an
9 order for two attorneys to be appointed to advise them
10 before they testified, they were both subpoenaed at their
11 residence on the 23rd of this month by private investigator
12 Pete Skidmore but neither of them have shown this morning.
13 Therefore I would request that we be granted a continuance
14 for additional time to secure their presence at this
15 hearing.

16 THE COURT: Solicitor?

17 MR. BARFIELD: Object to the continuance, Your Honor.
18 This thing has been rolling now for several weeks. They
19 knew who these witnesses were obviously to be able to go out
20 and get affidavits, they obviously were able to get their
21 hands on them to serve subpoenas on them, they have not
22 appeared and I think the motion should fail for the
23 inability to prosecute.

24 THE COURT: All right. So the subpoenas were
25 personally served on the people?

1 MS. BLANCHETTE: Yes, they were, Your Honor. And Pete
2 Skidmore is here today if you would like to hear as far as
3 the service that he completed on the two of them.

4 THE COURT: As long as you will tell me that service
5 was perfected that's really all I need to know. Well, you
6 heard what the solicitor said that he opposed a continuance.
7 Let's just argue the motion now based upon the sworn
8 affidavits. Go ahead.

9 MS. BLANCHETTE: Your Honor, I will be happy to, I just
10 wanted to make sure I'd asked for a continuance on the
11 record.

12 THE COURT: Well, I'm going to deny the continuance to
13 the extent that their live testimony is necessary today, we
14 will go ahead and hear it. I have what their sworn
15 testimony purports to be, obviously the fact that they're
16 not here, I don't know what to draw from that but I will
17 consider all of that when I look over everything.

18 MR. BARFIELD: Let me say this, too. I want this thing
19 over with and done today certainly. I also, though, in
20 conjunction with my objection to the motion for a
21 continuance, I also object to proceeding based on
22 affidavits. The short and the long of this is, the two
23 people that she's got subpoenaed gave multiple statements
24 during this investigation which occurred in the year 2000.
25 Those statements were in -- contained various factual

1 scenarios and eventually each of those two witnesses
2 implicated Mr. Hall as the trigger man in this double
3 homicide. She's provided affidavits that she says they
4 signed and wants the Court to rule on a new trial motion
5 based upon those affidavits and I object to the Court
6 hearing this case based on affidavits. I'm going to hand
7 you a case in just a minute which I understand indicates
8 State versus Mercer. Your Honor, on a new trial motion
9 under a scenario kind of like this the Mercer court
10 recognized that the trial court hearing the motion is the
11 gatekeeper on the credibility issue concerning what this new
12 evidence is, and I think in this case in particular the
13 credibility of these two witnesses that are under subpoena
14 that did not appear is crucial to whether you would be
15 inclined to grant a new trial or not. And I don't think the
16 credibility of these two witnesses can be explored at all
17 based on reading a one paragraph affidavit that each of them
18 apparently prepared and has been submitted to you, so I just
19 don't think you can rule on this motion which requires you
20 to be the gatekeeper on credibility issues --

21 THE COURT: Well, can't I make an adverse inference to
22 the fact that they did not show up under subpoena as to
23 their credibility?

24 MR. BARFIELD: I certainly think that's an inference
25 that can be made, but I don't think you can adequately judge

1 their credibility unless they're on the witness stand and
2 they're asked questions by Ms. Blanchette and by me and get
3 to be confronted with the prior multiple statements that
4 they gave in this case.

5 THE COURT: Okay.

6 MR. BARFIELD: I just don't see how you can decide
7 whether they even meet the threshold of the credibility
8 standard without hearing them.

9 THE COURT: I understand. Ms. Blanchette, let me hear
10 from you on that.

11 MS. BLANCHETTE: Yes, Your Honor. I think by asking
12 the Court to assess credibility the State is essentially
13 asking the Court to hear the motion, so moving for failure
14 to prosecute or dismissal, if you're going to make a
15 credibility assessment you will be hearing the motion and we
16 will be going forward on the motion.

17 THE COURT: Well, if I make a credibility assessment
18 that puts in the issue of whether or not a continuance is
19 necessary because the witnesses are not here which brings up
20 the whole adverse inference thing as to whether or not I can
21 consider that in support of a motion or not.

22 MR. BARFIELD: Let me kind of lay it out this way, I
23 interrupted, I'm arguing kind of out of both sides of my
24 mouth. I don't want it continued but I don't want you to --
25 but I don't want you to take it up on affidavits either, and

1 I'm arguing that you need the witnesses here to be able to
2 judge their credibility.

3 THE COURT: Well, I'm looking at rule 29B and -- is
4 there anything -- do y'all have any case law that says that
5 it has to be by way of -- the after-discovered evidence has
6 to be presented by way of live testimony?

7 MS. BLANCHETTE: Your Honor, I actually have a packet
8 of cases that I plan to hand up, Mercer is in here so you
9 will have two copies of that. But State versus DeAngelis is
10 in here, and that case was a guilty plea case where there
11 was an after-discovered evidence motion filed pursuant to
12 Rule 29 and it was decided based solely upon three
13 affidavits and that was reviewed and upheld by the higher
14 court. So I would submit pursuant to State versus DeAngelis
15 this Court does have jurisdiction or power or whatever word
16 we would like to use to decide the case based solely upon
17 the affidavits. Furthermore I have both parties here that
18 secured the affidavits if the Court would like to hear from
19 them today.

20 THE COURT: All right. On -- I said two words that you
21 may have cringed about and I wanted to protect your record
22 and hear you argue about that if you want me to, adverse
23 inference.

24 MS. BLANCHETTE: Your Honor, in State versus Mercer and
25 all -- a number of the cases that I'm going to be handing up

1 it does explain that the trial court or the lower court is
2 the gatekeeper for assessing credibility. It is up to this
3 Court on how we would like to assess credibility. But I
4 would like to point out Mercer also says that a witness may
5 lack persuasive credibility but still create a reasonable
6 doubt, so in doing that gatekeeping function it's not to
7 determine whether or not the testimony is itself credible,
8 it's whether or not that testimony or the information
9 contained in these affidavits could present a reasonable
10 doubt. I would just like to clarify that based upon the
11 Mercer case and I hope that that answered your question.

12 THE COURT: Okay. Solicitor, you had your hand up?

13 MR. BARFIELD: I did. She just gave me the DeAngelis
14 case a minute ago which deals with hearing a motion like
15 this based on affidavits, I have not read every word of it.
16 But it appears to me that in the DeAngelis case there wasn't
17 any objection to having the motion heard by affidavit. I
18 don't think the case addressed the merits of whether you can
19 or cannot do a motion for a new trial based on
20 after-discovered evidence solely on affidavits. I don't
21 think anybody objected in DeAngelis and I do object.

22 THE COURT: All right. Y'all give me just a second on
23 this micro issue.

24 (Break in proceedings.)

25 THE COURT: Taking into consideration that the

1 subpoenaed witnesses who offered these affidavits were
2 served and for whatever reason are not here this morning, I
3 am going to consider all of this under the ambient of
4 deciding their credibility, what their testimony may have
5 been if they would have been here going by what they said in
6 their affidavits as well. And in making that decision I've
7 read rule 29B and the case law that y'all handed up. I
8 don't see where there's any black letter law saying it has
9 to just be live testimony for whether or not to consider a
10 motion for a new trial on after-discovered evidence. I also
11 read in conjunction with Rule 59 in the South Carolina Rules
12 of Civil Procedure where motions for new trials are based
13 upon affidavits. So I'm going to allow the defendant to
14 proceed with the motion this morning. I denied the
15 continuance so I will let her proceed with the motion and
16 we'll go forward that way. So let's argue the merits of the
17 motion.

18 MS. BLANCHETTE: Thank you, Your Honor. First I would
19 like to address a number of the cases that I handed up and
20 then I'll apply those cases to the facts that we have here
21 today. First I handed up a copy of State versus Fann
22 (phonetically) and Tatum versus State which set out the five
23 factors that we have to establish to prevail on this motion.
24 One, that the evidence is such that it would probably change
25 the result if a new trial were granted. It has been

1 discovered since the trial, it could not in the exercise of
2 due diligence been discovered prior to trial, and is
3 material and is not merely cumulative or impeaching. I've
4 already referenced the case of the State versus DeAngelis,
5 but I would like to point out to the Court besides how that
6 case was just decided based upon affidavit, the Court does
7 point out that the motions for new trials are looked upon
8 with favor, but they did note that however there are cases
9 that motions of this character should be entertained and
10 granted in order that wrongs be done and remedied, and
11 that's what we ask the Court to do here. I already pointed
12 out in State versus Mercer that this Court is the gatekeeper
13 for the credibility assessment, but the credibility
14 assessment as they clarify in Mercer and a number of other
15 cases that are cited there is that it shouldn't just be
16 whether or not the witness lacks persuasive credibility,
17 it's whether or not that testimony that we are presenting
18 through affidavits could create a reasonable doubt. I also
19 provided the Court a copy of Johnson versus Cato, which is a
20 South Carolina Supreme Court case out of 2001. That
21 involves a guilty plea case but it was heard in the Supreme
22 Court's original jurisdiction because it was on a stay of
23 execution. There they had a codefendant who had given
24 numerous statements, had suffered from well documented
25 mental health history and the Court denied based upon her

1 credibility. But Justice Pleicones gave a very interesting
2 descent there, and he said -- he goes into the fact that you
3 don't have to be convinced as an absolute matter of truth of
4 the new evidence before granting a new trial, you need to
5 only find that the evidence, and in this case these
6 affidavits, are worthy of belief. He went on to explain
7 that a jury should have the opportunity to determine the
8 extent the testimony or the affidavits would be credible or
9 make a reasonable doubt. And he gives a quote that I
10 included in the Rule 29 motion, I would just like to read it
11 into the record, he says citing to Arizona versus Pulamente
12 (phonetically), which I provided a copy of that also to the
13 Court. He states, "A confession is like no other evidence.
14 Indeed the defendant's own confession is probably the most
15 probative and damaging evidence that can be admitted against
16 him. The admission of a defendant comes from the actor
17 himself, the most knowledgeable and unimpeachable source of
18 information about his past conduct. Certainly confessions
19 can have profound impacts on the jury, so much so that we
20 should just justifiably doubt its ability to put them out of
21 its mind even if told to do so." And what we have in these
22 two affidavits are two confessions by the co-defendants
23 stating that in the interest of looking out for themselves
24 they implicated Mr. Lakeithon Hall and that he was innocent
25 and not involved in these crimes. Finally I provided the

1 Court a copy of Newsome versus United States. There again
2 they deal with a codefendant that had changed his testimony
3 a number of times, and I just want to read one line from
4 that where it says that every practicable precaution should
5 be taken to ensure that the defendant -- or that the verdict
6 really speaks the truth, for if it does not an innocent man
7 may be imprisoned for years. I would ask that the Court
8 review the entire analysis in there, but I thought that note
9 was worth pointing out. What we have here essentially is
10 these two affidavits of co-defendants that changed their
11 statements. Their original statements were that they
12 weren't even there, and then eventually in the course of
13 four statements for one and five statements for the other
14 they chose to implicate Mr. Hall. I think what should be
15 noted for the Court and for the record is that Mr. Hall
16 never gave statements in this case, he didn't confess to
17 this crime and he has maintained his innocence. Also I
18 provided the Court a copy of the PCR -- and I see the
19 Court's questioned look. He didn't --

20 THE COURT: I mean, he pled guilty and I'm sure there
21 was a plea colloquy where the Court -- I haven't read the
22 transcript yet but I appeared in front of Judge Short many
23 times and I remember all of the questions he used to ask me
24 when I was representing people and my clients, so I'm sure
25 he said -- and hadn't this PCR been dealt with and

1 everything like that?

2 MS. BLANCHETTE: Yes, sir, Your Honor. And I guess to
3 qualify my statement, I ask that you review the evidentiary
4 hearing where he explains why he pled guilty. He did take
5 the stand at the PCR hearing and explains why he pled guilty
6 and that he is, in fact, innocent. Also at the evidentiary
7 hearing because this Court has to essentially weigh the
8 evidence and determine if this new information would affect
9 the outcome, there are three witnesses that come and testify
10 at the evidentiary hearing that they gave statements to law
11 enforcement or spoke to law enforcement, and that Mr.
12 Lakeithon Hall was not present and he was not at the scene
13 when the shooting occurred. So I would ask also that when
14 the Court is reviewing the five prongs that we must show
15 that you would consider the evidentiary hearing testimony
16 from the PCR and those witnesses that testified under oath
17 that Mr. Hall was not involved and they were eye witnesses
18 to this. Now, Your Honor, I do have Mr. Hall here today if
19 the Court would like to hear from him. Pursuant to
20 DeAngelis we did provide an affidavit of my client because
21 DeAngelis was denied because the fact that the defendant did
22 not provide an affidavit. If the Court doesn't want to hear
23 from him I have a further affidavit that he has completed
24 just further addressing how this is newly discovered and how
25 in the exercise of due diligence he could not have

1 discovered it before. It goes to the timeline as far as
2 when he discovered the information contained in the
3 affidavits.

4 THE COURT: Okay. Well, hand up the affidavits because
5 I'm making this decision based upon affidavits, one more
6 won't hurt. Anything else?

7 MS. BLANCHETTE: Your Honor, if I could just beg the
8 Court's indulgence one moment to just confer with my client,
9 please.

10 THE COURT: Okay.

11 (Break in proceedings.)

12 MS. BLANCHETTE: Your Honor, just briefly. I wanted to
13 clarify that I only provided you a portion of the appendix.
14 The reason being -- and this causes me some concern -- is
15 when I received the appendix that was submitted by Wanda
16 Carter on his petition for writ of certiorari filed on his
17 PCR, every other page of his guilty plea and his sentencing
18 hearing was missing. So when our Supreme Court reviewed the
19 appendix on his PCR appeal they only had every other page of
20 the record, I tried to read it and it didn't make sense. So
21 it really calls into question to me whether or not he had a
22 proper appeal of his PCR. I know we're not here on that
23 matter, I just wanted to explain why I only gave you a
24 portion of the appendix is because I had to get the guilty
25 plea and sentencing hearing separate so that you would have

1 every page. One other matter is I know that we have both
2 referenced them, I do have a copy with me here today of the
3 statements that were given by both of the co-defendants
4 along with a polygraph interview of Mr. Peay. And then a
5 lot of Mr. Peay's statements were verbal, so I also made a
6 copy of the police report summarizing all of those verbal
7 statements. If that would be of benefit to the Court I do
8 have a copy of those that I would provide.

9 THE COURT: Okay. Let me hear what the solicitor has
10 to say and then I'll come back to you on that.

11 MS. BLANCHETTE: Thank you, Your Honor.

12 THE COURT: Solicitor?

13 MR. BARFIELD: Of course I want you to see the prior
14 statements that these witnesses made, too, if there's any
15 issue with that then that kind of --

16 THE COURT: All right. I want to see them. Have you
17 got them for me?

18 MR. BARFIELD: I've got them right here. Let me do
19 this and then I'll give you the statements, all right? If
20 you will indulge me, I think you need -- you'll read all of
21 this stuff later but I want you to know it now, the factual
22 scenario that led to these two murders. Can I give you a
23 little summary of the facts of this case?

24 THE COURT: Yes, sir.

25 MR. BARFIELD: This case occurred on November 20th of

1 2000, it occurred in the afternoon in the daylight hours in
2 Pardue Street Apartments. The victim -- the two victims of
3 the deaths were Sheila Jury, and I'll explain that in a
4 minute, Tommy Jury and Sheila Jury were husband and wife.
5 Sheila Jury was eight months pregnant, the child was to be
6 named also Sheila J[REDACTED]. They were in a car and they ended
7 up in the parking lot of Pardue Apartments, I don't need to
8 get into detail of where they had been and where they were
9 going, but they got twisted up in Pardue Apartments. In
10 Pardue Apartments there was a group of young men, six or
11 eight or more young men hanging around outside in Pardue
12 Apartments. At some point these young men, or some number
13 of them approached the car and a conversation was had and
14 the end of the story was that one of these young man, we say
15 Mr. Hall, fired a shot into the car at Mr. Jury, missed him,
16 struck Ms. Jury who was in the passenger seat in the back of
17 the left shoulder, she died at the hospital as a result of
18 those injuries. They did an emergency C-section on the baby
19 and flew the baby to Charlotte and the baby died as a result
20 of depravation of oxygen essentially from the mother's death
21 before the baby could be taken and treated. Police swarmed
22 the two areas. The car pulled out of the parking lot at
23 Pardue and was stopped by sheriff's deputies a short
24 distance away, that's one scene where the car was, the other
25 scene was out there in Pardue Apartments. When police got

1 to the area in Pardue some of these young men were still out
2 there and a bunch of them were rounded up and taken into
3 custody and taken to the police department and were
4 questioned and gave statements. Now, let me tell you what
5 we have that says Lakeithon Hall did these two killings. We
6 have number one, Tommy Jury who gave a statement, the driver
7 of the car who gave a statement and he said that the
8 confrontation involved the young man, and that the one with
9 the gun was right there outside the drivers window of his
10 car which was two-thirds of the way down within a foot or
11 two of his car and he saw the person that pulled out the gun
12 and shot into the car. He didn't know the person, he
13 couldn't use a name but he picked that person, who was
14 Lakeithon Hall, out of a lineup provided -- prepared by the
15 police department several days later. So we have Tommy Jury
16 saying Lakeithon Hall shot and killed his wife and his
17 child. Now, we also have the two witnesses that she had
18 subpoenaed here today and they are Brandon Rodsheek
19 (phonetically) Cunningham and Calvin Lamar Peay. And I'm
20 going to hand you a batch of information which includes the
21 accumulated statements of Cunningham and Peay. Ms.
22 Blanchette needs me to tell you what statements I gave you,
23 I don't have an extra copy to give her.

24 THE COURT: Brandon Cunningham and Calvin Peay.

25 MR. BARFIELD: This is what I got, I'll just put it on

1 the record. I got a Miranda warning from Brandon Cunningham
2 on 11-28, 17:45, followed by a three page handwritten
3 question and answer statement. And then in the same batch I
4 have Brandon Cunningham, another Miranda warning 11-20 of
5 2000 at 18:36, followed by a five page handwritten
6 statement. And then I have another Miranda warning with
7 Brandon Cunningham, 11-22 of 2000 at 14:22, followed by a
8 three page statement, and that's what I submitted on Brandon
9 Cunningham. I'm going to come back and talk about them in a
10 minute. And then on Calvin Peay I have a Miranda warning,
11 11-20 of 2000 at 17:51 followed by a three page handwritten
12 question and answer statement. I have a Miranda warning on
13 11-20 of 2000 at 20:35, and that was followed by an audio
14 recorded statement which I have the tape for in the evidence
15 box over here and I will summarize what that says in a
16 little bit. Then I have a Miranda Warning at 11-21 of 2000
17 at 13:28 p.m. which also included a video and audio recorded
18 statement which we have the tape of and the box over here,
19 and I'll summarize that for you in a little bit. Then I
20 have an 11-27 of 2000 Miranda warning at 21:06 p.m. followed
21 by a one page statement which is handwritten. So Your
22 Honor -- and I'm going to talk about Cunningham and Peay in
23 just a minute. We also have in this case so that you will
24 not believe or conclude that the only two people who
25 implicated Lakeithon Hall in the murder of Sheila Jury and

1 her daughter were Cunningham and Peay, I want to also point
2 out to you that witness Heyward Watts gave statements which
3 I'm going to hand up also, November 20 of 2000 at 17:51
4 Miranda warning, did not result in a statement apparently.
5 December 11th of 2000, Heyward Watts 11:15 a.m. Miranda
6 warning followed by a three page handwritten statement which
7 I'm also going to hand up to you. So to again summarize
8 it -- I will talk about Cunningham's and Peay's statements
9 in just a minute, but to summarize what we have that tells
10 you that Lakeithon Hall did the killing in this case is that
11 Tommy Jury, the husband of the two murdered victims who was
12 a foot or two away from the muzzle of the gun, picked
13 Lakeithon Hall out of a lineup, number one. Number two,
14 Calvin Peay said, "I saw Lakeithon Hall shoot into the car"
15 -- presumably -- there was only one shot fired in this case.
16 There was five or six guys charged with murder but one gun,
17 one shot, Lakeithon Hall is the one who ended up pleading on
18 the murder. Calvin Lamar Peay says Lakeithon Hall is the
19 shooter. Brandon Cunningham says that Lakeithon Hall is the
20 shooter, and then Heyward Watts also says that Lakeithon
21 Hall is the shooter. Now, Calvin Peay also says in his
22 statements that after the shooting he ran -- Calvin Peay ran
23 to his apartment followed by Lakeithon Hall who comes in and
24 turns the gun over, and the gun is actually found in Calvin
25 Peay's bedroom between the bed -- between the mattress and

1 the box springs. A bullet was recovered out of the body of
2 Sheila Jury, SLED compared the bullet -- test-fired the gun
3 and compared the test-fired bullets to the gun and the
4 bullet which was taken out of Sheila Jury's body. We have
5 the murder weapon, that's the bottom line, we have the
6 murder weapon. So let me go back now and just summarize if
7 I can from the statements what Cunningham, Peay and Watts
8 said. Cunningham's first statement, the 11-20 of 2000
9 statement at 17:45 basically said he was in Pardue but
10 denied any knowledge of anything concerning the shooting of
11 the Jurys. "Did you hear anything that sounded like a gun
12 shot? No. Do you have any information that would help?
13 No." Second statement, 11-20 of 2000 18:36, he does at that
14 point admit that the car containing the Jurys drove into the
15 parking lot. He indicates in that statement that the female
16 got out of the car and that is inconsistent with what he
17 said later and inconsistent with what anybody else in this
18 case said. There's nothing other than that one blurb in one
19 statement that says the female got out of the car. He also
20 says in that second statement that at some point he hit
21 the -- Cunningham himself was up at the window of the car
22 and that he got into sort of an argument with Mr. Jury and
23 that he hit Mr. Jury. Nobody else in the case, including
24 Mr. Jury, says he was struck by anybody, so I submit to you
25 that Brandon Cunningham is not being truthful and consistent

1 in that. Also in this same statement he was asked, "Do you
2 know who fired the gun?" He said, "No." He was asked, Do
3 you know anything more about what happened? No. Do you
4 anything to add? No." That's the second statement of
5 Brandon Cunningham. Third statement of Brandon Cunningham
6 at 11-22 of 2000, 14:22 in the afternoon, he's getting
7 closer to telling the truth we submit at this time. He
8 indicates that the man was driving the car, the white lady
9 was in the passenger seat and that statement never says
10 anything about the lady getting out of the car. He said in
11 that statement that Keithon Hall shot at the dude. In
12 another page of that statement he indicates who he was out
13 there with and he says Keithon walked over to the car on the
14 drivers side, leaned in the car and he heard the gunshot
15 while Keithon was leaning into the car. So that's what
16 Brandon Cunningham says. Of course, now Brandon Cunningham
17 today says in his affidavit, "I lied, Keithon Hall wasn't
18 even out there, Montenyo (phonetically) Stevens did the
19 killing." So I submit to you there are huge credibility
20 issues with Brandon Cunningham in these multiple statements
21 that he gave all of the way leading up to and including the
22 affidavit that has been submitted to you today. He's
23 absolutely an in-credible witness, not to be believed for
24 anything he says. I'm glad I didn't have to try this case
25 frankly because I would have had this credibility issue

1 myself with Brandon Cunningham to deal with, and I submit
2 that today on a motion for a new trial his credibility
3 should be judged accordingly. Calvin Peay. Your Honor,
4 Calvin Peay in his statement on 11-20 of 2000 at 5:51 p.m.
5 or 17:51, basically disclaimed any knowledge of any shooting
6 in Pardue Apartments. He said he was in Pardue Apartments.
7 "Did you hear any gunshots? No." He indicated that he was
8 with Brandon Cunningham and another fellow named Darryl
9 Alexander. "Do you have any information that might help?
10 No." Denied any knowledge of any shooting in Pardue. Later
11 on that evening 11-20 of 2000 at 8:35 p.m. he gave a consent
12 recorded statement, and in that statement he then that night
13 says Lakeithon Hall is the shooter. He indicated that the
14 car came in, Keithon Hall approached the car, said -- came
15 back to the group of guys standing in Pardue, said he was
16 going to try to get them, meaning try to rob them. He went
17 back up to the car and was at the drivers side window,
18 pulled a gun shot one time. In that statement he says Peay,
19 himself, followed by Lakeithon Hall ran back to Peay's
20 apartment. That Keithon, or Lakeithon Hall had the gun,
21 pulled it out and put it under Mr. Peay's mattress. He says
22 Keithon Hall, Lakeithon Hall, brought the gun into his
23 bedroom, pulled it out and put it under Mr. Peay's mattress.
24 Then again on the next day on 11-21 of 2000 at 1:28 p.m.
25 Calvin Lamar Peay was questioned again, this time

1 audio/video recorded and gave a statement, recorded
2 statement saying essentially the same thing that he had said
3 about the mechanics of how the shooting occurred. He said
4 the car came in, there was some discussion between and among
5 the guys in the crowd and some interaction with Mr. Jury in
6 the car. He said after Lakeithon Hall had been up to the
7 car he came back to the group, said he was going to try to
8 get them, meaning rob them. At this point Calvin Peay
9 admitted, Calvin Peay admitted that the gun being used to
10 kill Ms. Jury had been supplied by Calvin Peay. Calvin Peay
11 told investigators that he had found the gun a day or two
12 before in the woods, had kept it at his house, the day this
13 shooting occurred before he went outside that day he put it
14 in his pocket and he had it on him when the group was
15 standing outside in Pardue when the Jury car came into the
16 parking lot. He said as he was out in the group after
17 Lakeithon Hall had been up to the car and had some
18 discussion with Mr. Jury, Lakeithon Hall came back up to him
19 and asked -- said he was going to get them, meaning rob
20 them, and asked Calvin Peay for the gun and Calvin Peay
21 provided Lakeithon Hall the gun, and Lakeithon Hall went
22 over to the car, stood outside the drivers side window,
23 pointed the gun into the car or toward the car and fired a
24 shot. And he again said at that time he, Calvin Peay and
25 Lakeithon Hall, ran back to Calvin Peay's house. He said

1 Lakeithon Hall gave Calvin Peay the gun and Calvin Peay put
2 it under the mattress in his bedroom. And then despite all
3 of that he sends a note to the investigator and about a week
4 later gets questioned again on 11-27 -- no, excuse me, same
5 day, 11-22 of 2000, gives yet another statement saying that
6 he didn't provide Lakeithon Hall the gun, that Montenyio
7 (phonetically) Stevens provided Lakeithon Hall the gun, and
8 the statement is miswritten, but it says -- and you've got a
9 copy of it -- Keithon Hall got B from Montenyio Stevens, I
10 think he means to say got the gun from Montenyio Stevens. I
11 heard -- he said he didn't actually see Lakeithon Hall get
12 it from Montenyio Stevens but he said in the statement, "I
13 heard him ask Montenyio Stevens for the gun. And after
14 Keithon Hall got the gun what did he do? He went back over
15 to the car." So again, we've got Calvin Lamar Peay who has
16 given multiple statements each of which is inconsistent with
17 the other in certain details, and yet today again has
18 provided another affidavit for the Court's consideration
19 saying, "I lied, Lakeithon Hall wasn't even out there and
20 had nothing to do with this. Again, his credibility --
21 there is no credibility as to Calvin Lamar Peay based upon
22 the multiple statements that he's given which are
23 inconsistent with each other. And also, Your Honor, there's
24 just no credibility to anything that he said. Your Honor,
25 Mr. Watts gave a single statement on the night in question,

1 11-20 of 2000 -- no, excuse me, was questioned on 11-20 of
2 2000, apparently didn't say anything. Was questioned on
3 December 11th of 2000 and gave a two page statement which
4 you have a copy of which says Brandon Cunningham walked to
5 the drivers side, Lakeithon -- later on in the statement
6 says Lakeithon, who had walked around the side of the
7 building a short time earlier, circled around behind
8 Brandon, Lakeithon walked up directly behind Brandon,
9 Brandon moved quickly to his left as if Lakeithon had pushed
10 him. "I saw Lakeithon extend his right arm and hand and
11 point it directly at the green car, I heard one gunshot from
12 where Lakeithon and Brandon were standing. Lakeithon,
13 Brandon and Calvin ran through the middle of the apartments
14 towards Calvin's apartment." So we have again two people
15 who are not involved in this motion today for a new trial,
16 Mr. Jury and Heyward Watts, who say Lakeithon Hall was the
17 shooter. Now, let me let you understand this, too,
18 concerning the credibility issue. We ended up having -- six
19 people actually got charged in this case and all of them
20 were charged as principles, and of the two that you're here
21 today considering the credibility of, Brandon Cunningham
22 pled guilty to misprision of a felony and some unrelated
23 charges, and received a five year sentence suspended to two
24 years, followed by two years of probation. There's some
25 information in the material that Ms. Blanchette handed up to

1 you, and I think in Brandon Cunningham's affidavit he says
2 that he only did what he did because Barfield said he was
3 going to give him probation. Let me point out a couple of
4 things about that. These statements from all of these
5 witnesses were taken by law enforcement beginning the day
6 this incident occurred. Nothing the State -- the
7 solicitor's office did in the prosecution of this case
8 produced additional statements. It wasn't like these guys
9 were not talking and I went to the police department and
10 said, "What have we got to do to help these guys to get them
11 to talk?" They talked before Barfield ever got involved in
12 this thing. All of these statements that you've been handed
13 up were the result of the police department investigation,
14 not the result of plea bargains made with these defendants.
15 Obviously when it came time to get this case ready for court
16 I wanted people on board to testify to the truth, and the
17 truth was that Lakeithon Hall did these killings. I didn't
18 get anybody to produce information that was going to be
19 offered as testimony at the trial. I offered them plea
20 deals for them to testify consistent with the statements
21 that they had given which implicated Lakeithon Hall. So
22 nothing I did to try to work out pleas on this case produced
23 statements or information. That's important. Brandon
24 Cunningham pled guilty, he had been in jail for a couple of
25 years so it might have been effectively a time-served

1 sentence but he got an active two year sentence, he had
2 pretty much done it by the time he pled as I understand it.
3 Calvin Peay pled guilty to accessory before attempted armed
4 robbery, and he also pled guilty to possession of a pistol
5 under 21 for his possession of the pistol and the provision
6 of the pistol to Lakeithon Hall which became the murder
7 weapon, he got an eight year sentence on the accessory
8 before the armed robbery. Your Honor, I would also --
9 Ms. Blanchette, and the Court correctly recognized that I
10 think it's a mischaracterization, Ms. Blanchette said
11 Lakeithon Hall never admitted anything. Well, he didn't.
12 He wasn't caught until like nine days later. He was
13 developed as a suspect either that night or the next day
14 and, of course, the police were looking for him, and I can't
15 say that he was running or hiding but he was not found for
16 nine days later. He was arrested, I think, on November 29th
17 and this thing happened on November 20th. That is to me
18 consistent with a guilty man, that guy that pulled the
19 trigger, taking off. He did not give a statement to the
20 police during this investigation, but he, in fact, did give
21 a statement. Because on December 6th or December 9th, I
22 can't remember which it was, in 2002 he stood before Judge
23 Short and you read that transcript and it is a typical Judge
24 Short guilty plea, and it is -- obviously it was a very
25 serious case because it was a double murder, and it was

1 obviously one that judges would call their long form guilty
2 plea proceeding and Judge Short asked every single question
3 he should have asked very clearly, very concisely, went
4 through the whole litany of questions necessary to conduct a
5 proper guilty plea in a case such as this. And Lakeithon
6 Hall stood there with his lawyer question after question and
7 answered every question appropriately, had no questions
8 about what his rights were, listened to me in very great
9 detail recite the facts of this case and listened to Judge
10 Short very clearly ask him did you hear what Barfield said
11 you did and is this what you did, and did you do this and
12 are you guilty of this, and are you pleading guilty. He
13 confessed at his guilty plea. And the courts have
14 recognized the solemnity of a guilty plea and the reluctance
15 to upset guilty pleas especially when there's no technical
16 issue with the way the guilty plea was done. This then
17 young man stood in front of Judge Short and took it. He
18 admitted it. He admitted doing what I said and what the
19 police investigation said he did and what these witnesses
20 said he did. And in addition to that, in addition to
21 admitting to doing what we said he did he apologized to
22 Tommy Jury for what he had done. He looked at the man in
23 the courtroom and apologized to him for killing his wife and
24 his child. There's no better confession to that, number
25 one, under oath in a courtroom at a guilty plea proceeding

1 when you're fixin' to go to prison, there's no better
2 confession than that. The whole stuff about the plea not
3 being voluntarily given was all hashed out in the PCR which
4 was denied and which was appealed and which was denied,
5 that's all over and done with. And I submit to you that
6 there's an absolutely no reason in this case not to accord
7 truth to Hall's statements under oath in front of Judge
8 Short on December of 2002 when he pled guilty. This was not
9 a trial where he denied doing what he was accused of doing,
10 this was not a trial that was contested and I brought in
11 witnesses who proved up what we said he did. This was a
12 guilty plea, and he didn't appeal his guilty plea. Why
13 didn't he appeal his guilty plea? Because it was a good
14 guilty plea, because it was a truthful guilty plea. Now,
15 they're coming in here today with two affidavits from two
16 guys who gave multiple statements when this investigation
17 was fresh and they're now saying in these new affidavits,
18 "We lied." Well, they lied throughout this thing, no
19 question about it. I don't know whether they're lying today
20 or lying then, but the point is they have absolutely no
21 credibility based upon the inconsistencies and the various
22 statements they've given, and also when you throw on top of
23 that the other witnesses who say Lakeithon Hall did this,
24 namely Tommy Jury and Heyward Watts. Let me see if there is
25 anything else before I sit down. It's also interesting to

1 me to note that I think Brandon Cunningham in his affidavit
2 today says Lakeithon Hall didn't have anything to do with
3 this and wasn't out there. And by the way, guess who did do
4 it? Montenyo Stevens. Judge, you need to know that
5 Montenyo Stevens was shot and killed several years ago
6 himself in a case within the city of Lancaster and it just
7 almost defies my imagination that once again Montenyo
8 Stevens has come up after he's dead and has been named as a
9 suspect in something. It's just real convenient that
10 Brandon Cunningham can come in here and give us an affidavit
11 saying the dead man was the one who killed these two people
12 after 12 years when this investigation got kicked off and
13 not saying anything about it for all of that time. I think
14 that's all I've got, Your Honor.

15 THE COURT: Thank you, Solicitor. Yes, ma'am, brief
16 reply? I've got a lot of reading I need to do and I've got
17 other things to do this morning.

18 MS. BLANCHETTE: Yes, Your Honor, brief reply and then
19 I do think I need to point out some of the discovery issues
20 that I failed to address earlier in the record. I would
21 just like to point out that the solicitor as an officer of
22 the court said he had no involvement in brokering these
23 statements that evolved and that these evolved and got
24 closer to the truth. What I would submit to this Court is
25 these statements evolved and got closer to getting these two

1 individuals out of trouble themselves. As he stated, they
2 were charged as principals in this case, that means they
3 were facing 30 to life. The solicitor has pointed on the
4 record the offers that were extended to them, those are very
5 generous offers if he was truly questioning their
6 credibility and saying that he did not want to have to use
7 them at trial. For some reason, I don't know that that was
8 explained in the solicitor's presentation, they were
9 extended those offers and that's a matter that I would like
10 the Court to consider. Furthermore, the question
11 essentially in the case law that I've submitted and already
12 discussed is it's a question of whether this new information
13 could provide a reasonable doubt for the jury and we submit
14 that it does. Finally, I don't feel that I properly
15 addressed for the record the discovery of this, so I would
16 like to point out that in the affidavit that I submitted
17 Mr. Hall indicates that he was provided this information
18 regarding Brandon Cunningham on January 27, 2013, and
19 regarding Mr. Peay on July 23rd. And that should -- I'm
20 sorry, that should state -- no, it's correct, July 23rd of
21 2012.

22 THE COURT: Hold on a second. So the new information
23 that could not in the exercise of due diligence have been
24 discovered prior to the trial, or the new evidence that
25 could not have been discovered with the exercise of due

1 diligence prior to the trial was that two of the
2 codefendants changed their stories?

3 MS. BLANCHETTE: That two of the codefendants had
4 improperly implicated Mr. Hall as the shooter in this case.

5 THE COURT: How often have you tried cases, ma'am,
6 where the codefendants don't change their stories numerous
7 times?

8 MS. BLANCHETTE: Well, Your Honor, as an officer of the
9 court I have to be honest, I don't try cases, I barely come
10 to general sessions. I do post-conviction relief and direct
11 appeal. So in reviewing records I have seen it, but I do
12 not try cases, I don't do any frontline defense so I can't
13 honestly answer that one. But I just wanted to point out in
14 the affidavits we've established the dates that he was given
15 that information, then he used Shameka Cochran
16 (phonetically) who is here in the courtroom and Investigator
17 Pete Skidmore to obtain the affidavits that are before the
18 Court today. I would also like to point out that regarding
19 Mr. Peay just as to this issue of an exercise of due
20 diligence, could it have been discovered before trial. At
21 the PCR hearing his plea attorney testified that he spoke
22 with Mr. Peay and he does not indicate that this information
23 was given to him. So I would say that Ross Burton's
24 testimony at the PCR helps establish the fact that this is,
25 in fact, newly discovered evidence. Unless the Court has

1 any questions for me based upon what was presented, I will
2 honor your request to be brief --

3 THE COURT: Well, let me ask you this, and I don't -- I
4 guess this is a question, I'm trying -- I'm having a hard
5 time wrapping my mind around. One of the five factors,
6 factor number three, I'm looking at your Mercer case. In
7 order to prevail at a new trial motion, number three, you
8 could not in the exercise of due diligence have discovered
9 that evidence prior to the trial. So you're telling me
10 Mr. Burton could not have discovered these two witnesses'
11 credibility issues prior to trial?

12 MS. BLANCHETTE: I believe that he could not have
13 discovered the statements that are in the affidavit, that
14 they're saying --

15 THE COURT: Well, of course not, that's ten years later
16 they're making these statements now. Do you see where I'm
17 coming?

18 MS. BLANCHETTE: I do, Your Honor. And that's why I
19 pointed out Ross Burton's testimony at the PCR hearing where
20 he says he spoke to Mr. Peay. I think if Mr. Peay would
21 have given him this information at this time he would have
22 known it and he would have proceeded, so I think this is
23 information that Mr. Peay was not volunteering nor was Mr.
24 Cunningham. Because my client through his affidavit, and if
25 the Court would like to hear from him, submits that if he

1 would have known this he would have proceeded to trial, he
2 would have known their position based upon these affidavits.

3 THE COURT: Got it. Anything to wrap it up?

4 MR. BARFIELD: To wrap it up very quickly. The five
5 elements, or the five prongs of a successful new trial
6 motion based on after-discovered, evidence, I don't think
7 two of them were met, in particular I don't think of them
8 are met, I'm not conceding anything. But prong one is that
9 the new evidence would probably change the result if the new
10 trial were granted. I think this is a case where because of
11 the credibility issues the results of the trial likely would
12 not change if this information were now presented to a jury.
13 And I support that with the argument that even had this case
14 gone to trial when it was scheduled to go to trial, the
15 witnesses that she's submitting affidavits from today had
16 already given inconsistent statements and there is just no
17 credibility to what they're saying. I don't think it would
18 change the trial results. Element five is cumulative or
19 impeaching. I don't argue that it's cumulative but I think
20 it clearly is impeaching. The witnesses are impeaching
21 themselves with these subsequent affidavits and I think it's
22 just additional impeaching evidence which does not meet the
23 prong for a successful new trial motion. Thank you.

24 THE COURT: Thank you. To the attorneys, what I'm
25 going to do is I'm going to take this matter under

1 advisement as I indicated at first, I have a lot of stuff to
2 read. I will be in touch with both of you maybe some time
3 next week and direct one of you to prepare the proposed
4 order.

5 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 30th day of August,
8 2013.

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

11

12

March 5, 2014

13

14


Michael C. Watkins
Court Reporter

15

16

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CASE # 2000-23986
DATE 11-21-00

I am [redacted] years old and reside at [redacted] CANCER J.C. 29960

BOARDS, WEARING A DARK JACKET, DARK JEANS AND TENNIS SHOES) STARTED "HEY MAN WHAT DO YOU WANT". V/T. JUNG STATED I DON'T WANT NOTHING, I'M JUST LOST. THE MALE WITH THE DARK JACKET REACHED HIS RIGHT HAND INSIDE THE LEFT SIDE OF HIS JACKET AND SAID "GIVE ME YOUR MONEY". I SAID I DON'T GOT NO MONEY. THIS MAN THEN PULLED A SMALL DARK COLORED REVOLVER OUT FROM UNDER HIS JACKET. WHEN I SAW THAT I JUMPED ON THE GAS SO WE COULD GET OUT OF THERE. THAT MALE THEN PUT THE GUN RIGHT IN OR BARELY THROUGH THE WINDOW AND SHOT ONE TIME. I THEN DROVE AWAY FAST BACK TO ALCH ST., THAT'S WHEN I RAN INTO THE POLICE. THE MALE THAT SHOT WAS ABOUT A FOOT OR LESS FROM MY CAR WHEN HE SHOT. WHEN THIS HAPPENED I SAW A VERY LIGHT SKIN YK MALE EITHER STANDING WITH THE SHOOTER, OR JUST BEHIND HIM ON THE SIDEWALK. I SAW THAT SAME LIGHT SKIN MALE LAST NIGHT AT THE POLICE DEPT.

THE STATEMENT WAS WRITTEN FOR ME BY OFFICER PARSONS*

have read or had read to me, the above statement of 2 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

worn before me this _____ day of _____ 19____

NOTARY PUBLIC FOR SOUTH CAROLINA

/ Commission Expires: _____

AGENCY ID

SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 026

SUPPLEMENTAL [Narrative ID = 2000-23986 INC000026]
Added 11/30/2000 - 12:37:15 By PARSONS A P

ON 11-30-2000, VICTIM THOMAS JURY CAME TO THE LANCASTER POLICE DEPARTMENT FOR THE PURPOSE OF VIEWING A PHOTO LINE UP (ATTACHED) CONTAINING SIX PHOTOS, ONE OF THOSE BEING OF SUSPECT LAKEITHON HALL.

WHEN VICT. JURY WAS SHOWN THE PHOTO LINE UP HE IMMEDIATELY POINTED TO PHOTO #3, WHICH IS INDEED A PHOTO OF SUSPECT LAKEITHON HALL. AS HE WAS DOING SO VICT. JURY STATED "THAT'S HIM I'LL NEVER FORGET HIS FACE".

AFTER VIEWING THE PHOTO LINE UP VICT. JURY SIGNED A DEPARTMENTAL LINE UP VIEWING FORM WHERE HE IDENTIFIED PHOTO #3 (SUSPECT HALL) AS THE PERSON WHO HAD SHOT/MURDERED HIS WIFE (VICT. SHEILA M. JURY) ON 11-20-2000 AT PARDUE APARTMENTS.



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

Forward
Together...
The Spirit of
Lancaster

CRN 2000-23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE MJR

DATE 11-20-01

TIME 181

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Calvin Peary Time 1751

Witness P. C. Odom

Witness _____



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

Forward
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The Spirit of
Lancaster



CRN 2000-23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE COUNTY JAIL

DATE 11-27-00

TIME 21:06pm

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Calvin Peay Time 21:06pm

Witness [Signature]

Witness _____



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

Forward
Together...
The Spirit of
Lancaster



CRN 2000 - 23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE Lancaster P.D.

DATE 11-21-00

TIME 13:38 pm

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Calvin Peacy Time 13:28 pm

Witness [Signature]

Witness _____

* Video
Confession *

CRN 2000-23986

SUSPECT'S RIGHTS MIRANDA WARNING

PLACE MJCDATE 11-20-00TIME 2030

**LANCASTER
POLICE
DEPARTMENT**

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Calvin Peay Time 2035

Witness MC L...

Witness _____

Forward
Together...
The Spirit of
Lancaster

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-00

I, Calvin Lamar Peay
C.P. Davis and _____, do hereby give freely and voluntarily this statement to
of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any
other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right
to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an
Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so
voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 17 years old and reside at [REDACTED] SC

Q Davis: Do you have any information that might
help The Lancaster Police Dept. with
this investigation?

A. Peay: No sir.

END statement

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have
received a copy of this statement.

WITNESSES:

[Signature]
[Signature]

Calvin Peay

Sworn before me this 20 day of Nov 2000

Lolie H. Child
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/29/00

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-00

I, Calvin Lamar Peay and C.D. Davis, do hereby give freely and voluntarily this statement to who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 17 and [REDACTED] SC

Q. Peay: YES sir

Q. Davis: Who?

A. Peay: Brandon Cunningham and Darrel Alexander

Q. Davis: Why were going to Pardue St. apts?

A. Peay: I Live There.

Q. Davis: Where did you meet Brandon Cunningham & Darrel Alexander?

A. Peay: IN The section of Pardue near Arch St.

have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]

[Signature]

worn before me this 20 day of Nov. 2000

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 12/29/05

Calvin Peay

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-00

I, Calvin Lamar Peay, do hereby give freely and voluntarily this statement to C.D. Davis and [REDACTED] who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 17 years old and reside [REDACTED] [REDACTED] SC.

Q. Davis: Where were you on 11-15-00 at approximately 5:00 pm?

A. Peay: I had walked from Johnny's mart towards the arch st side of Pardue st. Apts.

Q. Davis: Did you hear any gunshots while you were at or near Pardue st Apts?

A. Peay: No sir.

Q. Davis: When you arrived at Pardue was anyone else with you?

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

C.D. Davis
[Signature]

Calvin Peay

born before me this 20 day of Nov 2000

L. H. Child
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 12/29/00

AGENCY ID

SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 009

CALVIN PEAY STATEMENT DATED 11-20-2000 [Narrative ID = 2000-23986
INC000009]
Added 11/28/2000 - 14:38:38 By PARSONS A P

STATEMENT #4

SUSPECT PEAY WAS INITIALLY INTERVIEWED AT THE LANCASTER POLICE DEPARTMENT ON 11-20-2000 BY PFC DAVIS SHORTLY AFTER THE SHOOTING TOOK PLACE. SUSPECT PEAY WAS ADVISED OF HIS MIRANDA RIGHTS (WRITTEN WAIVER ATTACHED) WHICH HE ACKNOWLEDGED AND AGREED TO GIVE A STATEMENT. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

SUSPECT PEAY STATED THAT AT APPROXIMATELY 1700 HOURS, 11-20-2000 HE HAD WALKED FROM "JOHNNY'S MART" TOWARDS THE ARCH STREET SIDE OF PARDUE APARTMENTS. ONCE AT THAT LOCATION HE MET BRANDON CUNNINGHAM AND DARRELL ALEXANDER. SUSPECT PEAY STATED HE DID NOT HEAR ANY GUN SHOTS NOR DID HE HAVE ANY INFORMATION THAT MIGHT AID THE LANCASTER POLICE DEPARTMENT IN THIS INVESTIGATION.

AGENCY ID

SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 010

CALVIN PEAY STATEMENT DATED 11-20-2000 [Narrative ID = 2000-23986
INC000010]
Added 11/28/2000 - 14:46:21 By PARSONS A P

STATEMENT #5

A SECOND INTERVIEW OF SUSPECT PEAY WAS CONDUCTED AT THE LANCASTER POLICE DEPARTMENT ON 11-20-2000, THIS TIME BY SGT WITHERSPOON. THIS INTERVIEW RECORDED ON AUDIO TAPE (PLACED INTO EVIDENCE) WAS CONDUCTED AT 2103 HOURS AND ENDED AT 2146 HOURS. AN OVERVIEW OF THIS STATEMENT BY SUSPECT PEAY IS DOCUMENTED BELOW.

SUSPECT PEAY STATED THAT HE, BRANDON CUNNINGHAM, HEYWOOD WATTS, DELRICO STEVENS AND LAKEITHON HALL WERE STANDING IN FRONT OF THE 1800 BLOCK OF PARDUE STREET APARTMENTS WHEN HE NOTICED TWO "WHITE PERSONS" TURN INTO THE BLOCK. AS SOON AS THE PEOPLE WERE SEEN DRIVING INTO THE BLOCK LAKEITHON HALL STATED THAT HE WAS GOING TO ROB THEM. SUSPECT PEAY FURTHER STATED THAT THE VICTIMS DROVE TO THE END OF THE BLOCK AND TURNED AROUND AND DROVE BACK TOWARD THEM AT WHICH TIME LAKEITHON HALL YELLED AT THE VEHICLE WHICH THEN CAME TO A STOP.

AT THAT TIME LAKEITHON HALL MADE CONTACT WITH THE DRIVER WHO ACCORDING TO HALL TOLD HIM HE (DRIVER) WANTED TO BUY SOME DRUGS. HALL TOLD THEM TO BACK UP TO THE 1600 BLOCK OF PARDUE STREET. SUSPECT PEAY STATED AT THAT POINT HE ASKED HALL NOT TO ROB THE VICTIMS AND THAT HE WAS NOT AWARE THAT HALL HAD A GUN.

SUSPECT PEAY THEN STATED THAT HALL WALKED UP TO THE VEHICLE AT WHICH TIME HE (PEAY) SAW THE VEHICLE ATTEMPTING TO LEAVE. AT THAT POINT HALL SHOT ONE TIME INTO THE VEHICLE.

AT THAT POINT SUSPECT PEAY STATED HE RAN TO HIS APARTMENT AND WAS FOLLOWED BY HALL. PEAY STATED THEY BOTH WENT UPSTAIRS. PEAY STATED HE WENT INTO THE BATHROOM TO WASH HIS FACE BECAUSE HE WAS SCARED BECAUSE HE THOUGHT SOMEBODY HAD BEEN SHOT. PEAY STATED HALL HAD WENT INTO HIS (PEAY'S) BEDROOM AND AS HE ENTERED THE BEDROOM AFTER WASHING HIS FACE HALL PULLED THE GUN OUT AND TOLD HIM TO KEEP IT FOR HIM. AT THAT POINT HALL PLACED THE GUN UNDER THE MATTRESS OF PEAY'S BED.

SUSPECT PEAY STATED HE THEN WENT BACK OUTSIDE AND DOES NOT KNOW WHERE HALL WENT TO. SHORTLY THEREAFTER HE (PEAY) WAS STOPPED BY THE POLICE.

AGENCY ID
SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER
2000-23986 011

CALVIN PEAY STATEMENT DATED 11-21-2000 [Narrative ID = 2000-23986
INC000011]
Added 11/28/2000 - 15:12:24 By PARSONS A P

STATEMENT #6

ON 11-21-2000 SUSPECT PEAY AGREED TO TAKE A POLYGRAPH TEST WHICH WAS TO BE CONDUCTED AT THE LANCASTER POLICE DEPARTMENT. THE TEST WAS TO BE GIVEN BY SLED AGENT BUDDY WILKES. PRIOR TO THAT TEST BEING GIVEN SUSPECT PEAY WAS ADVISED OF HIS MIRANDA RIGHTS VIA SOUTH CAROLINA LAW ENFORCEMENT DIVISION FORM (WAIVER FORM ATTACHED) WHICH HE ACKNOWLEDGED AND AGREED TO TO MAKE A STATEMENT.

PRIOR TO THE ACTUAL TEST BEING GIVEN, AGENT WILKES CONDUCTED AN INTERVIEW WITH PEAY REGARDING HIS KNOWLEDGE OF THE MURDER THAT TOOK PLACE ON 11-20-2000 AT PARDUE STREET APARTMENTS. AN OVERVIEW OF THAT STATEMENT BY PEAY IS DOCUMENTED BELOW.

ON 11-20-2000 HE (PEAY), BRANDON CUNNINGHAM, DELRICO STEVENS, HEYWOOD WATTS AND LAKEITHON HALL WERE STANDING ON THE SIDEWALK AT PARDUE APARTMENTS. AT THAT TIME HE SAW A GREEN TEMPO OR TAURUS DRIVE UP. THE VEHICLE WAS OCCUPIED BY A MALE WHITE AND A FEMALE WHITE. THE VEHICLE TURNED AROUND AND LAKEITHON STOPPED THEM. THE WHITE MAN SAID "I WANT TO BUY 8 20'S". LAKEITHON CAME BACK TO WHERE WE WERE AND SAID THEY WANTED TO BUY SOME DOPE. LAKEITHON HALL THEN SAID "I'M GOING TO ROB THEM". LAKEITHON SAID LET ME HOLD THE GUN AT WHICH TIME PEAY STATED "I GAVE HIM MY GUN". PEAY INITIALLY DESCRIBED THE GUN AS A .38 CALIBER REVOLVER, BLACK IN COLOR THEN STATED IT WAS A .32 CALIBER. PEAY STATED HE HAD HAD THE GUN FOR TWO DAYS AND THAT HE GOT IT IN THE WOODS.

SUSPECT PEAY WENT ON TO STATE THAT AFTER HE GAVE HALL THE GUN HE (HALL) WENT BACK TO THE CAR. PEAY STATED THAT AT THAT POINT HE WAS NOT PAYING ATTENTION AND IN FACT HAD TURNED AROUND. PEAY STATED HE THEN HEARD A SHOT AND THE CAR STARTED "SPINNING OUT". PEAY STATED THAT WHEN THE SHOT WAS FIRED HE (PEAY) WAS RIGHT ACROSS THE STREET FROM THE CAR.

PEAY STATED THAT AFTER THE SHOT HE RAN TO HIS HOUSE. WHEN HE GOT TO THE DOOR HALL WAS RIGHT BEHIND HIM. PEAY STATED THAT HE AND HALL WENT UPSTAIRS TO HIS BEDROOM AT WHICH POINT HALL GAVE HIM THE GUN BACK AND HE (PEAY) PUT IT UNDER THE MATTRESS. THEY THEN WENT BACK OUTSIDE AND HE STOOD ON THE SIDEWALK BUT DOES NOT KNOW WHERE HALL WENT.

AGENCY ID

SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 012

VIDEO TAPE STATEMENT OF CALVIN PEAY DATED 11-21-2000 [Narrative ID =
2000-23986 INC000012]
Added 11/28/2000 - 15:31:17 By PARSONS A P

STATEMENT #7

ON 11-21-2000 A VIDEO TAPED (SECURED INTO EVIDENCE) WAS CONDUCTED OF SUSPECT PEAY BY SGT WITHERSPOON. PRIOR TO THAT INTERVIEW SUSPECT PEAY WAS ADVISED OF HIS MIRANDA RIGHTS (WAIVER FORM ATTACHED) WHICH HE ACKNOWLEDGED AND AGREED TO GIVE A STATEMENT. SUSPECT PEAY WAS ALSO ADVISED THAT THE INTERVIEW WAS BEING VIDEO TAPED WHICH HE ALSO ACKNOWLEDGED. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

SUSPECT PEAY STATED THAT HE WAS STANDING ON THE SIDEWALK IN PARDUE APARTMENTS WHEN HE SAW A GREEN CAR DRIVE INTO THE BLOCK. THE VEHICLE DROVE PAST HIM AND TURNED AROUND AT THE MAIL BOXES. AS THE VEHICLE RETURNED LAKEITHON HALL, WHO WAS STANDING WITH HIM STOPPED THE CAR AND MADE CONTACT WITH THE DRIVER (VICT THOMAS JURY). PEAY STATED THAT THE DRIVER HAD INDICATED THAT HE WANTED TO BUY 8 20'S. HALL TOLD THE DRIVER TO BACK UP TO THE 1600 BLOCK. AT THAT POINT HALL CAME OVER TO PEAY AND STATED "I WANT TO TRY TO GET THEM, LET ME HOLD THAT GUN".

WHEN HE GOT PEAY'S GUN HE WALKED BACK OVER TO THE AFOREMENTIONED VEHICLE AND TRIED TO ROB THEM. THE VEHICLE ATTEMPTED TO LEAVE QUICKLY AT WHICH TIME HALL POINTED THE PISTOL AT THE CAR AND FIRED ONE SHOT.

AT THAT POINT EVERYBODY RAN AND HE WENT TO HIS APARTMENT FOLLOWED BY HALL. THEY BOTH WENT UPSTAIRS TO HIS (PEAY'S) BEDROOM AND LOOKED OUT THE WINDOW. HALL THEN GAVE THE GUN BACK TO SUSPECT PEAY WHO IN TURN HID IT UNDER THE BED.

AT THAT POINT THEY WENT OUTSIDE BUT HE DOES NOT KNOW WHERE HALL WENT TO AND HAS NOT SEEN HIM SINCE.

WHEN SGT WITHERSPOON ASKED SUSPECT PEAY DIRECTLY WHO THE GUN BELONGED TO SUSPECT PEAY STATED THAT THE GUN WAS HIS. HE WENT ON TO STATE THAT HE HAD ONLY HAD THE GUN ONE DAY AND THAT HE HAD FOUND IT ON A PATH IN THE WOODS.

AGENCY ID

SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 021

CALVIN PEAY STATEMENT DATED 11-22-2000 [Narrative ID = 2000-23986
INC000021]
Added 11/28/2000 - 18:54:35 By PARSONS A P

STATEMENT #8

ON 11-21-2000, SUSPECT CALVIN PEAY HANDED A HAND WRITTEN NOTE (PLACED INTO EVIDENCE/COPY ATTACHED WITH THIS FORM) TO SGT WITHERSPOON WHILE IN THE BOOKING AREA. THE NOTE STATED THAT PEAY HAD ONE MORE CONFESSION TO MAKE. THAT CONFESSION WAS THAT MONTINYO STEVENS GAVE LAKEITHON HALL THE GUN. HE WENT ON TO STATE THAT HE DID NOT WANT TO TELL US THAT BECAUSE WE DID NOT KNOW HE WAS OUT THERE, BUT THAT HE CAN'T TAKE A CHARGE FOR SOMEONE ELSE.

BASED ON THAT NOTE SGT WITHERSPOON CONDUCTED A FIFTH INTERVIEW WITH SUSPECT PEAY. THIS INTERVIEW WAS CONDUCTED ON 11-22-2000 AT THE LANCASTER COUNTY DETENTION CENTER. PRIOR TO THAT INTERVIEW SGT WITHERSPOON ADVISED PEAY OF HIS MIRANDA RIGHTS (WAIVER FORM ATTACHED) WHICH HE ACKNOWLEDGED AND AGREED TO GIVE A STATEMENT. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

SUSPECT PEAY BEGAN HIS STATEMENT BY SAYING THAT LAKEITHON HALL GOT THE GUN FROM MONTINYO STEVENS. HE STATED THAT HE DID NOT SEE MONTINYO STEVENS GIVE THE GUN TO HALL, BUT THAT HE HEARD HALL ASK STEVENS FOR THE GUN. PEAY AGAIN STATED THAT HALL DID GO TO THE CAR WITH THE GUN.

WHEN SGT WITHERSPOON ASK PEAY WHY HE WAITED TILL NOW TO GIVE THIS STATEMENT, PEAY DECLARED "MONTINYO DID NOT GET CAUGHT UP AND EVERYBODY WOULD KNOW THAT I TOLD".

THAT LAST STATEMENT CAUSES ME TO BELIEVE THAT THIS LATEST STATEMENT IS NOT TRUE AND THAT PEAY SIMPLY DOES NOT WISH THE OTHER PERSONS INVOLVED IN THIS CRIME TO KNOW THAT HE HAS PROVIDED FACTS IN THIS CASE TO INVESTIGATORS.



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

CRN 2000-23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE MJC

DATE 11-20-00

TIME 17:42

1. You have the right to remain silent. BRC
2. Anything you say can and will be used against you in a court of law. BRC
3. You have the right to talk to a lawyer and have him present with you while you are being questioned. BRC
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish. BRC
5. You can decide at any time to exercise these rights and not answer any questions or make any statements. BRC
6. Do you understand each of these rights that I have explained to you? BRC
7. Having these rights in mind, are you willing to talk to us at this time? BRC

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Brandon P. L. Cunningham Time 17:46

Witness M.B. Howell

Witness _____

Forward
Together...
The Spirit of
Lancaster

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



POLYGRAPH EXAMINATION PRE-TEST WORKSHEET

NAME <u>Calvin Peay</u>		OCCUPATION <u>Student</u>
EDUCATION <u>in 10th</u>		PLACE OF BIRTH <u>SC</u>
PREVIOUS ARREST <u>as Juvenile: Burglary, Auto Theft, PL, Poss. Crack, Poss. Marij., A&B; As Adult: A&B</u>		
MARITAL STATUS MAR ☐ SIN ☒ DIV ☐ SEP ☐ WID ☐	CHILDREN <u>0</u> BOY(s) _____ GIRL(s) _____	
	PREVIOUS POLYGRAPH YES _____ NO ☒	
	THIS CASE YES _____ NO ☒	

MEDICAL PROBLEMS			
HEART DISEASE	YES _____ NO ☒	DRUG OR ALCOHOL USE	YES _____ NO ☒
NEUROLOGICAL DISORDER	YES _____ NO ☒	PREGNANT	YES _____ NO ☒
PAST PSYCHIATRIC CARE	YES _____ NO ☒	OTHER MEDICAL PROBLEMS	YES _____ NO ☒
CURRENT MEDICATION	YES _____ NO ☒	# OF HOURS SLEEP	<u>12</u>
IF ANY QUESTIONS ARE ANSWERED YES, PLEASE EXPLAIN BELOW:			
_____ _____ _____			

NOTES In 10th grade - Adult Ed. Lived w/ mother. Just then 2103 Pardue Apt. Lancaster. Yesterday after^{noon} me, Brandon Cunningham, Rico Stevens, Heyward Watts, & Keithon Hall were standing on sidewalk @ Pardue Apts. Saw green Tempo. or Taurus drive up. White Man & White lady in car. They turned around. Keithon stopped them. The White man said "I want to buy 8 '20's." Keithon came back to where we were, & said they wanted to buy some dope. He said "I'm going to rob them." Keithon said "let me hold the gun." I gave him my gun. A .38 revolver - black. No - it was a .32. I've had the gun 2 days. Got it in woods - found it. After I gave him my gun - he went back to car. I wasn't paying attention - I had turned around. I heard the man spinning out. First I heard the shot. then he started spinning out. When shot was fired, I was right across the street from the car. The man drove all up on the sidewalk & left out. I ran to my house. When I got to the door, Keithon was behind me.

SLED CASE # _____ DATE _____ / _____ / _____ EXAMINER _____

DOCUMENT # 8

LAB FORM # 138
MARCH 1, 1994

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-22-00

I, CALVIN PEAY
Sgt. TIM WILKUSPOON and _____, do hereby give freely and voluntarily this statement to _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 17 years old and reside at ██████████

Q: TELL ME ABOUT THE LETTER YOU WROTE ME?

A: THAT KEITHON HALL GOT THE MONTIEO STEVENS (TIO)

Q: WHO ALL WAS STANDING OUT THERE?

A: HAYWOOD WATTS, BRANDON CUNNINGHAM, RICO STEVENS,
MONTIEO STEVENS AND KEITHON HALL.

Q: DID YOU SEE HIM GIVE THE GUN TO KEITHON HALL?

A: I DON'T SEE HIM GIVE HIM THE GUN, BUT I HEARD HIM
ASK MONTIEO STEVENS FOR THE GUN. THEY WERE
STANDING TOGETHER.

Q: AFTER KEITHON HALL GOT THE GUN, WHAT DID HE DO?

A: HE WENT BACK OVER TO THE CAR.

Q: WHY DID YOU WAIT TO NOW AND TELL THIS STATEMENT?

A: MONTIEO DID NOT GET CAUGHT UP AND EVERYBODY
WOULD KNOW THAT I TOLD.

I have read or had read to me, the above statement of _____ pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

Sgt. T. Wilkuspoon

Calvin Peay

Subscribed and sworn before me this _____ day of _____ 19__.

NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: _____

803-896-72

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT**



POLYGRAPH DEPARTMENT

DATE: 11-21-00SLED LAB NO: P00-924VICTIM: Sheila Jury

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other Laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

POLYGRAPH REPORT

I have been informed that the results of the polygraph examination administered in Calvin Peay
by Agent Buddy Wilkes of the South Carolina Law Enforcement Division are as follows:

- () NDI - No responses indicative of attempted deception were noted to relevant test questions.
- () DI - Responses indicative of attempted deception were noted to relevant test question(s).
- ☒ Inconclusive - The truthfulness or attempted deception of the examinee could not be determined
- () DNT - Did not test examinee(See Comments)
- () Re-examination recommended by examiner

COMMENTS/REMARKS

This opinion should be considered a final report; however, all examinations undergo a Quality Control Review. Should this Quality Control Review change the results of this examination, your agency will be promptly notified by written report.

1.5) Did you shoot that woman in that car
yesterday? No.

1.7) Did you shoot that woman in that car
yesterday at Pardee Apartments? No.

Prior to the exam, Mr. Peay said that this was his gun
used in this shooting. He said he found it in the woods 2
days ago. He also said that Keithon Hall came back from
the car and said "I'm going to rob them. Let me hold the
gun."



Check here if a typed
report is requested



Michael Greene

Special Agent
(803) 251-2000
(803) 251-2250

South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, South Carolina 29221-1398

SLED CASE # P00-924 DATE 11-21-00

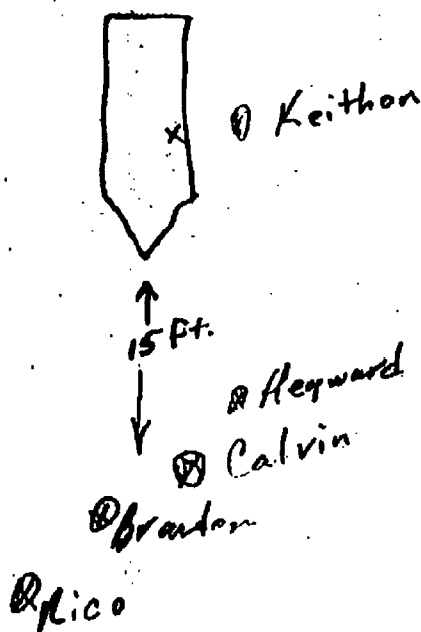
Another guy - I don't know where he came from -
walked up to the car after I gave Keithon
the gun. He walked up there w/ Keithon.

Me & Keithon went upstairs to my room. He gave
me the gun & I put it under the bed. We
 left my house. I stood out front. I don't
 know where he went.

The other guy walked thro like this
 key point → I never saw him walk up to the car. → other guy

Keithon wasn't saying anything
 when we got back to my house.

Haven't seen him since then.



CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-00

I, Brandon Rodshi Cunningham, do hereby give freely and voluntarily this statement to C.D. Davis and [redacted] who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am [redacted] years old and reside at [redacted] Lancaster SC

OFFICER DAVIS: Where were you at on 11-15-00 at approximately 5:00pm?

Cunningham: I was walking towards Pardue from Chester St. By Johnny's mart.

OFFICER DAVIS: Who were you with?

Cunningham: Calvin Peay.

OFFICER DAVIS: Did you meet with anyone when you arrived at Pardue St Apts?

Cunningham: Yes. Darrel Alexander

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

C.D. Davis

Brandon Cunningham

Sworn before me this 20 day of Nov 2000

Lois H. Child
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/29/05

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 7-15-00

I, Brandon Radshi Cunningham, do hereby give freely and voluntarily this statement to C.D. Davis and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am _____ years old and reside at _____ Lancaster SC

OFFICER DAVIS: Why Did you go to Pardue?

Cunningham: I got Family at Pardue.

OFFICER DAVIS: Where were you going after you left Pardue?

Cunningham: Me, Calvin Peay, and Darrel Alexander were going to go to KFC.

OFFICER DAVIS: Did you hear anything that sounded like a gunshot while you were walking through Pardue?

Cunningham: NO.

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

C.D. Davis

Brandon Cunningham

Sworn before me this 20 day of Nov. 2000

Laurel H. Childers
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/29/01

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2008-23986
DATE 11-20-08

I, Brandon Radshi Cunningham, do hereby give freely and voluntarily this statement to _____ and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 25 years old and reside at [REDACTED] Lancaster, SC

OFFICER DAVIS: Do you have any information that would help The Lancaster Police Dept. with this investigation?

Cunningham: NO.

END OF STATEMENT

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

C. J. Davis

Brandon Cunningham

Sworn before me this 20 day of Nov 2008

Ree H. Childers
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/29/08



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

Forward
Together...
The Spirit of
Lancaster

CRN 2000-23870

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE MJC

DATE 11-20-00

TIME 1836

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Brenda Cunningham Time 1836

Witness L. C. C. C.

Witness _____

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2002-23870
DATE 11-20-02

I, Brandon Cunningham, do hereby give freely and voluntarily this statement to LT L.H. Childers and who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am years old and reside at S.C. 29720

Q. Were you in the parade ST. Apts. on 11/19/02 around 1:15 AM?

A. Yes.

Q. What part of the apts. were you in?

A. 1st Section, 2300 block.

Q. Did you know the person you came in contact with?

A. No.

Q. Was the person in a vehicle?

A. Yes. He dropped a female off and he stayed in the car.

Q. Did the person say anything?

A. Yes.

I have read or had read to me, the above statement of 5 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
LT L.H. Childers

Brandon Cunningham

worn before me this 20th day of Nov 2002.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 11/10/04

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23870
DATE 11-20-02

I, Branda Cunningham, do hereby give freely and voluntarily this statement to LT. L.H. Childers and [redacted] who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am years old and reside at [redacted]

Q. What did he say?

A. From his car he ask "Did anyone have any marijuana?"

Q. What did you say?

A. No one over here sells marijuana so get out of the projects.

Q. What did he say next?

A. I'm not sure, he had the car running and I did not hear what he said. He must have been driving a stick because the car kept rolling back.

Q. What did you say next?

A. Man, I told you to get out of the projects.

have read or had read to me, the above statement of 5 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
LT. L.H. Childers

Branda Cunningham

born before me this 20th day of Nov 1992.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 11-1-2006

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

3 of 5
CASE # 2020-23870
DATE 11-29-22

I, Brendon Cunningham, do hereby give freely and voluntarily this statement to LT. L.H. Child and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am _____ years old and reside at _____

Q. What happened next.

A. That's when I hit him.

Q. Why did you hit him.

A. Because I have never seen his face before.

Q. What did you hit him with.

A. My hand.

Q. After you struck him, what did he do.

A. He backed up, then as he was leaving out, some shots were fired.

Q. How many times did you strike him with your hand

A. one time

have read or had read to me, the above statement of 5 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

J. J. [Signature]
LT. L.H. Child

Brendon Cunningham

worn before me this 29 day of Nov 1922.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 11-29-2025

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

4 of 5

CASE # 2 m-23870
DATE 1-20-02

I, Brandon Cunningham, do hereby give freely and voluntarily this statement to LT. L. H. Childers and [Signature] who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am _____ years old and reside at _____

Q. How many shots were fired?

A. I cannot count how many was fired.

Q. Did you fire a gun?

A. No.

Q. Did you have a gun?

A. No

Q. Do you know who fired the gun?

A. No, there were several people around the area.

Q. Did you attempt to rob or take money or ask for money from him?

A. No

I have read or had read to me, the above statement of 5 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
LT. L. H. Childers

Brandon Cunningham

born before me this 20th day of Nov 2001

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 4-10-2006

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

5 of 5

CASE # 2000-23870
DATE 11-21-00

I, Brandon Cunningham, do hereby give freely and voluntarily this statement to LT. L.H. Cliden and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am _____ years old and reside at _____

Q. Do you know anything more about what happened.

A. No.

Q. Do you have anything to add to what you have already stated

A. No.

End of Statement

have read or had read to me, the above statement of 5 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
LT. L.H. Cliden

Brandon Cunningham

worn before me this 20th day of Nov 2000.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: 4-10-2004



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

CRN 2000-23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE MJC

DATE 11-22-00

TIME 2:20 Pm

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Brandon Cunningham Time 14:22

Witness M. C. [Signature]

Witness [Signature]

Forward
Together...
The Spirit of
Lancaster

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-22-2000

I, BRANDON CUNNINGHAM, do hereby give freely and voluntarily this statement to Sgt. JAMES KIRK and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 18 years old and reside at _____

Reco Stevens was not out there when the lady got shot.
Reco came outside after THE shooting.

This white man and white woman came in the 1900 Block of Pardue Apts. The white man was driving and the white lady was in the passenger seat.

He rolled down his window and asked if anyone had 8 twenties. Everyone start saying he was the police. Keithon Hall shot at the dude and the bullet missed him and hit the woman in the car. I ran after the shooting.

? What color was the car the white man was driving?
.. A real light green Ford Tempo.

I have read or had read to me, the above statement of 1 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

Sgt. James Kirk

Brandon Cunningham

Subscribed and sworn before me this _____ day of _____ 19____.

NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: _____

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-22-00

I, Brandon Cunningham, do hereby give freely and voluntarily this statement to M.C. Greene and Pat Parsons who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 18 years old and reside at [REDACTED]

I was STANDING in The 1900 Block of Pardue ST. I was STANDING with Heywood WATTS, Calvin Peay, Keithon Hall, and Montinyo STEVENS. The green car with a white man and a white lady in The car drove by us. He Turned around and backed up in A parking space near The 1600 Block, Accross From us. I walked over to The car and The man Told me he wanted 8-20's. I Turned and walked away Towards The guys I was with. When I walked over I saw Keithon walking over to The green car. I Told Them That The white guy wanted eight 20's. Keithon walked over to The car on The driver side and leaned into The car. I heard The gunshot

have read or had read to me, the above statement of 2 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
[Signature]

Brandon Cunningham

worn before me this _____ day of _____ 19____.

JOTARY PUBLIC FOR SOUTH CAROLINA

/ Commission Expires: _____

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-22-00

I, Brandon Cunningham, do hereby give freely and voluntarily this statement to MC Greene and Pat Parsons who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 18 years old and reside at [REDACTED]

while Keithon was leaning in the car and we all ran away. I then heard the cars tires spinning as the car drove out towards Pardue ST.

MC Green wrote this statement.

I have read or had read to me, the above statement of 2 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
[Signature]

Brandon Cunningham

born before me this _____ day of _____ 19____.

JURY PUBLIC FOR SOUTH CAROLINA

Commission Expires: _____

AGENCY ID

SC 0298100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 013

BRANDON CUNNINGHAM STATEMENT DATED 11-20-2000 [Narrative ID =
2000-23986 INC000013]
Added 11/28/2000 - 15:46:19 By PARSONS A P

STATEMENT #9

BRANDON CUNNINGHAM WAS INITIALLY INTERVIEWED AT THE LANCASTER POLICE DEPARTMENT ON 11-20-2000 SHORTLY AFTER THE MURDER AT PARDUE STREET APARTMENTS. THIS INTERVIEW WAS CONDUCTED BY PFC HOWELL AT 1721 HOURS. PFC HOWELL ADVISED CUNNINGHAM OF HIS MIRANDA RIGHTS (WAIVER FOR ATTACHED) WHICH HE ACKNOWLEDGED AND AGREED TO GIVE A STATEMENT. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

SUSPECT CUNNINGHAM STATED THAT AT APPROXIMATELY 1700 HOURS ON THE DAY IN QUESTION HE AND CALVIN PEAY WERE WALKING TOWARD PARDUE STREET APARTMENTS FROM CHESTERFIELD AVENUE. ONCE THERE THEY MET UP WITH DARRELL ALEXANDER. CUNNINGHAM STATED THAT HE, PEAY AND ALEXANDER WERE GOING TO KENTUCKY FRIED CHICKEN AND THAT HE DID NOT HEAR ANY GUNSHOTS NOR DID HE HAVE ANY INFORMATION THAT MIGHT AID THE LANCASTER POLICE DEPARTMENT IN THIS INVESTIGATION.

CYID

0250100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 014

BRANDON CUNNINGHAM STATEMENT DATED 11-22-2000 [Narrative ID =
2000-23986 INC000014]
Added 11/28/2000 - 15:52:19 By PARSONS A P

STATEMENT #10

SUSPECT CUNNINGHAM WAS INTERVIEWED ON 11-22-2000 AT THE LANCASTER POLICE DEPARTMENT BY SGT KIRK. PRIOR TO THE INTERVIEW SUSPECT CUNNINGHAM WAS ADVISED OF HIS MIRANDA RIGHTS (WAIVER FORM ATTACHED) WHICH HE ACKNOWLEDGED AND AGREED TO GIVE A STATEMENT. THIS INTERVIEW WAS CONDUCTED AT 1420 HOURS. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

SUSPECT CUNNINGHAM STATED THAT A WHITE MAN AND A WHITE WOMAN CAME INTO THE 1900 BLOCK OF PARDUE APARTMENTS. THE WHITE MAN WAS DRIVING AND THE WHITE LADY WAS IN THE PASSENGER SEAT. THE WHITE MAN ROLLED DOWN HIS WINDOW AND ASKED IF ANYONE HAD 8 20'S. EVERYONE STARTED SAYING THAT HE WAS THE POLICE.

AT THAT POINT LAKEITHON HALL SHOT AT THE "DUDE" AND THE BULLET MISSED AND HIT THE WOMAN. CUNNINGHAM STATED HE RAN AWAY AFTER THE SHOOTING.

AGENCY ID

SC 0280100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 016

BRANDON CUNNINGHAM STATEMENT DATED 11-22-2000 { Narrative ID =
2000-23986 INC000015]
Added 11/28/2000 - 15:58:32 By PARSONS A P

STATEMENT #11

SUSPECT CUNNINGHAM WAS INTERVIEWED A SECOND TIME ON 11-22-2000, THIS TIME BY SLED AGENT GREENE AND PFC PARSONS IMMEDIATELY FOLLOWING THE INTERVIEW CONDUCTED BY SGT KIRK. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

SUSPECT CUNNINGHAM STATED HE, HEYWOOD WATTS, CALVIN PEAY, LAKEITHON HALL AND MONTINYO STEVENS WERE STANDING IN THE 1900 BLOCK OF PARDUE STREET APARTMENTS. AT THAT POINT A GREEN CAR WITH A WHITE MAN AND A WHITE WOMAN IN IT DROVE BY THEM. THE CAR TURNED AROUND AND BACKED INTO A PARKING SPACE NEAR THE 1600 BLOCK OF PARDUE STREET ACROSS FROM THEM.

SUSPECT CUNNINGHAM STATED HE THEN WALKED OVER TO THE CAR AND THE MAN TOLD HIM THAT HE WANTED 8 20'S. CUNNINGHAM THEN TURNED AND WALKED BACK OVER TO MALES THAT HE WAS WITH. AS HE WAS WALKING TOWARDS THEM HE SAW LAKEITHON HALL WALKING OVER TO THE GREEN CAR. CUNNINGHAM STATED THAT HE TOLD HALL THAT THE WHITE MAN WANTED TO BUY 8 20'S. HALL WALKED OVER TO THE CAR ON THE DRIVERS SIDE AND LEANED INTO THE CAR. AT THAT POINT CUNNINGHAM STATED HE HEARD THE GUNSHOT.

AFTER THE SHOT THEY ALL RAN AWAY AND WHILE DOING SO HE HEARD THE CARS TIRES SPINNING AS IT DEPARTED THE AREA.

FOLLOW UP [Narrative ID = 2000-23870 INC000003]
Added 11/20/2000 - 19:49:28 By CHILDERS L H

ON 11-20-2000 AT 6:36 PM, I TOOK A STATEMENT FROM CUNNINGHAM REGARDING THE INCIDENT AT PARDUE ST. APTS. ON 11-19-2000. BASICALLY, CUNNINGHAM ADMITS TO BEING IN THE PARDUE ST. APTS. AND COMING IN CONTACT WITH THE VICTIM.

CUNNINGHAM STATED THAT THE VICTIM LET AN UNKNOWN FEMALE OUT OF HIS VEHICLE AND ASK A GENERAL QUESTION TO SEVERAL PEOPLE WHO WERE STANDING IN DIFFERENT LOCATIONS. THE QUESTION THE VICTIM ASK WAS "DID ANYONE HAVE ANY MARIJUANA?" CUNNINGHAM TOLD HIM THAT NO ONE OVER HERE SELLS MARIJUANA SO GET OUT OF HERE. CUNNINGHAM TOLD THE VICTIM A SECOND TIME TO LEAVE THE AREA.

CUNNINGHAM ADMITTED STRIKING THE VICTIM AFTER TELLING HIM TO LEAVE A SECOND TIME. AS TO WHY HE STRUCK THE VICTIM, CUNNINGHAM STATED THAT HE HAD NEVER SEEN HIS FACE BEFORE. AS THE VICTIM WAS LEAVING, CUNNINGHAM SAID HE HEARD GUN SHOTS, BUT DID NOT KNOW HOW MANY SHOTS WERE FIRED OR WHO FIRED THEM.

CUNNINGHAM SAID THAT HE STRUCK THE VICTIM WITH HIS HAND. HE ONLY STRUCK THE VICTIM ONE TIME. COPIES OF THE FIVE PAGE STATEMENT IS ATTACHED AS WELL AS A SIGNED MIRANDA RIGHTS WARNING.

[REDACTED]



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

CRN 2000-23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE MJC

DATE 11-20-00

TIME 1751

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed [Signature] ^{keyword} _{11/20/00} Time 1751

Witness Lo Childers

Witness _____

Forward
Together...
The Spirit of
Lancaster



**LANCASTER
POLICE
DEPARTMENT**

P.O. BOX 1008
LANCASTER, SC
29721-1008

FAX
(803) 286-4632

Forward
Together...
the Spirit of
Lancaster

RECYCLED PAPER

CRN 2000-23986

**SUSPECT'S RIGHTS
MIRANDA WARNING**

PLACE Lancaster Detention Center

DATE 12-11-2000

TIME _____

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you can not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
- X6. Do you understand each of these rights that I have explained to you?
7. Having these rights in mind, are you willing to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed x [Signature] Heyward Watts Time 11:15

Witness [Signature]

Witness _____

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 12-11-2000

I, HAYWOOD WATTS, do hereby give freely and voluntarily this statement to DET. PARSONS and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 18 years old and reside at [REDACTED] Lancaster S.C.

This statement was written for me by Detective PARSONS at the LANCASTER DETENTION CENTER on 12-11-2000 at 11:20 Hrs. H.W.

On 11-20-2000 I DROVE MY BLACK 1982 CORSELA TO PARSONS APARTMENTS. I WAS BY MYSELF WHEN I GOT TO PARSONS APARTMENTS. ONCE AT THE PARSONS APARTMENTS I PARKED MY CAR IN THE 1800 BLK OF PARSONS. AFTER I PARKED I WALKED DOWN THE BLOCK WHERE I MET LAKESTON HALL, BRANDON CONNOR HALL AND CALVIN PERCY. AFTER APPROXIMATELY ONE TO TWO MINUTES I SAW A GREEN CAR TURN ONTO THE BLOCK. AS THEY DROVE BY US THE WHITE MAN AND THE WHITE WOMAN IN THE GREEN CAR MADE HAND MOTIONS TO THEIR MOUTHS. I TOOK THIS MOTION TO MEAN THEY WANTED TO BUY DRUGS. THEY THEN WENT TO THE END OF THE BLOCK AND

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

[Signature]
DET. PARSONS

Subscribed and sworn before me this _____ day of _____ 19____.

NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires: _____

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 12-11-2000

I, Harwood Watts, do hereby give freely and voluntarily this statement to Det. Parsons and — who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 18 years old and reside at [REDACTED] LANCASTER S.C.

TURNED AROUND. THEY DROVE BACK DOWN THE BLOCK AND BACKED INTO A PARKING SPOT ACROSS FROM US. AT THIS POINT BRANDON CUNNINGHAM WALKED TO THE DRIVERS SIDE OF THE GREEN CAR. AT THIS POINT I COULD SEE THAT BRANDON WAS TALKING TO THE MAN IN THE GREEN CAR, BUT I COULD NOT HEAR THEIR CONVERSATION. BRANDON WAS AT THE CAR FOR A SHORT TIME, I BELIEVE LESS THAN A MINUTE. WHILE BRANDON WAS STILL AT THE CAR LAKEATHON, WHO HAD WALKED AROUND THE SIDE OF THE BUILDING A SHORT TIME EARLIER CIRCLED AROUND BEHIND BRANDON. SHE WAS STILL STANDING BY THE DRIVERS DOOR OF THE GREEN CAR. LAKEATHON WALKED UP DIRECTLY BEHIND BRANDON. AT THIS POINT BRANDON MOVED QUICKLY TO HIS LEFT AS IF LAKEATHON HAD PUSHED HIM. AT THIS POINT I WAS STANDING APPROXIMATELY 40 FEET AWAY ON THE OPPOSITE SIDEWALK. AT THIS POINT I SAW LAKEATHON EXTEND HIS RIGHT ARM AND HAND AND POINT IT DIRECTLY AT THE GREEN CAR. I COULD NOT TELL IF LAKEATHON WAS HOLDING

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

Sworn before me this _____ day of _____ 19____.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 12-11-2000

I, Haywood Watts
Det. Parsons and —

, do hereby give freely and voluntarily this statement to who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 18 years old and reside at [REDACTED], LANCASTER S.C.

A GUN IN HIS RIGHT HAND BECAUSE BRANDON WAS IN THE JAIL. AS SOON AS I SAW LAKEATHON POINT WITH HIS EXTENDED RIGHT ARM, THAT IS WHEN I HEARD ONE GUNSHOT FROM WHERE LAKEATHON AND BRANDON WERE STANDING. AFTER THE GUNSHOT THE VEHICLE DROVE AWAY DOWN THE BLOCK AS LAKEATHON, BRANDON AND CALVIN RAN THROUGH THE MIDDLE OF THE APARTMENTS TOWARD CALVIN'S APARTMENT. AFTER THEY RAN AWAY I WALKED AWAY FROM THE BLOCK WHERE I MET "BUD". "BUD" ASKED ME WHAT HAPPENED AND I TOLD HIM I THOUGHT THEY SHOT SOMEBODY. "BUD" THEN ASKED ME TO GOE HOME A BUS TO SOUTHSIDE. WE WERE WALKING TO MY CAR WHEN THE POLICE STOPPED ME.

THIS STATEMENT WAS WRITTEN FOR ME BY DETECTIVE PARSONS*

I have read or had read to me, the above statement of 3 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

Det. Parsons

X [Signature]

born before me this _____ day of _____, 19__.

JURY PUBLIC FOR SOUTH CAROLINA

Commission Expires: _____

HAYWOOD WATTS STATEMENT DATED 12-11-2000 [Narrative ID = 2000-23986
 INC000028]
 Added 12/11/2000 - 12:53:46 By PARSONS A P

STATEMENT #20

SUSPECT HAYWOOD WATTS WAS INTERVIEWED AT THE LANCASTER DETENTION CENTER ON 12-11-2000 BY PFC PARSONS. THIS INTERVIEW WAS CONDUCTED IN THE PRESENCE OF SUSPECT WATTS ATTORNEY MR. LIONEL LOFTON. PRIOR TO THE INTERVIEW SUSPECT WATTS WAS ADVISED OF HIS MIRANDA RIGHTS VIA DEPARTMENTAL FORM (ATTACHED) WHICH HE STATED HE UNDERSTOOD AND AGREED TO GIVE A STATEMENT. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

ON 11-20-2000 WATTS DROVE HIS 1982 CORSICA, BLK IN COLOR TO PARDUE APARTMENTS. HE WAS ALONE UPON HIS ARRIVAL. ONCE AT PARDUE APARTMENTS HE PARKED HIS CAR IN THE 1800 BLOCK. AFTER HE EXITED HIS VEHICLE HE WALKED DOWN THE BLOCK WHERE HE MET WITH LAKEITHON HALL, CALVIN PEAY AND BRANDON CUNNINGHAM. AFTER APPROXIMATELY ONE MINUTE A GREEN IN COLOR CAR, OCCUPIED BY A MALE WHITE AND A FEMALE WHITE TURNED INTO THE BLOCK. THE CAR DROVE PAST THE AFOREMENTIONED MALES AT WHICH TIME BOTH OCCUPANTS OF THE VEHICLE MADE HAND GESTURES TO THEIR RESPECTIVE MOUTHS. SUSPECT WATTS STATED HE TOOK THOSE HAND GESTURES TO MEAN THAT THE OCCUPANTS WANTED TO BUY DRUGS.

AFTER THE CAR DROVE SLOWLY PAST IT MADE A TURN AT THE END OF THE BLOCK BEFORE DRIVING BACK DOWN THE BLOCK. WHEN THE VEHICLE WAS ADJACENT TO THE AFOREMENTIONED MALES IT BACKED INTO A PARKING SPOT DIRECTLY ACROSS FROM WHERE THEY WERE STANDING.

AT THAT POINT BRANDON CUNNINGHAM WALKED OVER TO THE DRIVERS SIDE OF THE VEHICLE AND APPEARED TO BE HAVING A CONVERSATION WITH THE MALE DRIVER. AFTER A VERY SHORT PERIOD OF TIME LAKEITHON HALL, WHO HAD PREVIOUSLY WALKED AROUND THE CORNER OF THE BUILDING RE-APPEARED AND "CIRCLED" AROUND BEHIND BRANDON CUNNINGHAM WHO WAS STILL STANDING BESIDE THE GREEN CAR. AT THAT POINT LAKEITHON HALL WALKED UP BEHIND BRANDON CUNNINGHAM. IT WAS AT THAT TIME THAT SUSPECT WATTS OBSERVE BRANDON CUNNINGHAM MOVE QUICKLY TO HIS (CUNNINGHAM'S) LEFT AS IF LAKEITHON HALL HAD PUSHED HIM SLIGHTLY.

IMMEDIATELY THEREAFTER SUSPECT WATTS SAW LAKEITHON HALL EXTEND HIS HALL'S) RIGHT ARM AND APPEARED TO BE POINTING DIRECTLY AT THE DRIVERS SIDE OF THE GREEN CAR. SUSPECT WATTS STATED THAT HE DID NOT SEE A GUN IN LAKEITHON HALL'S RIGHT HAND BECAUSE HE BELIEVES BRANDON CUNNINGHAM WAS BLOCKING THAT VIEW.

AS SOON AS LAKEITHON HALL'S RIGHT ARM WAS FULLY EXTENDED SUSPECT WATTS STATED HE HEARD ONE GUNSHOT COME FROM PRECISELY WHERE HALL AND CUNNINGHAM WERE STANDING. IMMEDIATELY FOLLOWING THE GUNSHOT THE GREEN CAR QUICKLY DEPARTED AT WHICH TIME LAKEITHON HALL, BRANDON CUNNINGHAM AND CALVIN PEAY ALL FLED ON FOOT THROUGH THE APARTMENTS TOWARD CALVIN PEAY'S APARTMENT.

SUSPECT WATTS STATED HE THEN WALKED AWAY FROM THE AREA WHERE HE A SHORT TIME LATER MET "BUD" WHO ASKED HIM WHAT HAD HAPPENED. SUSPECT WATTS TOLD "BUD" THAT HE THOUGHT THEY HAD SHOT SOMEBODY. "BUD" THEN ASKED SUSPECT WATTS FOR A RIDE TO SOUTHSIDE AND THEY WERE RETURNING TO HIS CAR WHEN HE WAS STOPPED BY THE POLICE. END OF WRITTEN STATEMENT.

ACCORDING TO SUSPECT WATTS THERE WERE OTHER PERSONS IN THE AREA AT THE TIME OF THE INCIDENT BUT HE WAS NOT SURE OF THEIR IDENTITY.

SUSPECT WATTS WENT ON TO STATE THAT BRANDON CUNNINGHAM HAD INFORMED HIM APPROXIMATELY ONE WEEK EARLIER THAT HE (CUNNINGHAM) HAD ATTEMPTED TO ROB AN UNKNOWN PERSON AT PARDUE APARTMENTS. ACCORDING TO SUSPECT WATTS, CUNNINGHAM TOLD HIM THAT HE HAD STRUCK THAT PERSON WITH A PISTOL WHILE ATTEMPTING TO CONDUCT THAT ROBBERY.

IT SHOULD BE NOTED THAT SUSPECT CUNNINGHAM IS A NAMED SUSPECT IN A ROBBERY THAT OCCURRED THE NIGHT BEFORE THIS INCIDENT. WHEN QUESTIONED REGARDING THE TIME FRAME OF THE ALLEDGED STATEMENT FROM CUNNINGHAM TO WATTS, WATTS CONFIRMED THAT HE WAS SURE THAT IT HAD BEEN AT LEAST A WEEK PRIOR TO THE SHOOTING THAT CUNNINGHAM HAD INFORMED HIM OF THE SEPERATE ROBBERY ATTEMPT, CAUSING THIS INVESTIGATOR TO BELIEVE THAT CUNNINGHAM HAS BEEN INVOLVED IN ROBBERY'S AND ROBBERY ATTEMPTS THAT HAVE NOT BEEN REPORTED TO THE POLICE.

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-00

I, Takisha Cunningham , do hereby give freely and voluntarily this statement to
M. C. Greene and _____ who have identified themselves as officers
of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any
other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right
to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an
Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so
voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 22 years old and reside at

I was at ~~the~~ Pardue St. looking out the window. I saw a medium size Green car Turn around in Front of The Apartment. The car stopped and six guys walked over to The car. They stood AT The Passenger side window. A Few seconds later, Approximately 20, I heard A gunshot coming From where The guys were standing. The car drove off Fast Toward Pardue St. The six guys ran away. The guys That were AT the car were Brandon Cunningham, Martinio Stevenson, ^{CALVIN} ~~Kevin~~ Peay, Darrell Alexander, and I don't know The other 2 guys names.

I have read or had read to me, the above statement of 2 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

WITNESSES:

Det. Ron Long

Sworn before me this 20th day of Nov 192003

Danora Howell
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-18-2006

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-00

I, Takisha Cunningham, do hereby give freely and voluntarily this statement to MC Greene and R.D. Casey who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 22 years old and reside at [REDACTED]

I saw All six guys run into The ~~back~~ back door of Calvin Peay's Apartment in The 2100 Block of Pardue. I'm not sure who Fired The shot.

Later in The interview Takisha Added This info

I believe The other 2 guys involved are The guys AT The MJC.

Q: Are you referring to Rico Stevens and Heywood WATTS?

A: Yes.

S/A Michael Greene Prepared This statement For me AT my request.

have read or had read to me, the above statement of 2 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

MC Greene

Det. Ron Casey

Takisha Cunningham

worn before me this 20th day of Nov 2000

Dorcas D. Dwyer
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-10-2006

CITY OF LANCASTER
COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

CASE # 2000-23986
DATE 11-20-2000

I, Tara Nelson Evans, do hereby give freely and voluntarily this statement to Det. Ron Casey and _____ who have identified themselves as officers of the Lancaster Police Department, Lancaster, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rights.

I am 25 years old and reside at _____ S.C.

I was outside in front of an Apartment (Crystal Duncan). I was talking to Crystal and we heard a loud shot and I said what is that. Crystal said that was a gun shot. We turned around and looked and we seen the green car. We seen about six to eight boys running. I know some of them but not by their name. I can identify approx. four or more of them if I see them again. The boys ran between the fence to the 1st section of Parker Apts. Me and Crystal were sitting in my car in front of her Apt. when the gun shot was heard. one of the boys that was running had light skin and his name is Martinal Stevens his approx 18 or 19. one of the other boys were real light skinned and appeared to be white. they all appeared to be teen agers and they were laughing when they were running away. End of Statement.

I have read or had read to me, the above statement of 1 pages and it is true and correct as best I recall, and I have received a copy of this statement.

WITNESSES:

Tara N. Evans

Det. Ron Casey

Sworn before me this 20th day of Nov 2000.

Dandra D. Dore
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-10-2006

AGENCY ID

SC 0230100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER

2000-23986 007

TAKISHA CUNNINGHAM STATEMENT [Narrative ID = 2000-23986 INC000007]
Added 11/28/2000 - 14:11:33 By PARSONS A P

STATEMENT #2

WITNESS TAKISHA CUNNINGHAM F/B 22, OF [REDACTED] WAS INTERVIEWED ON 11-20-2000 BY SLED AGENT GREENE AT THE LANCASTER POLICE DEPARTMENT. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

MS. CUNNINGHAM STATED THAT SHE WAS AT 1603 PARDUE STREET AT THE TIME THE SHOOTING HAPPENED. AT THAT TIME SHE WAS LOOKING OUT THE WINDOW OF THE APARTMENT WHEN SHE SAW A MEDIUM SIZE GREEN CAR TURN AROUND IN FRONT OF THE APARTMENTS. AT THAT POINT THE CAR STOPPED AND SIX "GUYS" WALKED OVER TO THE CAR. A FEW SECONDS LATER SHE HEARD A SINGLE GUNSHOT COMING FROM THE AREA WHERE THE SIX MALES WERE STANDING. THE AFOREMENTIONED VEHICLE THEN SUDDENLY DROVE AWAY AS THE SIX MALES RAN AWAY.

MS. CUNNINGHAM STATED THAT SHE RECOGNIZED FOUR OF THE MALES THAT WERE AT THE VEHICLE AS BEING CALVIN PEAY, BRANDON CUNNINGHAM, MONTINYO STEVENS AND DARRELL ALEXANDER. AS THE MALES RAN AWAY MS. CUNNINGHAM STATED SHE SAW THEM RUN INTO THE REAR APARTMENT DOOR OF CALVIN PEAY'S RESIDENCE [REDACTED]. MS. CUNNINGHAM ALSO RELATED THAT SHE DOES NOT KNOW WHO FIRED THE SHOT.

WHILE AT THE LANCASTER POLICE DEPARTMENT SHORTLY AFTER THE INCIDENT MS. CUNNINGHAM STATED SHE BELIEVED THAT THE TWO MALES SHE HAD NOT PREVIOUSLY IDENTIFIED WERE RICO (DELRICO) STEVENS AND HEYWOOD WATTS. MS. CUNNINGHAM HAD SEEN THESE TWO MALES AT THE POLICE DEPARTMENT WHILE SHE WAS HERE TO BE INTERVIEWED.

AGENCY ID
SC 0290100

Lancaster Police Department
INCIDENT REPORT
Narrative Continuation Page

CASE NUMBER
2000-23986 008

TARA EVANS STATEMENT [Narrative ID = 2000-23986 INC000008]
Added 11/28/2000 - 14:28:10 By PARSONS A P

STATEMENT #3

WITNESS TARA EVANS WAS INTERVIEWED AT THE LANCASTER POLICE DEPARTMENT ON 11-20-2000 BY DETECTIVE CASEY. AN OVERVIEW OF THAT STATEMENT IS DOCUMENTED BELOW.

MS. EVANS STATED SHE WAS SITTING IN HER CAR IN FRONT OF APARTMENT 1609 PARDUE STREET WITH MS. CRYSTAL DUNCAN. WHILE AT THAT LOCATION SHE HEARD A LOUD GUN SHOT. AT THAT POINT SHE TURNED IN THE DIRECTION OF THE SHOT AND SAW A GREEN CAR. SHE ALSO STATED SHE SAW SIX TO EIGHT MALES RUNNING FROM THE CAR. MS. EVANS STATED SHE KNOWS SOME OF THE MALES BY SIGHT BUT NOT BY NAME, ALTHOUGH SHE CAN IDENTIFY FOUR OR MORE OF THEM IF SHE SAW THEM AGAIN. MS. EVANS STATED THAT THE MALES RAN BETWEEN THE FENCE OF THE APARTMENTS TO TOWARD THE FIRST SECTION OF PARDUE APARTMENTS.

MS. EVANS FURTHER STATED THAT ONE OF THE MALES SHE SAW RUNNING HAD LIGHT SKIN AND THAT HIS NAME IS MONTINYO STEVENS. SHE STATED HE IS APPROXIMATELY 18 TO 19 YEARS OLD. SHE FURTHER STATED THAT A SECOND ONE OF THE MALES HAD "REAL LIGHT" SKIN AND APPEARED TO BE WHITE. MS. EVANS STATED THAT ALL THE MALES APPEARED TO BE TEENAGERS AND WERE LAUGHING AS THEY RAN AWAY.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)
)
 State of South Carolina)
)
 vs.)
)
 Lakeithon M. Hall,)
 Defendant.)

IN THE COURT OF GENERAL SESSION

ORDER

2001-GS-29-71, 72, 73, 346

LANCASTER COUNTY
 LANCASTER, SC

FILED
 OFFICE OF CLERK OF COURT
 FOR LANCASTER COUNTY

This is a motion for a new trial based upon after discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. A hearing was held before me on August 30, 2013. The State was represented by Solicitor Douglas A. Barfield, Jr., who prosecuted the Defendant when he was convicted as set forth below. The Defendant was present with his attorney, Tricia A. Blanchette. The motion is based upon the affidavits of Brandon Cunningham and Calvin Lamar Peay, both of whom were codefendants of the Defendant and who implicated the Defendant in statements to the police when the case was investigated. Both Cunningham and Peay were served by the Defendant with subpoenas to testify at the hearing. Neither appeared. The Defendant moved for a continuance. The State objected. The motion was denied. The Defendant moved to be allowed to argue the matter based upon the affidavits of Cunningham and Peay. The State objected. The objection was overruled, and the hearing proceeded.

FINDINGS OF FACT

On November 20, 2000, at approximately 4:20 p. m., Thomas Jury and his wife Sheila Jury entered the parking lot of Pardue Street Apartments in the City of Lancaster in their automobile. Thomas was driving, and Sheila was the front seat passenger. Sheila was approximately eight months pregnant with a female child. Thomas gave investigators a written statement in which he said the couple had been to the bank and to McDonald's but determined

they needed to return to the bank to conduct other business. Thomas drove into Pardue Street Apartments as a short cut. Thomas had his window rolled partially down. He had an encounter with three males, who were standing in the roadway. One of the males reached his hand inside his jacket and demanded money from Thomas. When Thomas said he had no money, that male produced a handgun from under his jacket and fired one shot through Thomas' open window. Thomas was not struck, but Sheila was as she sat in the front passenger seat. Thomas drove out of the apartment complex. Thomas subsequently picked the Defendant out of a photographic lineup as the person who shot into the automobile.

Sheila died at Springs Memorial Hospital as the result of a single gunshot wound to her left shoulder which penetrated her left lung and her heart. The baby was delivered by caesarean section and was transferred to Carolinas Medical Center, where she died two days later of hypoxic encephalopathy as the result of the death of her mother from the gunshot wound.

The Lancaster Police Department and the South Carolina Law Enforcement Division investigated the case. Six people, including the Defendant, were charged in the case. The Defendant was charged with two counts of Murder, Attempted Armed Robbery, and Possession of a Firearm during the Commission of a Violent Crime. Cunningham was charged with one count of Murder, Attempted Armed Robbery, and Misprision of a Felony. Peay was charged with one count of Murder, Attempted Armed Robbery, Possession of a Firearm during the Commission of a Violent Crime, Possession of a Pistol by a Person under 21 Years of Age, and Accessory after the Fact of Murder.

The Defendant did not give a statement implicating himself in these crimes.

Cunningham gave investigators four statements. The first statement was given shortly after the crime occurred. In that statement Cunningham disclaimed any knowledge of the



shooting of Sheila Jury. The second statement was given later that evening. In the second statement Cunningham said Sheila got out of the automobile but Thomas did not. Cunningham said he struck Thomas with his hand as Thomas sat in the automobile. Cunningham said as Thomas was driving away shots were fired. Cunningham denied knowing who fired the shots. Cunningham's third statement was given two days later. In it Cunningham said the Defendant shot at Thomas but missed and hit Sheila. Cunningham's fourth statement was given the same date and just after the third. In this final statement, Cunningham told investigators he was standing on the street with the Defendant, Peay, Montinyo Stevens, and Heywood Watts. The Jurys drove by, turned around, backed up, and parked. Cunningham said he approached the automobile, and Thomas inquired of him about buying drugs. Cunningham returned to his group and related to them his conversation with Thomas. The Defendant approached the driver's side of the automobile and leaned in. Cunningham heard a single gunshot as the Defendant leaned into the automobile.

Peay also gave investigators four statements. The first statement was given shortly after the crime occurred. In that statement Peay disclaimed any knowledge of the shooting of Sheila Jury. The second statement was given later the night of the shooting. It was recorded. Peay told investigators he was with the Defendant, Cunningham, Watts, and Delrico Stevens in the street. When Thomas first drove into the complex, the Defendant told the others, "I might try to get them." Thomas drove back by the group and stopped. The Defendant told the group Thomas was looking for drugs. The Defendant approached the driver's side window of the automobile and pulled a gun. As Thomas attempted to drive away, the Defendant shot one time. All in the group ran. Peay ran to his home in the complex followed by the Defendant. The Defendant hid a gun under the mattress of Peay's bed in Peay's bedroom. Peay's third statement was given the

next day and was also recorded. Peay told investigators the gun used to shoot Sheila Jury was his and that he had found it on a path in the woods near his home a day before the shooting. Peay said when Thomas drove into the complex, the Defendant stopped him. The defendant told the group Thomas wanted drugs and said he was going to "try to get them." The Defendant asked for and received the gun from Peay and approached the automobile. The Defendant attempted to rob Thomas and pointed and fired the gun into the automobile as Thomas attempted to drive away. Peay ran to his home. The Defendant followed and busted in the door to Peay's home. The Defendant gave the gun back to Peay, who put it under his mattress. Peay sent investigators a note and was questioned again the following day. In a written statement Peay changed his story about the gun and told investigators the Defendant got the gun from Montinyo Stevens.

A Smith & Wesson .38 caliber revolver was found by investigators under Peay's mattress as he described. A fired bullet was recovered from the body of Sheila Jury. A firearms examiner with SLED test fired the revolver and determined it fired the bullet recovered from Sheila's body.

On December 9, 2002, the Defendant appeared before Judge Paul E. Short, Jr., and entered pleas of guilt to two counts of Murder, Attempted Armed Robbery, and Possession of a Firearm during the Commission of a Violent Crime. He received sentences of 38 years on the Murder charges, 20 years on the Attempted Armed Robbery charge, and five years on the Possession of a Firearm during the Commission of a Violent Crime charge. All sentences were concurrent. The Defendant was represented by Public Defender Ross Burton.

On December 9, 2002, Cunningham pled guilty to Mispriison of a Felony and was sentenced to five years suspended upon the service of two years followed by two years

probation. The indictments charging Cunningham with Murder and Attempted Armed Robbery were dismissed.

On December 6, 2002, Peay pled guilty to Accessory before the Fact of Attempted Armed Robbery in lieu of Attempted Armed Robbery and Possession of a Pistol by a Person under 21 Years of Age. He received concurrent sentences of eight and five years, respectively. The indictments charging Peay with Murder, Possession of a Firearm during the Commission of a Violent Crime, and Accessory after the Fact of Murder were dismissed.

This motion is based upon the affidavits of Cunningham and Peay. Cunningham provided an affidavit dated January 28, 2013. In the affidavit, Cunningham admitted being present when Sheila Jury was shot and stated, in part, "I am giving this statement because I lied about Lakeithon Hall's involvement. Mr. Hall was not even out there when the crime took place...the truth of the matter is Montinyo Stevens is the one who attempted to rob Mr. & Mrs. Jury and this led to Mrs. Jury's death."

Montinyo Stevens is now deceased. He died after Sheila Jury was shot and killed but before Cunningham provided the above affidavit.

Peay's affidavit is dated June 11, 2013. In the affidavit Peay also admitted being present when Sheila Jury was shot and stated, in part, "I am giving this statement because I lied about Lakeithon Hall's involvement in this crime. Mr. Hall was not out there when the crime took place."

CONCLUSIONS OF LAW

Pursuant to Rule 29(b), the Defendant must make a motion for a new trial based on after discovered evidence within one year after the date of the actual discovery of the evidence. An affidavit of the Defendant indicates he discovered the Cunningham information on January 27,



2013, and the Peay information on July 23, 2012. The Cunningham affidavit was obtained on January 28, 2013, and the Peay affidavit was obtained on June 11, 2013. The motion was filed on July 19, 2013. The Defendant filed the motion within one year after the discovery of the evidence.

In order to prevail on a motion for a new trial based upon after discovered evidence, the Defendant must show the evidence (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching. **State v. Spann**, 334 S. C. 618, 513 S. E. 2d 98 (S. C. 1999).

The affidavits of Cunningham and Peay are not "after discovered" evidence. "[A] court must exercise great caution in considering evidence to be 'newly discovered' when it existed all along and was unavailable only because a co-defendant, since convicted, had availed himself of his privilege not to testify." **United States v. Jacobs**, 475 F. 2d 270, 286 n. 33 (2d Cir. 1973), quoted in **United States v. Flynn**, 791 F. Supp. 133, 136 (M. D. N. C. 1992). The proffered evidence of Cunningham and Peay is merely newly available and not newly discovered. *Id.*

The information contained in the affidavits of Cunningham and Peay could have easily been discovered in the exercise of due diligence prior to trial. Cunningham and Peay were implicated in the crime on the day it occurred. Both admitted being present when the crime occurred and had knowledge of the crime and its perpetrators. If the Defendant did not commit the crime, Cunningham and Peay knew as much from the outset. Both gave multiple statements beginning the day the crime occurred. The statements contained glaring inconsistencies. The Defendant was on notice from the time he received the many statements of Cunningham and

Peay that if the Defendant was not a participant Cunningham and Peay knew he was not a participant and that the credibility of these two witnesses could be challenged.

The affidavits of Cunningham and Peay are merely impeachment evidence. In their statements to investigators, Cunningham and Peay clearly implicated the Defendant as Sheila Jury's shooter. In their affidavits, Cunningham and Peay recanted their prior statements that the Defendant was the shooter. The affidavits merely impeach the veracity of Cunningham's and Peay's prior statements.

The affidavits of Cunningham and Peay are not such as would probably change the result if the Defendant were granted a new trial. This court has a gatekeeping role in making a credibility assessment of the affidavits of Cunningham and Peay. *State v. Mercer*, 381 S. C. 149 (SC 2009). Cunningham's and Peay's statements are riddled with inconsistencies. Their stories changed in substantial ways from statement to statement. Their affidavits follow this pattern and offer yet a fifth version from each about the events leading to the shooting death of Sheila Jury. Their affidavits come over a decade after the Defendant pled guilty to these crimes and after both Cunningham and Peay were convicted for their roles in these events and have nothing to lose by again changing their stories. Cunningham now even attempts to attribute the death of Sheila Jury to Montinyo Stevens, who is deceased. The affidavits of Cunningham and Peay are also contrary to the information provided to investigators by Thomas Jury, who was face to face with the Defendant and picked him out of a photographic lineup as the shooter. Finally, both Cunningham and Peay failed to appear to testify under oath about the substance of their affidavits despite having been served with subpoenas. I conclude the affidavits of Cunningham and Peay are not credible.



Although the Defendant did not confess to investigators that he committed these crimes, he did admit doing so when he pled guilty on December 9, 2002. His plea was a guilty plea, not a nolo contendere plea or a plea pursuant to **North Carolina v. Alford**. "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably foreclosed. **Blackledge v. Allison**, 431 U. S. 63, 97 S. Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. **Crawford v. U. S.**, 519 F. 2d 317 (4th Cir. 1975); **Edmonds v. Lewis**, 546 F. 2d 566 (4th Cir. 1976).

The Defendant entered his guilty plea on December 6, 2002, and was sentenced on December 9, 2002. He was represented by competent counsel. He was sworn to tell the truth. Judge Short meticulously ensured that the Defendant understood his constitutional rights and that by pleading guilty he waived those rights. Judge Short reviewed each indictment with the Defendant and asked the Defendant, as to each indictment, whether he committed the offenses, to which the Defendant replied affirmatively. The solicitor summarized the facts of the case including the statements of Peay implicating the Defendant. Judge Short asked the Defendant whether he agreed with the statement of the facts and he said he did, that is what happened, and that is what he did. Thomas Jury was present. Thomas Jury was also present at the sentencing hearing. The Defendant apologized to the court for what he had done. He also apologized directly to Thomas Jury and asked for Mr. Jury's forgiveness.

I conclude as a matter of law that the Defendant has failed to meet his burden in establishing that he is entitled to a new trial based on after discovered evidence.

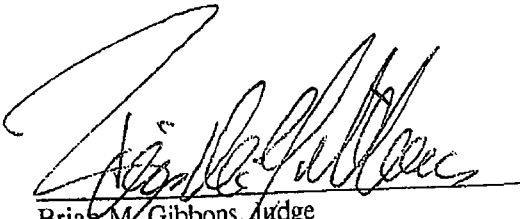
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IT IS THEREFORE ORDERED that the motion is denied.

IT IS SO ORDERED!

November 12, 2013

Lancaster, South Carolina



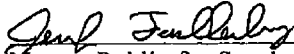
Brian M. Gibbons, Judge
Court of General Sessions for the
Sixth Judicial Circuit

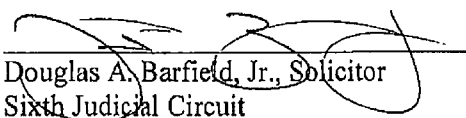
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER	)	
State	)	
	)	
vs.	)	AFFIDAVIT OF MAILING
	)	2001-GS-29-71, 72, 73, 346
Lakeithon M. Hall	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME Douglas A. Barfield, Jr., who, being duly sworn, stated that he is the Solicitor for the Sixth Judicial Circuit in the above mentioned action and that on the 2nd day of December, 2013, he deposited in the United States Mail with proper postage affixed thereto a copy of the Order dated November 12, 2013, addressed as follows:

Tricia A. Blanchette, Esquire
P. O. Box 12725
Columbia, South Carolina 29211

SWORN to and subscribed before me
this 2nd day of December, 2013.


Notary Public for South Carolina
My Commission Expires July 13, 2022


Douglas A. Barfield, Jr., Solicitor
Sixth Judicial Circuit
P. O. Box 607
Lancaster, South Carolina 29721
(803)416-9367

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2013-002616

THE STATE,

RESPONDENT,

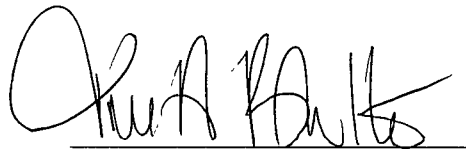
v.

LAKEITHON M. HALL,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Tricia A. Blanchette
Bar No. 74904
Post Office Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for Appellant

February 15, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

RECEIVED

FEB 18 2015

SC Court of Appeals

Appellate Case No. 2013-002616
Trial Court Case No. 2001-GS-29-0071, 0072, 0073, 0346

THE STATE,

RESPONDENT,

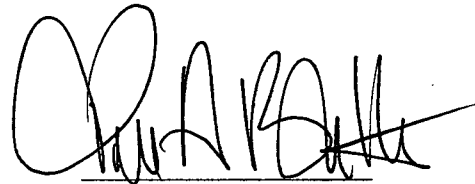
v.

LAKEITHON M. HALL,

APPELLANT.

CERTIFICATE OF REDACTION

The undersigned hereby certifies that personal identifiers and sensitive information have been have been redacted in the Record on Appeal pursuant to the South Carolina Supreme Court's Order dated August 13, 2007.



Tricia A. Blanchette
Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803) 988-0008

February 18, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 18 2015

SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2013-002616
Trial Court Case No. 2001-GS-29-0071, 0072, 0073, 0346

THE STATE,

RESPONDENT,

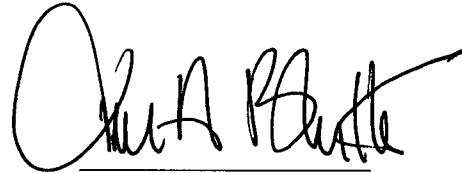
v.

LAKEITHON M. HALL,

APPELLANT.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Record on Appeal on Randy Newman, Jr., Sixth Circuit Solicitor, by depositing a copy of it in the United States Mail, postage prepaid, on February 18, 2015 addressed to PO Box 607, Lancaster, S.C. 29721.



Tricia A. Blanchette
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February 18, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2013-002616
Trial Court Case No. 2001-GS-29-0071, 0072, 0073, 0346

RECEIVED

FEB 18 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

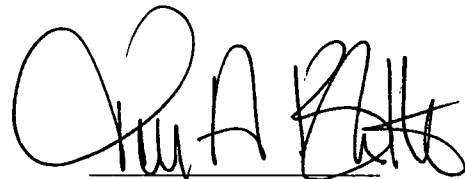
LAKEITHON M. HALL,

APPELLANT.

CERTIFICATE OF SERVICE

I certify that I have served the Record on Appeal via hand delivery this 18th day of February 2015 on J. Anthony Mabry, Assistant Attorney General at:

Office of the Attorney General
Att: J. Anthony Mabry, Assistant Attorney General
1000 Assembly Street
Columbia, SC 29201



Tricia A. Blanchette
Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803) 988-0008

February 18, 2015



LAW OFFICE OF TRICIA A. BLANCHETTE

February 18, 2015
VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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FEB 18 2015

SC Court of Appeals

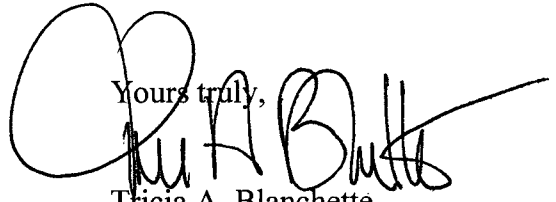
RE: State v. Lakeithon M. Hall;
Appellate Case No.: 2013-002616

Dear Madam Clerk:

For filing, I have attached an unbound original and fourteen copies of the Record on Appeal. Also, for filing, I have attached the Certificate of Service on the Attorney General's Office and Sixth Circuit Solicitor and Certificate of Redaction.

Thank you for your assistance with this matter. Please contact me if any additional information is needed.

Yours truly,


Tricia A. Blanchette
Attorney at Law

cc: J. Anthony Mabry, Assistant Attorney General
Randy Newman, Jr., Sixth Circuit Solicitor
Lakeithon M. Hall